

**TRIBAL-STATE COMPACT**  
**BETWEEN**  
**THE STATE OF CALIFORNIA**  
**AND**  
**THE ELK VALLEY RANCHERIA, CALIFORNIA**

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**TRIBAL-STATE COMPACT  
BETWEEN THE STATE OF CALIFORNIA AND ELK VALLEY  
RANCHERIA, CALIFORNIA**

The Elk Valley Rancheria, California (Tribe), a federally recognized Indian tribe, and the State of California (State) enter into this tribal-state class III gaming compact (Compact) pursuant to the Indian Gaming Regulatory Act of 1988 (IGRA).

**PREAMBLE**

WHEREAS, in 1999, the Tribe and the State entered into the Tribal-State Compact Between the State of California and the Elk Valley Rancheria, California (1999 Compact), which enabled the Tribe, through revenues generated by its Gaming Operation, to improve the governance, environment, education, health, safety, and general welfare of its citizens, and to promote a strong tribal government, self-sufficiency, and to provide essential government services to its citizens; and

WHEREAS, the Tribe is committed to improving the environment, education status, and the health, safety, and general welfare of its members and the surrounding community; and

WHEREAS, the State and the Tribe recognize that the exclusive rights that the Tribe will enjoy under this Compact create a unique opportunity for the Tribe to operate a Gaming Facility in an economic environment free of competition from the operation of slot machines and banked card games on non-Indian lands in California and that this unique economic environment is of great value to the Tribe; and

WHEREAS, in consideration of the exclusive rights enjoyed by the Tribe to engage in the Gaming Activities and to operate the number of Gaming Devices specified herein, and the other meaningful concessions offered by the State in good faith negotiations, and pursuant to IGRA, the Tribe reaffirms its commitment, *inter alia*, to provide to the State, on a sovereign-to-sovereign basis, and to local jurisdictions, fair cost reimbursement and mitigation from revenues from the Gaming Devices operated pursuant to this Compact on a payment schedule; and

WHEREAS, the Tribe and the State share an interest in mitigating the off-reservation impacts of the Gaming Facility, affording meaningful consumer and



employee protections in connection with the operations of the Gaming Facility, fairly regulating the Gaming Activities conducted at the Gaming Facility, and fostering a good-neighbor relationship; and

WHEREAS, the Tribe and the State share a joint sovereign interest in ensuring that Gaming Activities are free from criminal and other undesirable elements; and

WHEREAS, this Compact will afford the Tribe primary responsibility over the regulation of its Gaming Facility and will enhance the Tribe's economic development and self-sufficiency; and

WHEREAS, the State and the Tribe have therefore concluded that this Compact protects the interests of the Tribe and its members, the surrounding community, and the California public, and will promote and secure long-term stability, mutual respect, and mutual benefits; and

WHEREAS, the State and the Tribe agree that all terms of this Compact are intended to be binding and enforceable.

NOW, THEREFORE, the Tribe and the State agree as set forth herein:

**SECTION 1.0. PURPOSES AND OBJECTIVES.**

The terms of this Compact are designed and intended to:

- (a) Evidence the goodwill and cooperation of the Tribe and the State in fostering a mutually respectful government-to-government relationship that will serve the mutual interests of the parties.
- (b) Enhance and implement a means of regulating Class III Gaming to ensure its fair and honest operation in a way that protects the interests of the Tribe, the State, its citizens, and local communities in accordance with IGRA, and through that regulated Class III Gaming, enable the Tribe to develop self-sufficiency, promote tribal economic development, and generate jobs and revenues to support the Tribe's government and its governmental services and programs.
- (c) Promote ethical practices in conjunction with Class III Gaming, through the licensing and control of persons and entities employed in, or providing goods and services to, the Gaming Operation, protect

against the presence or participation of persons whose criminal backgrounds, reputations, character, or associations make them unsuitable for participation in gaming, thereby maintaining a high level of integrity in tribal government gaming, and protect the patrons and employees of the Gaming Operation and the local communities.

- (d) Achieve the objectives set forth in the preamble.

## **SECTION 2.0. DEFINITIONS.**

**Sec. 2.1.** “Applicable Codes” means the California Building Code and the California Public Safety Code applicable to the County, as set forth in titles 19 and 24 of the California Code of Regulations, as those regulations may be amended during the term of this Compact, including, but not limited to, codes for building, electrical, energy, mechanical, plumbing, fire and safety.

**Sec. 2.2.** “Applicant” means an individual or entity that applies for a tribal gaming license or for a State Gaming Agency determination of suitability.

**Sec. 2.3.** “Association” means an association of California tribal and state gaming regulators, the membership of which comprises up to two (2) representatives from each tribal gaming agency of those tribes with whom the State has a gaming compact under IGRA, and up to two (2) delegates each from the state Department of Justice, Bureau of Gambling Control and the California Gambling Control Commission.

**Sec. 2.4.** “City” means the City of Crescent City, California.

**Sec. 2.5.** “Class III Gaming” means the forms of class III gaming defined as such in 25 U.S.C. § 2703(8) and by the regulations of the National Indian Gaming Commission.

**Sec. 2.6.** “Commission” means the California Gambling Control Commission, or any successor agency of the State.

**Sec. 2.7.** “Compact” means this Tribal-State Compact Between the State of California and the Elk Valley Rancheria, California.

**Sec. 2.8.** “County” means the County of Del Norte, California, a political subdivision of the State.

**Sec. 2.9.** “Financial Source” means any person or entity who, directly or indirectly, extends financing to the Gaming Facility or Gaming Operation.

**Sec. 2.10.** “Gaming Activity” or “Gaming Activities” means the Class III Gaming activities authorized under this Compact.

**Sec. 2.11.** “Gaming Device” means any slot machine within the meaning of article IV, section 19, subdivision (f) of the California Constitution. For purposes of calculating the number of Gaming Devices, each player station or terminal on which a game is played constitutes a separate Gaming Device, irrespective of whether it is part of an interconnected system to such terminals or stations. “Gaming Device” includes, but is not limited to, video poker, but does not include electronic, computer, or other technological aids that qualify as class II gaming (as defined under IGRA).

**Sec. 2.12.** “Gaming Employee” means any natural person who is an employee of the Gaming Operation and (a) conducts, operates, maintains, repairs, accounts for, or assists in any Gaming Activities, or is in any way responsible for supervising such Gaming Activities or persons who conduct, operate, maintain, repair, account for, assist, or supervise any such Gaming Activities, (b) is in a category under federal or tribal gaming law requiring licensing, or (c) is a person whose employment duties require or authorize access to areas of the Gaming Facility in which any activities related to Gaming Activities are conducted but that are not open to the public. The definition of Gaming Employee does not include members or employees of the Tribal Gaming Agency.

**Sec. 2.13.** “Gaming Facility” or “Facility” means any building in which Gaming Activities or any Gaming Operations occur, or in which the business records, receipts, or other funds of the Gaming Operation are maintained (but excluding offsite facilities primarily dedicated to storage of those records, and financial institutions), and parking lots, walkways, rooms, buildings, and areas that provide amenities to Gaming Activity patrons, if and only if, the principal purpose of which is to serve the activities of the Gaming Operation, provided that nothing herein prevents the conduct of class II gaming (as defined under IGRA) therein.

**Sec. 2.14.** “Gaming Operation” means the business enterprise that offers and operates Gaming Activities, whether exclusively or otherwise.

**Sec. 2.15.** “Gaming Ordinance” means a tribal ordinance or resolution duly authorizing the conduct of Gaming Activities on the Tribe’s Indian lands in California and approved under IGRA.

**Sec. 2.16.** “Gaming Resources” means any goods or services provided or used in connection with Gaming Activities, whether exclusively or otherwise, including, but not limited to, equipment, furniture, Gaming Devices and ancillary equipment, implements of Gaming Activities such as playing cards, furniture designed primarily for Gaming Activities, maintenance or security equipment and services, and Class III Gaming consulting services. “Gaming Resources” does not include professional accounting and legal services.

**Sec. 2.17.** “Gaming Resource Supplier” means any person or entity who, directly or indirectly, does, or is deemed likely to, manufacture, distribute, supply, vend, lease, purvey, or otherwise provide, to the Gaming Operation or Gaming Facility at least twenty-five thousand dollars (\$25,000) in Gaming Resources in any twelve (12)-month period, or who, directly or indirectly, receives, or is deemed likely to receive, in connection with the Gaming Operation or Gaming Facility, at least twenty-five thousand dollars (\$25,000) in any consecutive twelve (12)-month period, provided that the Tribal Gaming Agency may exclude a purveyor of equipment or furniture that is not specifically designed for, and is distributed generally for use other than in connection with, Gaming Activities, if, but for the purveyance, the purveyor is not otherwise a Gaming Resource Supplier as described herein, the compensation received by the purveyor is not grossly disproportionate to the value of the goods or services provided, and the purveyor is not otherwise a person who exercises a significant influence over the Gaming Operation.

**Sec. 2.18.** “IGRA” means the Indian Gaming Regulatory Act of 1988 (P.L. 100-497, 18 U.S.C. §§ 1166-1168 and 25 U.S.C. § 2701 et seq.), and any amendments thereto, as interpreted by all regulations promulgated thereunder.

**Sec. 2.19.** “Management Contractor” means any Gaming Resource Supplier with whom the Tribe has contracted for the management of any Gaming Activity or Gaming Facility, including, but not limited to, any person who would be regarded as a management contractor under IGRA.

**Sec. 2.20.** “NIGC” means the National Indian Gaming Commission.

**Sec. 2.21.** “Project” means (a) the proposed construction of a new Gaming Facility, (b) any renovation, expansion, or modification of an existing Gaming Facility, or (c) other activity, provided the principal purpose of which is related to the Gaming Activities or Gaming Operation, and any one of which may cause a Significant Effect on the Off-Reservation Environment as defined in section 2.22. For purposes of this definition and section 11.0, “reservation” refers to the Tribe’s Indian lands within the meaning of IGRA, lands located within the reservation, lands held in trust for the Tribe by the United States as described in Appendix A, or lands otherwise held in trust for a member of the Tribe by the United States. “Project” does not include an activity that has been both described and the impacts of which have been previously addressed in an environmental impact report, statement, or assessment under the Tribe’s 1999 Compact or an activity described and addressed within the September 2006 Final Environmental Impact Statement Elk Valley Rancheria Martin Ranch Fee-to-Trust and Casino Project, which is located adjacent to U.S. Highway 101 and Humboldt Road, and the January 4, 2008 Record of Decision [regarding the] Trust Acquisition of the 203.5-acre Martin Ranch Site in Del Norte County, California, for the Elk Valley Rancheria, California.

**Sec. 2.22.** “Significant Effect(s) on the Off-Reservation Environment” occur(s) if any of the following conditions exist:

(a) A proposed Project has the potential to degrade the quality of the off-reservation environment, curtail the range of the environment, or achieve short-term, to the disadvantage of long-term, environmental goals.

(b) The possible effects of a Project on the off-reservation environment are individually limited but cumulatively considerable. As used herein, “cumulatively considerable” means that the incremental effects of an individual Project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

(c) The off-reservation environmental effects of a Project will cause substantial adverse effects on human beings, either directly or indirectly.

For purposes of this definition, “reservation” refers to the Tribe’s Indian lands within the meaning of IGRA or lands otherwise held in trust for the Tribe by the United States.

**Sec. 2.23.** “State” means the State of California or an authorized official or agency thereof designated by this Compact or by the Governor.

**Sec. 2.24.** “State Designated Agency” means the entity or entities designated or to be designated by the Governor to exercise rights and fulfill responsibilities established by this Compact.

**Sec. 2.25.** “State Gaming Agency” means the entities authorized to investigate, approve, regulate and license gaming pursuant to the Gambling Control Act (chapter 5 (commencing with section 19800) of division 8 of the California Business and Professions Code), or any successor statutory scheme, and any entity or entities in which that authority may hereafter be vested.

**Sec. 2.26.** “Tribal Chair” or “Tribal Chairperson” means the person duly elected or selected under the Tribe’s constitution or governing documents to perform the duties specified therein, including serving as the Tribe’s official representative.

**Sec. 2.27.** “Tribal Gaming Agency” means the person, agency, board, committee, commission, or council designated under tribal law, including, but not limited to, an intertribal gaming regulatory agency approved to fulfill those functions by the NIGC, primarily responsible for carrying out the Tribe’s regulatory responsibilities under IGRA and the Tribe’s Gaming Ordinance. No person employed in, or in connection with, the management, supervision, or conduct of any Gaming Activity may be a member or employee of the Tribal Gaming Agency.

**Sec. 2.28.** “Tribe” means the Elk Valley Rancheria, California, a federally recognized Indian tribe listed in the Federal Register, or an authorized official or agency thereof.

### **SECTION 3.0. SCOPE OF CLASS III GAMING AUTHORIZED.**

#### **Sec. 3.1. Authorized Class III Gaming.**

- (a) The Tribe is hereby authorized and permitted to operate only the following Gaming Activities under the terms and conditions set forth in the Compact:
  - (1) Gaming Devices.

- (2) Any banking or percentage card games.
  - (3) Any devices or games that are authorized under State law to the California State Lottery, provided that the Tribe will not offer such games through use of the Internet unless others in the state are permitted to do so under state and federal law.
- (b) Nothing herein shall be construed to preclude the Tribe from offering class II gaming or preclude the negotiation of a separate compact governing the conduct of off-track wagering at the Tribe's Gaming Facility.
  - (c) Nothing herein shall be construed to authorize or permit the operation of any Class III Gaming that the State lacks the power to authorize or permit under article IV, section 19, subdivision (f), of the California State Constitution.
  - (d) The Tribe shall not engage in Class III Gaming that is not expressly authorized in this Compact.

**SECTION 4.0. AUTHORIZED LOCATION OF GAMING FACILITY, NUMBER OF GAMING DEVICES, COST REIMBURSEMENT, AND MITIGATION.**

**Sec. 4.1. Authorized Number of Gaming Devices.**

The Tribe is entitled to operate up to a total of one thousand two hundred (1,200) Gaming Devices pursuant to the conditions set forth in section 3.1 and sections 4.2 through and including section 5.2.

**Sec. 4.2. Authorized Gaming Facilities.**

The Tribe may establish and operate not more than two (2) Gaming Facilities and engage in Class III Gaming only on eligible Indian lands held in trust for the Tribe or a member of the Tribe and on which Class III Gaming may lawfully be conducted under IGRA as of the execution date of this Compact as described in and represented on the map at Appendix A hereto. The Tribe may combine and operate in its Gaming Facilities any forms and kinds of gaming

permitted under law, except to the extent limited under IGRA, this Compact, and the Tribe's Gaming Ordinance.

**Sec. 4.3. Special Distribution Fund.**

- (a) The Tribe shall pay to the State on a pro rata basis the State's 25 U.S.C. § 2710(d)(3)(C) costs incurred for purposes consistent with IGRA, including the performance of all its duties under this Compact, the administration and implementation of tribal-state Class III Gaming compacts, and funding for the Office of Problem Gambling, as determined by the monies appropriated in the annual Budget Act each fiscal year to carry out those purposes (Appropriation). The Appropriation and the maximum number of Gaming Devices operated by all federally recognized tribes in California pursuant to tribal-state Class III Gaming compacts determined to be in operation during the previous State fiscal year shall be reported annually by the State Gaming Agency to the Tribe on or before December 15. The term "operated" or "operation" as used in this Compact in relation to Gaming Devices describes each and every Gaming Device available to patrons (including slot tournament contestants) for play at any given time. The Tribe's pro rata share of the State's 25 U.S.C. § 2710(d)(3)(C) regulatory costs in any given year this Compact is in effect shall be calculated by the following equation:

The maximum number of Gaming Devices operated in the Tribe's Gaming Facility during the previous State fiscal year as determined by the State Gaming Agency, divided by the maximum number of Gaming Devices operated by all federally recognized tribes in California pursuant to tribal-state Class III Gaming compacts during the previous State fiscal year, multiplied by the Appropriation, equals the Tribe's pro rata share.

- (1) Beginning the first full quarter after Class III Gaming commences under this Compact, the Tribe shall pay its pro rata share to the State Gaming Agency for deposit into the Indian Gaming Special Distribution Fund established by the Legislature (Special Distribution Fund). The payment shall be made in four (4) equal quarterly installments due on the thirtieth (30th) day following the end of each calendar quarter



(i.e., by April 30 for the first quarter, July 30 for the second quarter, October 30 for the third quarter, and January 30 for the fourth quarter); provided, however, that in the event this Compact becomes effective during a calendar quarter, payment shall be prorated for the number of days remaining in that initial quarter, in addition to any remaining full quarters in the first calendar year of operation to obtain a full year of full quarterly payments of the Tribe's pro rata share specified above. A payment year will run from January through December. If any portion of the Tribe's quarterly pro rata share payment is overdue, the Tribe shall pay to the State for purposes of deposit into the Special Distribution Fund, the amount overdue plus interest accrued thereon at the rate of one percent (1%) per month or the maximum rate permitted by State law for delinquent payments owed to the State, whichever is less. All quarterly payments shall be accompanied by the Quarterly Contribution Report specified in section 4.4, subdivision (b).

- (2) If the Tribe objects to the State's determination of the Tribe's pro rata share, or to the amount of the Appropriation as including matters not consistent with IGRA, the matter shall be resolved in accordance with the dispute resolution provisions of section 13.0. Any State determination of the Tribe's pro rata share challenged by the Tribe shall govern and shall be paid by the Tribe to the State when due, and the Tribe's payment is a condition precedent to invoking the section 13.0 dispute resolution provisions.
- (3) The Tribe's annual pro rata share payment amount under section 4.3, subdivision (a) shall be capped at an amount equal to a five (5%) percent increase from the Appropriation used to calculate the Tribe's pro rata share in the immediately preceding year.
- (4) The foregoing payments have been negotiated between the parties as a fair and reasonable contribution, based upon the State's costs of regulating and mitigating certain impacts of tribal Class III Gaming Activities, as well as the Tribe's market conditions, its circumstances, and the rights afforded and consideration provided by this Compact.

- (b) In any given state fiscal year, to the extent permissible and only as may be provided under State law, the State Gaming Agency may reduce, or eliminate, the Tribe's pro rata share payment obligation to the Special Distribution Fund.

**Sec. 4.3.1. Use of Special Distribution Funds.**

Revenue placed in the Special Distribution Fund shall be available for appropriation by the Legislature for the following purposes:

- (a) Grants, including any administrative costs, for programs designed to address and treat gambling addiction;
- (b) Grants, including any administrative costs and environmental review costs, for the support of State and local government agencies impacted by tribal government gaming;
- (c) Compensation for regulatory costs incurred by the State, including, but not limited to: the State Gaming Agency; the State Department of Justice; the Office of the Governor; the State Controller; the California Department of Public Health Programs, Office of Problem Gambling; the State Department of Human Resources; the Financial Information System for California; and State Designated Agencies in connection with the implementation and administration of Class III Gaming compacts in California;
- (d) Compensation to state and local governments for law enforcement, fire, public safety, and other emergency response services provided in response to or arising from any threat to the health, welfare and safety of the Tribe's Gaming Facility patrons, employees, tribal members or the public generally, attributable to, or as a consequence of, disputes arising on the Tribe's Indian lands in connection with the Tribe's operation of Gaming Activities; and
- (e) Any other purposes specified by the Legislature that are consistent with IGRA, including funds necessary to ensure adequate funding to the Revenue Sharing Trust Fund.

The foregoing payments have been negotiated between the parties as a fair and reasonable contribution, based upon the State's actual and reasonable costs of

regulating and mitigating certain impacts of tribal Class III Gaming Activities including problem gambling, as well as the Tribe's market conditions, its circumstances, and the rights afforded and consideration provided by this Compact.

**Sec. 4.3.2. Cost Reimbursement and Mitigation to Local Governments.**

The Tribe has entered into and shall maintain a binding enforceable agreement with Del Norte County for such undertakings and services that mitigate the impacts of the Gaming Facility. This agreement is distinct from those agreements associated with a specific Project and required by section 11.0.

**Sec. 4.4. Quarterly Payments and Quarterly Contribution Report.**

- (a) (1) The Tribe shall remit quarterly to the State Gaming Agency the payments described in section 4.3, for deposit into the Special Distribution Fund.
- (2) All quarterly payments shall be accompanied by the certification specified in subdivision (b).
- (b) At the time each quarterly payment is due, regardless of whether any monies are owed, the Tribe shall submit to the State Gaming Agency a certification (Quarterly Contribution Report), prepared by the Chief Financial Officer or other authorized representative of the Gaming Operation or of the Tribe, which sets forth the following information:
  - (1) The calculation of the maximum number of Gaming Devices operated in the Gaming Facility for each day during the given quarter;
  - (2) The total amount due pursuant to section 4.3.
  - (3) The total amount of the quarterly payment paid to the State under section 4.3.
- (c) The State Gaming Agency may audit the calculations in subdivision (b). The State Gaming Agency shall have access to all records deemed necessary by the State Gaming Agency to verify the maximum number of Gaming Devices operated in the Gaming

Facility during the given quarter, including access to the Gaming Device accounting systems and server-based systems and software, and to the data contained therein on a read only basis.

- (d) Notwithstanding anything to the contrary in section 13.0, any failure of the Tribe to remit the payments referenced in subdivision (a), will entitle the State to immediately seek injunctive relief in federal or state court, at the State's election, to compel the payments, plus accrued interest thereon at the rate of one percent (1%) per month, or the maximum rate permitted by State law for delinquent payments owed to the State, whichever is less; and further, the Tribe expressly consents to be sued in either court and hereby waives its sovereign immunity and its right to assert sovereign immunity against the State in any such proceeding. Failure to make timely payment shall be deemed a material breach of this Compact.
- (e) If any portion of the payments under subdivision (a) of this section is overdue after the State Gaming Agency has provided written notice to the Tribe of the overdue amount with an opportunity to cure of at least fifteen (15) business days, and if more than sixty (60) calendar days have passed from the due date, then the Tribe shall cease operating all of its Gaming Devices until full payment is made.

#### **Sec. 4.5. Exclusivity.**

In recognition of the Tribe's agreement to make the payments specified in section 4.3, the Tribe shall have the following rights:

- (a) In the event the exclusive right of Indian tribes to operate Gaming Devices in California is abrogated by the enactment, amendment, or repeal of a State statute or constitutional provision, or the conclusive and dispositive judicial construction of a statute or the State Constitution by a California appellate court after the effective date of this Compact that Gaming Devices may lawfully be operated by another person, organization, or entity (other than an Indian tribe operating pursuant to a Class III Gaming compact) within California, the Tribe shall have the right to exercise one of the following options:

- (1) Terminate this Compact, in which case the Tribe will lose the right to operate Gaming Devices and other Class III Gaming authorized by this Compact; or
  - (2) Continue under this Compact with an entitlement to a reduction of the rates specified in any agreement pursuant to section 5.2 following the conclusion of negotiations, to provide for: (A) compensation to the State for the costs of regulation, as set forth in section 4.3; (B) reasonable payments to local governments impacted by tribal government gaming, the amount to be determined based upon any intergovernmental agreement referenced in or entered into pursuant to sections 4.3.2 or 11.0; (C) grants for programs designed to address and treat gambling addiction; and (D) such assessments as authorized or permitted at such time under federal law. Such negotiations shall commence within thirty (30) days after receipt of a written request by a party to enter into the negotiations, unless both parties agree in writing to an extension of time. If the Tribe and the State fail to reach agreement on the amount of reduction of such payments within sixty (60) days following commencement of the negotiations specified in this section, the amount shall be determined by arbitration pursuant to section 13.2.
- (b) Nothing in this section is intended to preclude the California State Lottery from offering any lottery games or devices that are currently or may hereafter be authorized by State law.

## **SECTION 5.0. REVENUE SHARING WITH NON-GAMING AND LIMITED-GAMING TRIBES.**

### **Sec. 5.1. Definitions.**

For purposes of this section 5.0, the following definitions apply:

- (a) The “Revenue Sharing Trust Fund” is a fund created by the Legislature and administered by the State Gaming Agency that, as limited trustee, is not a trustee subject to the duties and liabilities contained in the California Probate Code, similar state or federal statutes, rules or regulations, or under state or federal common law or

equitable principles, and has no duties, responsibilities, or obligations hereunder except for the receipt, deposit, and distribution of monies paid by gaming tribes for the benefit of Non-Gaming Tribes and Limited-Gaming Tribes. The State Gaming Agency shall allocate and disburse the Revenue Sharing Trust Fund monies on a quarterly basis as specified by the Legislature. Each eligible Non-Gaming Tribe and Limited-Gaming Tribe in the State shall receive the sum of one million one hundred thousand dollars (\$1,100,000) per year from the Revenue Sharing Trust Fund. In the event there are insufficient monies in the Revenue Sharing Trust Fund to pay one million one hundred thousand dollars (\$1,100,000) per year to each eligible Non-Gaming Tribe and Limited-Gaming Tribe, any available monies in that fund shall be distributed to eligible Non-Gaming Tribes and Limited-Gaming Tribes in equal shares. Monies deposited into the Revenue Sharing Trust Fund in excess of the amount necessary to distribute one million one hundred thousand dollars (\$1,100,000) to each eligible Non-Gaming Tribe and Limited-Gaming Tribe shall remain in the Revenue Sharing Trust Fund available for disbursement in future years, or deposited in the Tribal Nation Grant Fund but shall not be diverted to any non-Revenue Sharing Trust Fund or any non-Tribal Nation Grant Fund use or purpose. In no event shall the State's general fund be obligated to make up any shortfall in the Revenue Sharing Trust Fund or to pay any unpaid claims connected therewith, and, notwithstanding any provision of law, including any existing provision of law implementing the State Gaming Agency's obligations related to the Revenue Sharing Trust Fund under any Class III Gaming compact, Non-Gaming Tribes and Limited-Gaming Tribes are not third-party beneficiaries of this Compact and shall have no right to seek any judicial order compelling disbursement of any Revenue Sharing Trust Fund monies to them.

- (b) The "Tribal Nation Grant Fund" is a fund created by the Legislature to make discretionary distribution of funds to Non-Gaming Tribes and Limited-Gaming Tribes upon application of such tribes for purposes related to effective self-governance, self-determined community, and economic development. The fiscal operations of the Tribal Nation Grant Fund are administered by the State Gaming Agency, which acts as a limited trustee, not subject to the duties and liabilities contained in the California Probate Code, similar state or federal statutes, rules or regulations, or under state or federal common law or equitable

principles, and with no duties or obligations hereunder except for the receipt, deposit, and distribution of monies paid by gaming tribes for the benefit of Non-Gaming Tribes and Limited-Gaming Tribes, as those payments are directed by a State Designated Agency. The State Gaming Agency shall allocate and disburse the Tribal Nation Grant Fund monies as specified by a State Designated Agency to one (1) or more eligible Non-Gaming and Limited-Gaming Tribes upon a competitive application basis. The State Gaming Agency shall exercise no discretion or control over, nor bear any responsibility arising from, the recipient tribes' use or disbursement of Tribal Nation Grant Fund monies. The State Designated Agency shall perform any necessary audits to ensure that monies awarded to any tribe are being used in accordance with their disbursement in relation to the purpose of the Tribal Nation Grant Fund. In no event shall the State's general fund be obligated to pay any monies into the Tribal Nation Grant Fund or to pay any unpaid claims connected therewith, and, notwithstanding any provision of law, including any existing provision of law implementing the State's obligations related to the Tribal Nation Grant Fund or the Revenue Sharing Trust Fund under any Class III Gaming compact, Non-Gaming Tribes and Limited-Gaming Tribes are not third-party beneficiaries of this Compact and shall have no right to seek any judicial order compelling disbursement of any Tribal Nation Grant Fund monies to them.

- (c) A "Non-Gaming Tribe" is a federally recognized tribe in California, with or without a tribal-state Class III Gaming compact, that has not engaged in, or offered, class II gaming or Class III Gaming in any location whether within or without California, as of the date of distribution to such tribe from the Revenue Sharing Trust Fund or the Tribal Nation Grant Fund, or during the immediately preceding three hundred sixty-five (365) days.
- (d) A "Limited-Gaming Tribe" is a federally recognized tribe in California that has a Class III Gaming compact with the State but is operating fewer than a combined total of three hundred fifty (350) Gaming Devices in all of its gaming operations wherever located, or does not have a Class III Gaming compact but is engaged in class II gaming, whether within or without California, during the immediately preceding three hundred sixty-five (365) days.

**Sec. 5.2. Payments to the Revenue Sharing Trust Fund and Tribal Nation Grant Fund.**

If the Tribe intends to operate more than one thousand two hundred (1,200) Gaming Devices during the Term of this Compact, the Tribe shall request the State to enter into negotiations pursuant to section 15.0 of this Compact for an amendment or modification regarding payments to the State Gaming Agency for deposit into the Revenue Sharing Trust Fund, and if that fund is fully solvent, the Tribal Nation Grant Fund, from the operation of Gaming Devices in excess of three hundred fifty (350), and appropriate credits that may offset such payments.

**SECTION 6.0. LICENSING.**

**Sec. 6.1. Gaming Ordinance and Regulations.**

- (a) All Gaming Activities conducted under this Compact shall, at a minimum, comply (i) with a Gaming Ordinance duly adopted by the Tribe and approved in accordance with IGRA, (ii) with all applicable rules, regulations, procedures, specifications, and standards duly adopted by the NIGC, the Tribal Gaming Agency, and the State Gaming Agency, and (iii) with the provisions of this Compact.
- (b) The Tribal Gaming Agency shall make available for inspection by the State Gaming Agency upon request a copy of the Gaming Ordinance, and all of its rules, regulations, procedures, specifications, ordinances, or standards applicable to the Gaming Activities and Gaming Operation, but excluding the Tribal Gaming Agency's internal policies and procedures.
- (c) Within ten (10) calendar days of a request therefor, the Tribal Gaming Agency shall make the following documents available to Gaming Operation patrons or their legal representatives, through electronic means or otherwise in its discretion: the Gaming Ordinance; the rules of each Class III Gaming game operated by the Tribe, to the extent that such rules are not available for display on the Gaming Device or the table on which the game is played; rules governing promotions; rules governing points and the player's club program, including rules regarding confidentiality of the player information, if any; the tort liability ordinance specified in section 12.5, subdivision (b); and the regulations promulgated by the Tribal Gaming Agency concerning



patron disputes pursuant to section 10.0. To the extent that any of the foregoing are available to the public on a website maintained by an agency of the State of California or the federal government, or by the Tribe or the Gaming Operation, the Tribal Gaming Agency may refer requesters to such website(s) for the requested information.

### **Sec. 6.2. Tribal Ownership, Management, and Control of Gaming Operation.**

The Gaming Operation authorized under this Compact shall be owned solely by the Tribe.

### **Sec. 6.3. Prohibitions Regarding Minors.**

- (a) The Tribe shall prohibit persons under the age of eighteen (18) years to be present in any room or area in which Gaming Activities are being conducted unless the person is en route to a non-gaming area of the Gaming Facility.
- (b) If the Tribe permits the consumption of alcoholic beverages in the Gaming Facility, the Tribe shall also prohibit persons under the age of twenty-one (21) years from purchasing, consuming, or possessing alcoholic beverages and from being present in any room or area in which alcoholic beverages may be consumed, except to the extent permitted by the State Department of Alcoholic Beverage Control.

### **Sec. 6.4. Licensing Requirements and Procedures.**

#### **Sec. 6.4.1. Summary of Licensing Principles.**

All persons in any way connected with the Gaming Operation or Gaming Facility who are required to be licensed or to submit to a background investigation under IGRA, and any others required to be licensed under this Compact, including, without limitation, all Gaming Employees, Gaming Resource Suppliers, Financial Sources not otherwise exempt from licensing requirements, and any other person having a significant influence over the Gaming Operation, must be licensed by the Tribal Gaming Agency and, except as otherwise provided, cannot have had any determination of suitability denied or revoked by the State Gaming Agency. The parties intend that the licensing process provided for in this Compact shall involve

joint cooperation between the Tribal Gaming Agency and the State Gaming Agency, as more particularly described herein.

**Sec. 6.4.2. Gaming Facility.**

- (a) The Gaming Facility authorized by this Compact shall be licensed by the Tribal Gaming Agency in conformity with the requirements of this Compact, the Gaming Ordinance, IGRA, and any applicable regulations adopted by the NIGC. The license shall be reviewed and renewed every two (2) years thereafter. Verification that this requirement has been met shall be provided by the Tribe to the State by sending a copy of the initial license and each renewal license to the State Gaming Agency within twenty (20) days after issuance of the license or renewal. The Tribal Gaming Agency's certification that the Gaming Facility is being operated in conformity with these requirements shall be posted in a conspicuous and public place in the Gaming Facility at all times.
  
- (b) To assure the protection of the health and safety of all Gaming Facility patrons, guests, and employees, the Tribe shall adopt, or has already adopted, and shall maintain throughout the term of this Compact, an ordinance that requires any Gaming Facility construction to meet or exceed the Applicable Codes. The Gaming Facility and construction, expansion, improvement, modification, or renovation will also comply with Title III of the Americans with Disabilities Act, P.L. 101-336, as amended. Notwithstanding the foregoing, the Tribe need not comply with any standard that specifically applies in name or in fact only to tribal facilities. Without limiting the rights of the State under this section, reference to Applicable Codes is not intended to confer jurisdiction upon the State or its political subdivisions. For purposes of this section, the terms "building official" and "code enforcement agency" as used in titles 19 and 24 of the California Code of Regulations mean the Tribal Gaming Agency or such other tribal government agency or official as may be designated by the Tribe's law. The "building official" and "code enforcement agency" designated by the Tribe's law may exercise authority granted to such individuals and entities as specified within the Applicable Codes with regard to the Gaming Facility.

- (c) To assure compliance with the Applicable Codes, in all cases where the Applicable Codes would otherwise require a permit, the Tribe shall employ for any Gaming Facility construction, qualified plan checkers or review firms. To be qualified as a plan checker or review firm for purposes of this Compact, plan checkers or review firms must be either California licensed architects or engineers with relevant experience, or California licensed architects or engineers on the list, if any, of approved plan checkers or review firms provided by the City or County in which the Gaming Facility is located. The Tribe shall also employ qualified project inspectors. To be qualified as a project inspector for purposes of this Compact, project inspectors must possess the same qualifications and certifications as project inspectors utilized by the County in which the Gaming Facility is located. The plan checkers, review firms, and project inspectors shall hereinafter be referred to as “Inspector(s).” The Tribe shall require the Inspectors to report in writing any failure to comply with the Applicable Codes to the Tribal Gaming Agency and the State Gaming Agency. The Tribe agrees to correct any Gaming Facility condition noted in the inspections that does not meet the Applicable Codes (hereinafter “deficiency”).
- (d) The Tribe shall cause the design and construction calculations, and plans and specifications that form the basis for the construction (the “Design and Building Plans”) to be available for inspection and copying by the State Gaming Agency upon its request.
- (e) In the event that material changes to a structural detail of the Design and Building Plans will result from contract change orders or any other changes in the Design and Building Plans, such changes shall be reviewed by the qualified plan checker or review firm and field verified by the Inspectors for compliance with the Applicable Codes.
- (f) The Tribe shall maintain during construction all other contract change orders for inspection and copying by the State Gaming Agency upon its request.
- (g) The Tribe shall maintain the Design and Building Plans depicting the as-built Gaming Facility, which shall be available to the State Gaming Agency for inspection and copying upon its request, for the term of this Compact.

- (h) Upon final certification by the Inspectors that the Gaming Facility meets the Applicable Codes, the Tribal Gaming Agency shall forward the Inspectors' certification to the State Gaming Agency within ten (10) days of issuance. If the State Gaming Agency objects to that certification, the Tribe shall make a good-faith effort to address the State's concerns, but if the State Gaming Agency does not withdraw its objection, the matter will be resolved in accordance with the dispute resolution provisions of section 13.0.
- (i) Any failure to remedy within a reasonable period of time any material and timely raised deficiency shall be deemed a violation of this Compact and, furthermore, any deficiency that poses a serious or significant risk to the health or safety of any occupant shall be grounds for the State Gaming Agency to prohibit occupancy of the affected portion of the Gaming Facility pursuant to a court order until the deficiency is corrected. The Tribe shall not allow occupancy of any portion of the Gaming Facility that is constructed or maintained in a manner that endangers the health or safety of the occupants.
- (j) The Tribe shall also take all necessary steps to reasonably ensure the ongoing availability of sufficient and qualified fire suppression services to the Gaming Facility, and to reasonably ensure that the Gaming Facility satisfies all requirements of titles 19 and 24 of the California Code of Regulations applicable to similar facilities in the County as set forth below:
  - (1) Not less than thirty (30) days after the effective date of the Compact, and not less than biennially thereafter, and upon at least ten (10) days' notice to the State Gaming Agency, the Gaming Facility shall be inspected, at the Tribe's expense, by an independent expert for purposes of certifying that the Gaming Facility meets a reasonable standard of fire safety and life safety.
  - (2) The State Gaming Agency shall be entitled to designate and have a qualified representative or representatives, which may include local fire suppression entities, present during the inspection. During such inspection, the State's representative(s) shall specify to the independent expert any

condition that the representative(s) reasonably believes would preclude certification of the Gaming Facility as meeting a reasonable standard of fire safety and life safety.

- (3) The independent expert shall issue to the Tribal Gaming Agency and the State Gaming Agency a report on the inspection within fifteen (15) days after its completion, or within thirty (30) days after commencement of the inspection, whichever first occurs, identifying any deficiency in fire safety or life safety at the Gaming Facility or in the ability of the Tribe to meet reasonably expected fire suppression needs of the Gaming Facility.
- (4) Within twenty-one (21) days after the issuance of the report, the independent expert shall also require and approve a specific plan for correcting deficiencies, whether in fire safety or life safety, at the Gaming Facility or in the Tribe's ability to meet the reasonably expected fire suppression needs of the Gaming Facility, including those identified by the State Gaming Agency's representatives. A copy of the report shall be delivered to the State Gaming Agency and the Tribal Gaming Agency.
- (5) Immediately upon correction of all deficiencies identified in the report, the independent expert shall certify in writing to the Tribal Gaming Agency and the State Gaming Agency that all deficiencies have been corrected.
- (6) Any failure to correct all deficiencies identified in the report within a reasonable period of time shall be a violation of this Compact, and any failure to promptly correct those deficiencies that pose a serious or significant risk to the health or safety of any occupants shall be a violation of this Compact and grounds for the State Gaming Agency to prohibit occupancy of the affected portion of the Gaming Facility pursuant to court order until the deficiency is corrected.
- (7) Consistent with its obligation to ensure the safety of those within the Gaming Facility, the Tribe shall promptly notify the State Gaming Agency of any circumstances that pose a serious

and significant risk to the health or safety of occupants and take prompt action to correct such circumstances. Any failure to remedy within a reasonable period of time any serious and significant risk to public safety shall be deemed a violation of this Compact, and any circumstance that poses a serious or significant risk to the health or safety of any occupant shall be grounds for the State Gaming Agency to prohibit occupancy of the affected portion of the Gaming Facility pursuant to a court order until the deficiency is corrected.

- (k) Notwithstanding anything in section 6.4 or elsewhere in this Compact, any construction of any Project that has taken place or has commenced prior to the effective date of this Compact shall be subject to the Gaming Facility license rules in section 6.4.2 of the 1999 Compact, provided that the Project was previously approved under section 6.4.2 of that compact.

#### **Sec. 6.4.3. Gaming Employees.**

- (a) Every Gaming Employee shall obtain, and thereafter maintain current, a valid tribal gaming license and those Gaming Employees identified in subdivision (b) shall also obtain, and thereafter maintain current, a State Gaming Agency determination of suitability, which license and determination shall be subject to biennial renewal; provided that in accordance with section 6.4.9, those persons may be employed on a temporary or conditional basis pending completion of the licensing process and the State Gaming Agency determination of suitability.
- (b) The State Gaming Agency will consult with the Tribal Gaming Agency to identify those Gaming Employees who, in addition to a tribal gaming license must also apply for, obtain, and maintain, a finding of suitability from the State Gaming Agency. Gaming Employees who must obtain and maintain a finding of suitability from the State Gaming Agency may be referred to as “Compact Key Employees” and are identified by position on the “Compact Key Employee Position List.” The general principles governing those Gaming Employees who must have both a tribal gaming license and a finding of suitability from the State Gaming Agency are set forth below. These principles are consistent with agreements between the State Gaming Agency and the Tribal Gaming Agency identifying

Gaming Employees who are not required to have a State Gaming Agency determination of suitability, as provided in section 6.5.6, subdivision (a) of the 1999 Compact and are referred to therein as “non-key Gaming Employee[s]” and that are in effect at the time of execution of this Compact, and any such agreements shall remain in effect unless and until they are updated or amended through consultations between the State Gaming Agency and the Tribal Gaming Agency. A Gaming Employee who is required to obtain and maintain current a valid tribal gaming license under subdivision (a) is not required to obtain or maintain a State Gaming Agency determination of suitability if any of the following applies:

- (1) A Gaming Employee shall not be placed on the Compact Key Employee Position List if the employee’s position title is subject to the licensing requirement of subdivision (a) solely because he or she is a person who conducts, operates, maintains, repairs, or assists in Gaming Activities, provided that this exception shall not apply if he or she supervises Gaming Activities or persons who conduct, operate, maintain, repair, assist, account for or supervise any such Gaming Activity, and is empowered to make discretionary decisions affecting the conduct of the Gaming Activities.
- (2) A Gaming Employee shall not be placed on the Compact Key Employee Position List if the employee’s position title is subject to the licensing requirement of subdivision (a) solely because he or she is a person whose employment duties require or authorize access to areas of the Gaming Facility that are not open to the public, provided that this exception shall not apply if he or she supervises Gaming Activities or persons who conduct, operate, maintain, repair, assist, account for or supervise any such Gaming Activity, and is empowered to make discretionary decisions affecting the conduct of the Gaming Activities.
- (3) Members and employees of the Tribal Gaming Agency are not subject to a finding of suitability from the State Gaming Agency.

- (4) The State Gaming Agency and the Tribal Gaming Agency agree to exempt a Gaming Employee from the requirement to obtain or maintain current a State Gaming Agency determination of suitability.
- (c) For those position titles not included on the Compact Key Employee Position List, notwithstanding subdivision (b), where the State Gaming Agency determines it is reasonably necessary, the State Gaming Agency is authorized to review the tribal license application, and all materials and information received by the Tribal Gaming Agency in connection therewith, for any person whom the Tribal Gaming Agency has licensed, or proposes to license, as a Gaming Employee. If the State Gaming Agency determines that the person would be unsuitable for issuance of a license or permit for a similar level of employment in a gambling establishment subject to the jurisdiction of the State, it shall notify the Tribal Gaming Agency of its determination and the reasons supporting its determination. Upon receipt of notice that the State Gaming Agency has determined that a person would be unsuitable for licensure in a gambling establishment subject to the jurisdiction of the State Gaming Agency, the Tribal Gaming Agency shall deny that person a tribal gaming license, or immediately suspend that person's or entity's license, as applicable. Any right to notice or hearing in regard thereto shall be governed by tribal law. Thereafter, the Tribal Gaming Agency shall revoke any tribal gaming license that has theretofore been issued to that person or entity; provided that the Tribal Gaming Agency may, in its discretion, reissue a tribal gaming license to the person or entity following entry of a final judgment reversing the determination of the State Gaming Agency in a proceeding in state court conducted pursuant to section 1085 of the California Code of Civil Procedure. Notwithstanding a determination of unsuitability by the State Gaming Agency, the Tribal Gaming Agency may, in its discretion, decline to revoke a tribal gaming license issued to a person employed by the Tribe pursuant to subdivisions (e) or (f).
- (d) Except as provided in subdivisions (e) and (f), the Tribe shall not employ, or continue to employ, any person whose application to the State Gaming Agency in accordance with subdivision (b) and section 6.5.6 for a determination of suitability or for a renewal of such a



determination, has been denied, or whose determination of suitability has expired without renewal.

- (e) Notwithstanding subdivision (d), the Tribe may employ or retain in its employ a person whose application for a determination of suitability, or for a renewal of such a determination, has been denied by the State Gaming Agency, if:
  - (1) The person holds a valid and current license issued by the Tribal Gaming Agency that must be renewed at least biennially;
  - (2) The denial of the application by the State Gaming Agency is based solely on activities, conduct, or associations that antedate the filing of the person's initial application to the State Gaming Agency for a determination of suitability;
  - (3) The person is not an employee or agent of any other gaming operation; and
  - (4) The person has been in the continuous employ of the Tribe for at least three (3) years prior to June 26, 2000.
  
- (f) Notwithstanding subdivision (d), the Tribe may employ or retain in its employ a person whose application for a determination of suitability, or for a renewal of such a determination, has been denied by the State Gaming Agency, if the person is an enrolled member of the Tribe and if:
  - (1) The enrolled member of the Tribe holds a valid and current license issued by the Tribal Gaming Agency that must be renewed at least biennially;
  - (2) The applicant was initially employed by the Tribe in any position identified on the Compact Key Employee Position List prior to January 1, 1996 or, the denial of the application by the State Gaming Agency is based solely on activities, conduct, or associations that antedate by at least ten (10) years, the filing of the enrolled member of the Tribe's initial application to the State Gaming Agency for a determination of suitability; and

- (3) The enrolled member of the Tribe is not an employee or agent of any other gaming operation.

For purposes of this subdivision (f), “enrolled member of the Tribe” means a person who is a member of the Tribe as determined by the Tribe’s law.

- (g) At any time after five (5) years following the effective date of this Compact, either party to this Compact may request renegotiation of the scope of coverage of subdivision (b) or (c).

#### **Sec. 6.4.4. Gaming Resource Suppliers.**

- (a) Every Gaming Resource Supplier shall be licensed by the Tribal Gaming Agency prior to the sale, lease, or distribution, or further sale, lease, or distribution, of any Gaming Resources to or in connection with the Tribe’s Gaming Operation or Facility. Unless the Tribal Gaming Agency licenses the Gaming Resource Supplier pursuant to subdivision (d), the Gaming Resource Supplier shall also apply to, and the Tribe shall require it to apply to, the State Gaming Agency for a determination of suitability at least thirty (30) days, unless such thirty (30) days is shortened by the Tribal Gaming Agency, prior to the sale, lease, or distribution, or further sale, lease, or distribution, of any Gaming Resources to or in connection with the Tribe’s Gaming Operation or Facility, except that for Gaming Devices the period specified under section 7.1, subdivision (a)(1), shall govern. The period during which a determination of suitability as a Gaming Resource Supplier is valid expires on the earlier of (i) the date two (2) years following the date on which the determination is issued, unless a different expiration date is specified by the State Gaming Agency, or (ii) the date of its revocation by the State Gaming Agency. If the State Gaming Agency denies or revokes a determination of suitability, the Tribal Gaming Agency shall immediately deny or revoke the license and shall not reissue any license to that Gaming Resource Supplier unless and until the State Gaming Agency makes a determination that the Gaming Resource Supplier is suitable. The license and determination of suitability shall be reviewed at least every two (2) years for continuing compliance. For purposes of section 6.5.2, such a review shall be deemed to constitute an application for renewal. In connection with such a review, the Tribal

Gaming Agency shall require the Gaming Resource Supplier to update all information provided in the previous application.

- (b) Any agreement between the Tribe and a Gaming Resource Supplier shall include, and shall be deemed to include, a provision for its termination without further liability on the part of the Tribe, except for the bona fide payment of all outstanding sums (exclusive of interest) owed as of, or payment for services or materials received up to, the date of termination upon revocation or non-renewal of the Gaming Resource Supplier's license by the Tribal Gaming Agency based on a determination of unsuitability by the State Gaming Agency. Except as set forth above, the Tribe shall not enter into, or continue to make payments to a Gaming Resource Supplier pursuant to, any contract or agreement for the provision of Gaming Resources with any person or entity whose application to the State Gaming Agency for a determination of suitability has been denied or revoked or whose determination of suitability has expired without renewal.
- (c) Notwithstanding subdivision (a), the Tribal Gaming Agency may license a Management Contractor for a period of no more than seven (7) years, but the Management Contractor must still apply for renewal of a determination of suitability by the State Gaming Agency at least every two (2) years, and where the State Gaming Agency denies or revokes a determination of suitability, the Tribal Gaming Agency shall immediately deny or revoke the license and, as of the effective date of the State Gaming Agency's decision, the Management Contractor shall no longer be authorized to perform any work within or provide any goods or services to, in support of, or in connection with, the Gaming Operation or Facility. Except for where the State Gaming Agency has denied or revoked its determination of suitability, nothing in this subdivision shall be construed to bar the Tribal Gaming Agency from issuing additional new licenses to the same Management Contractor following the expiration of a seven (7)-year license.
- (d) The Tribal Gaming Agency may elect to license a person or entity as a Gaming Resource Supplier without requiring it to apply to the State Gaming Agency for a determination of suitability under subdivision (a) if the Gaming Resource Supplier has already been issued a determination of suitability that is then valid. In that case, the Tribal

Gaming Agency shall immediately notify the State Gaming Agency of its licensure of the person or entity as a Gaming Resource Supplier, and shall identify in its notification the State Gaming Agency determination of suitability on which the Tribal Gaming Agency has relied in proceeding under this subdivision (d). Subject to the Tribal Gaming Agency's compliance with the requirements of this subdivision, a Gaming Resource Supplier licensed under this subdivision may, during and only during the period in which the determination of suitability remains valid, engage in the sale, lease, or distribution of Gaming Resources to or in connection with the Tribe's Gaming Operation or Facility, without applying to the State Gaming Agency for a determination of suitability. The issuance of a license under this subdivision is in all cases subject to any later determination by the State Gaming Agency that the Gaming Resource Supplier is not suitable or to a tribal gaming license suspension or revocation pursuant to section 6.5.1, and does not extend the time during which the determination of suitability relied on by the Tribal Gaming Agency is valid. A license issued under this subdivision expires upon the revocation or expiration of the determination of suitability relied on by the Tribal Gaming Agency. Nothing in this subdivision affects the obligations of the Tribal Gaming Agency, or of the Gaming Resource Supplier, under section 6.5.2 and section 6.5.6 of this Compact.

- (e) Except where subdivision (d) applies, within twenty-one (21) days of the issuance of a license to a Gaming Resource Supplier, the Tribal Gaming Agency shall transmit to the State Gaming Agency a copy of the license. All tribal license application materials and information received by it from the Applicant must be made available to the State Gaming Agency upon request which is not otherwise prohibited or restricted from disclosure under applicable federal law or regulation.

#### **Sec. 6.4.5. Financial Sources.**

- (a) Subject to subdivision (g) of this section 6.4.5, each Financial Source shall be licensed by the Tribal Gaming Agency prior to the Financial Source extending financing in connection with the Tribe's Gaming Facility or Gaming Operation.

- (b) Every Financial Source required to be licensed by the Tribal Gaming Agency shall, contemporaneously with the filing of its tribal license application, apply to the State Gaming Agency for a determination of suitability. In the event the State Gaming Agency denies or revokes the determination of suitability, the Tribal Gaming Agency shall deny or revoke the Financial Source's license within thirty (30) days of receiving notice of denial or revocation from the State Gaming Agency.
- (c) A license issued under this section 6.4.5 shall be reviewed at least every two (2) years for continuing compliance. In connection with that review, the Tribal Gaming Agency shall require the Financial Source to update all information provided in the Financial Source's previous application. For purposes of section 6.5.2, that review shall be deemed to constitute an application for renewal.
- (d) Any agreement between the Tribe and a Financial Source shall include, and shall be deemed to include, a provision for its termination without further liability on the part of the Tribe, except for the bona fide repayment of all outstanding sums (exclusive of interest) owed as of the date of termination upon revocation or non-renewal of the Financial Source's license by the Tribal Gaming Agency based on a determination of unsuitability by the State Gaming Agency. The Tribe shall not enter into, or continue to make payments to a Financial Source pursuant to, any contract or agreement for the provision of financing with any person whose application to the State Gaming Agency for a determination of suitability has been denied or whose determination of suitability has been revoked or has expired without renewal.
- (e) A Gaming Resource Supplier who provides financing exclusively in connection with the provision, sale, or lease of Gaming Resources obtained from that Gaming Resource Supplier may be licensed solely in accordance with the licensing procedures applicable, if at all, to Gaming Resource Suppliers, and need not be separately licensed as a Financial Source under this section.
- (f) Within twenty-one (21) days of the issuance of a license to a Financial Source, the Tribal Gaming Agency shall transmit to the State Gaming Agency a copy of the license and a copy of all tribal license

application materials and information received by it from the Applicant which is not otherwise prohibited or restricted from disclosure under applicable federal law or regulation.

- (g) (1) The Tribal Gaming Agency may, at its discretion, exclude from the licensing requirements of this section the following Financial Sources under the circumstances stated:
  - (A) Any federally-regulated or state-regulated bank, savings and loan association, or other federally- or state-regulated lending institution.
  - (B) An entity identified by Regulation CGCC-2, subdivision (f) (as in effect on the date the parties execute this Compact) of the Commission, when that entity is a Financial Source solely by reason of being (i) a purchaser or a holder of debt securities or other forms of indebtedness issued directly or indirectly by the Tribe for a Gaming Facility or for the Gaming Operation or (ii) the owner of a participation interest in any amount of indebtedness for which a Financial Source described in subdivision (g)(1)(A), or any fund or other investment vehicle which is administered or managed by any such Financial Source, is the creditor.
  - (C) Any investor who, alone or together with any person(s) controlling, controlled by or under common control with such investor, holds less than ten percent (10%) of all outstanding debt securities or other forms of indebtedness issued directly or indirectly by the Tribe for a Gaming Facility or for the Gaming Operation.
  - (D) Any agency of the federal government, or of a tribal, state or local government providing financing, together with any person purchasing any debt securities or other forms of indebtedness of the agency to provide such financing.
  - (E) A real estate investment trust (as defined in 26 U.S.C. § 856(a)) which is publicly traded on a stock exchange,

registered with the Securities and Exchange Commission, and subject to the regulatory oversight of the Securities and Exchange Commission.

- (F) An entity or category of entities that the State Gaming Agency and the Tribal Gaming Agency jointly determine can be excluded from the licensing requirements of this section without posing a threat to the public interest or the integrity of the Gaming Operation.
- (2) In any case where the Tribal Gaming Agency elects to exclude a Financial Source from the licensing requirements of this section, the Tribal Gaming Agency shall give no less than thirty (30) days' notice thereof to the State Gaming Agency, and shall give the State Gaming Agency reasonable advance notice of any extension of financing by the Financial Source in connection with the Tribe's Gaming Operation or Facility, and upon request of the State Gaming Agency, shall provide it with sufficient documentation to support the Tribal Gaming Agency's exclusion of the Financial Source from the licensing requirements of this section.
  - (3) Notwithstanding subdivision (g)(1), the Tribal Gaming Agency and the State Gaming Agency shall work collaboratively to resolve any reasonable concerns regarding the initial or ongoing excludability of an individual or entity from the licensing requirements of this section as a Financial Source. If the State Gaming Agency finds that an investigation of any Financial Source is warranted, the Financial Source shall be required to submit an application for a determination of suitability to the State Gaming Agency and shall pay the costs and charges incurred in the investigation and processing of the application, in accordance with the provisions set forth in California Business and Professions Code sections 19867 and 19951. Any dispute between the Tribal Gaming Agency and the State Gaming Agency regarding the initial or ongoing excludability of an individual or entity from the licensing requirements of this section as a Financial Source that cannot be promptly resolved by the Tribal Gaming Agency and the State Gaming

Agency shall be resolved by the dispute resolution provisions in section 13.0.

- (4) The following are not Financial Sources for purposes of this section.
  - (A) An entity identified by the Commission's Uniform Tribal Gaming Regulation CGCC-2, subdivision (h) (as in effect on the effective date of this Compact).
  - (B) A person or entity whose sole connection with a provision or extension of financing to the Tribe is to provide loan brokerage or debt servicing for a Financial Source at no cost to the Tribe or the Gaming Operation, provided that no portion of any financing provided is an extension of credit to the Tribe or the Gaming Operation by that person or entity.
- (h) In recognition of changing financial circumstances, this section shall be subject to good faith renegotiation by both parties, upon the request of either party in or after five (5) years from the effective date of this Compact; provided that renegotiation shall not retroactively affect transactions that have already taken place where the Financial Source has been excluded or exempted from licensing requirements.

**Sec. 6.4.6. Processing Tribal Gaming License Applications.**

- (a) Each Applicant for a tribal gaming license shall submit the completed application along with the required information and an application fee, if required, to the Tribal Gaming Agency in accordance with the rules and regulations of that agency.
- (b) At a minimum, the Tribal Gaming Agency shall require submission and consideration of all information required under IGRA, including part 556.4 of title 25 of the Code of Federal Regulations, for licensing primary management officials and key employees.
- (c) For Applicants that are business entities, these licensing provisions shall apply to the entity as well as: (i) each of its officers, limited liability company members and directors; (ii) each of its principal



management employees, including any chief executive officer, chief financial officer, chief operating officer, and general manager; (iii) each of its owners or partners, if an unincorporated business; (iv) each of its shareholders who owns more than ten percent (10%) of the shares of the corporation, if a corporation, or who has a direct controlling interest in the Applicant; and (v) each person or entity (other than a Financial Source that the Tribal Gaming Agency has determined does not require a license under section 6.4.5) that, alone or in combination with others, has provided financing in connection with any Gaming Operation or Class III Gaming authorized under this Compact, if that person or entity provided more than ten percent (10%) of either the start-up capital or the operating capital, or of a combination thereof, over a twelve (12)-month period. For purposes of this subdivision, where there is any commonality of the characteristics identified in this section 6.4.6, subdivisions (c)(i) through (c)(v), inclusive, between any two (2) or more entities, those entities may be deemed to be a single entity. For purposes of this subdivision, a direct controlling interest in the Applicant referred to in subdivision (c)(iv) excludes any passive investor or anyone who has an indirect or only a financial interest and does not have the ability to control, manage, or direct the management decisions of the Applicant.

- (d) Nothing herein precludes the Tribe or Tribal Gaming Agency from requiring more stringent licensing requirements.

**Sec. 6.4.7. Suitability Standard Regarding Gaming Licenses.**

- (a) In reviewing an application for a tribal gaming license, and in addition to any standards set forth in the Gaming Ordinance, the Tribal Gaming Agency shall consider whether issuance of the license is inimical to public health, safety, or welfare, and whether issuance of the license will undermine public trust that the Gaming Operation is free from criminal and dishonest elements and would be conducted honestly.
- (b) A license may not be issued unless, based on all information and documents submitted, the Applicant, and in the case of an entity, each individual identified in section 6.4.6, meets all of the following requirements:

- (1) The person is of good character, honesty, and integrity.
- (2) The person's prior activities, criminal record (if any), reputation, habits, and associations do not pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, or activities in the conduct of gaming, or in the carrying on of the business and financial arrangements incidental thereto.
- (3) The person is in all other respects qualified to be licensed as provided, and meets the criteria established in this Compact, IGRA, the Gaming Ordinance, and any other criteria adopted by the Tribal Gaming Agency or the Tribe; provided, however, an Applicant shall not be found to be unsuitable solely on the ground that the Applicant was an employee of a tribal gaming operation in California that was conducted prior to May 16, 2000.

**Sec. 6.4.8. Background Investigations of Applicants.**

- (a) The Tribal Gaming Agency shall conduct or cause to be conducted all necessary background investigations reasonably required to determine that the Applicant is qualified for a gaming license under the standards set forth in section 6.4.7, and to fulfill all requirements for licensing under IGRA, NIGC regulations, the Gaming Ordinance, and this Compact. The Tribal Gaming Agency shall not issue a gaming license, other than a temporary license pursuant to section 6.4.9, until a determination is made that those qualifications have been met.
- (b) In lieu of completing its own background investigation, and to the extent that doing so does not conflict with or violate IGRA or the Tribe's Gaming Ordinance, the Tribal Gaming Agency may contract with the State Gaming Agency for the conduct of background investigations, may rely on a State determination of suitability previously issued under a Class III Gaming compact involving another tribe and the State, or may rely on a State Gaming Agency license previously issued to the Applicant, to fulfill some or all of the Tribal Gaming Agency's background investigation obligations.

- (c) If the Tribal Gaming Agency contracts with the State Gaming Agency for the conduct of background investigations, then an Applicant for a tribal gaming license shall be required to provide releases to the State Gaming Agency to make available to the Tribal Gaming Agency background information regarding the Applicant. The State Gaming Agency shall cooperate in furnishing to the Tribal Gaming Agency that information, unless doing so would violate state or federal law, would violate any agreement the State Gaming Agency has with a source of the information other than the Applicant, or would impair or impede a criminal investigation, or unless the Tribal Gaming Agency cannot provide sufficient safeguards to assure the State Gaming Agency that the information will remain confidential.
- (d) In lieu of obtaining summary criminal history information from the NIGC, the Tribal Gaming Agency may, pursuant to the provisions in subdivisions (d) through (j), obtain such information from the California Department of Justice. If the Tribe adopts an ordinance confirming that article 6 (commencing with section 11140) of chapter 1 of title 1 of part 4 of the California Penal Code is applicable to members, investigators, and staff of the Tribal Gaming Agency, and those members, investigators, and staff thereafter comply with that ordinance, then, for purposes of carrying out its obligations under this section, the Tribal Gaming Agency shall be eligible to be considered an entity entitled to request and receive state summary criminal history information, within the meaning of subdivision (b)(13) of section 11105 of the California Penal Code.
- (e) The information received shall be used by the requesting agency solely for the purpose for which it was requested and shall not be reproduced for secondary dissemination to any other employment or licensing agency. Additionally, any person intentionally disclosing information obtained from personal or confidential records maintained by a state agency or from records within a system of records maintained by a government agency may be subject to prosecution.
- (f) The Tribal Gaming Agency shall submit to the California Department of Justice fingerprint images and related information required by the California Department of Justice of all Gaming Employees, as defined by section 2.12, for the purposes of obtaining information as to the existence and content of a record of state or federal convictions and

state or federal arrests and also information as to the existence and content of a record of state or federal arrests for which the Department of Justice establishes that the person is free on bail or on his or her recognizance pending trial or appeal.

- (g) When received, the California Department of Justice shall forward to the Federal Bureau of Investigation requests for federal summary criminal history information received pursuant to this section. The California Department of Justice shall review the information returned from the Federal Bureau of Investigation and compile and disseminate a response to the Tribal Gaming Agency.
- (h) The California Department of Justice shall provide a state or federal level response to the Tribal Gaming Agency pursuant to Penal Code section 11105, subdivision (p)(1).
- (i) The Tribal Gaming Agency shall request from the California Department of Justice subsequent notification service, as provided pursuant to section 11105.2 of the Penal Code, for persons described in subdivision (f) above.
- (j) The Department of Justice shall charge a fee sufficient to cover the cost of processing the request described in this section.

**Sec. 6.4.9. Temporary Licensing of Gaming Employees.**

- (a) If the Applicant has completed a license application in a manner satisfactory to the Tribal Gaming Agency, and that agency has conducted a preliminary background investigation, and the investigation or other information held by that agency does not indicate that the Applicant has a criminal history or other information in his or her background that would either automatically disqualify the Applicant from obtaining a tribal gaming license or cause a reasonable person to investigate further before issuing a license, or that the Applicant is otherwise unsuitable for licensing, the Tribal Gaming Agency may issue a temporary tribal gaming license and may impose such specific conditions thereon pending completion of the Applicant's background investigation, as the Tribal Gaming Agency in its sole discretion shall determine.

- (b) Special fees may be required by the Tribal Gaming Agency to issue or maintain a temporary tribal gaming license.
- (c) A temporary tribal gaming license shall remain in effect until suspended or revoked, or a final determination is made on the application, whichever comes first.
- (d) At any time after issuance of a temporary tribal gaming license, the Tribal Gaming Agency shall or may, as the case may be, suspend or revoke it in accordance with the provisions of sections 6.5.1, 6.5.5, or 6.5.6, and the State Gaming Agency may request suspension or revocation before making a determination of unsuitability.
- (e) Nothing herein shall be construed to relieve the Tribe of any obligation under part 558 of title 25 of the Code of Federal Regulations.

#### **Sec. 6.5.0. Tribal Gaming License Issuance.**

Upon completion of the necessary background investigation, the Tribal Gaming Agency may issue a tribal gaming license on a conditional or unconditional basis. Nothing herein shall create a property or other right of an Applicant in an opportunity to be licensed, or in a tribal gaming license itself, both of which shall be considered to be privileges granted to the Applicant in the sole discretion of the Tribal Gaming Agency.

#### **Sec. 6.5.1. Denial, Suspension, or Revocation of Licenses.**

- (a) Any Applicant's application for a tribal gaming license may be denied, and any license issued may be revoked, if the Tribal Gaming Agency determines that the application is incomplete or deficient, or if the Applicant is determined to be unsuitable or otherwise unqualified for a tribal gaming license.
- (b) Pending consideration of revocation, the Tribal Gaming Agency may suspend a tribal gaming license in accordance with section 6.5.5.
- (c) All rights to notice and hearing shall be governed by tribal law. The Applicant shall be notified in writing of any hearing and given notice of any intent to suspend or revoke the tribal gaming license.

- (d) (1) Except as provided in subdivision (d)(2) below, upon receipt of notice that the State Gaming Agency has determined that a person would be unsuitable for licensure in a gambling establishment subject to the jurisdiction of the State Gaming Agency, the Tribal Gaming Agency shall deny any application by that person for a tribal gaming license and promptly, and in no event later than the effective date of the decision or thirty (30) days from receipt of notice of the State Gaming Agency's determination, whichever is later, revoke any tribal gaming license that has theretofore been issued to that person; provided that the Tribal Gaming Agency may, in its discretion, reissue a tribal gaming license to the person following entry of a final judgment reversing the determination of the State Gaming Agency in a proceeding in state court conducted pursuant to section 1085 of the California Code of Civil Procedure.
- (2) Notwithstanding a determination of unsuitability by the State Gaming Agency, the Tribal Gaming Agency may, in its discretion, decline to revoke a tribal gaming license issued to a person employed by the Tribe pursuant to section 6.4.3, subdivision (e) or section 6.4.3, subdivision (f).

**Sec. 6.5.2. Renewal of Licenses; Extensions; Further Investigation.**

- (a) The term of a tribal gaming license shall not exceed two (2) years, and application for renewal of a license must be made prior to its expiration. Applicants for renewal of a license shall provide updated material, as requested, on the appropriate renewal forms, but, at the discretion of the Tribal Gaming Agency, may not be required to resubmit historical data previously submitted or that is otherwise available to the Tribal Gaming Agency. At the discretion of the Tribal Gaming Agency, an additional background investigation may be required at any time if the Tribal Gaming Agency determines the need for further information concerning the Applicant's continuing suitability or eligibility for a license.
- (b) Prior to renewing a tribal gaming license for an applicant for a position identified on the Compact Key Employee Position List as agreed to by the Tribal Gaming Agency and the State Gaming

Agency, the Tribal Gaming Agency shall deliver to the State Gaming Agency copies of all information and documents received in connection with the application for renewal of the tribal gaming license, which is not otherwise prohibited or restricted from disclosure under applicable federal law or regulation, for purposes of the State Gaming Agency's consideration of renewal of its determination of suitability.

### **Sec. 6.5.3. Identification Cards.**

- (a) The Tribal Gaming Agency shall require that all persons who are required to be licensed wear, in plain view at all times while in the Gaming Facility, identification badges issued by the Tribal Gaming Agency.
- (b) Identification badges must display information, including, but not limited to, a photograph and an identification number that is adequate to enable agents of the Tribal Gaming Agency and members of the public to readily identify the person and determine the validity and date of expiration of his or her license.
- (c) The Tribe shall upon request provide the State Gaming Agency with the name, badge identification number (if any), and job title of all Gaming Employees. Such request by the State Gaming Agency shall not be made more than twice a year.

### **Sec. 6.5.4. Fees for Tribal Gaming License.**

The fees for all tribal gaming licenses shall be set by the Tribal Gaming Agency.

### **Sec. 6.5.5. Suspension of Tribal Gaming License.**

The Tribal Gaming Agency shall summarily suspend the tribal gaming license of any licensee if the Tribal Gaming Agency determines that the continued licensing of the person or entity could constitute a threat to the public health or safety or may summarily suspend the license of any licensee if the Tribal Gaming Agency determines that the continued licensing of the person or entity may violate the Tribal Gaming Agency's licensing or other standards. The Tribal Gaming Agency shall notify the State Gaming Agency within seven (7) days of any such

determination. Any right to notice or hearing in regard thereto shall be governed by tribal law.

**Sec. 6.5.6. State Determination of Suitability Process.**

- (a) With respect to Applicants for licensing for a position identified on the Compact Key Employee Position List, the Applicant shall also file an application with the State Gaming Agency, prior to the Tribal Gaming Agency's issuance of a tribal gaming license, for a determination of suitability for licensure under the California Gambling Control Act; provided that in accordance with section 6.4.9, those persons may be employed on a temporary or conditional basis pending completion of the licensing process.
- (b) Upon receipt of an Applicant's completed license application and a determination by the Tribal Gaming Agency that it intends to issue either a temporary or permanent license, the Tribal Gaming Agency shall transmit within sixty (60) days to the State Gaming Agency for a determination of suitability for licensure under the California Gambling Control Act a notice of intent to license the Applicant, together with all of the following:
  - (1) A copy of all tribal license application materials and information received by the Tribal Gaming Agency from the Applicant which is not otherwise prohibited or restricted from disclosure under applicable federal law or regulation;
  - (2) An original, complete set of fingerprint impressions, rolled by a state-certified fingerprint roller or by a person exempt from state certification pursuant to Penal Code section 11102.1, subdivision (a)(2), and which may be on a fingerprint card or obtained and transmitted electronically;
  - (3) A current photograph; and,
  - (4) Except to the extent waived by the State Gaming Agency, such releases of information, waivers, and other completed and executed forms as have been obtained by the Tribal Gaming Agency.



- (c) Upon receipt of a written request from a Gaming Resource Supplier or a Financial Source for a determination of suitability, the State Gaming Agency shall transmit an application package to the Applicant to be completed and returned to the State Gaming Agency for purposes of allowing it to make a determination of suitability for licensure.
- (d) Investigation and disposition of applications for a determination of suitability shall be governed entirely by State law, and the State Gaming Agency shall determine whether the Applicant would be found suitable for licensure in a gambling establishment subject to the State Gaming Agency's jurisdiction. Additional information may be required by the State Gaming Agency to assist it in its background investigation, to the extent permitted under State law for licensure in a gambling establishment subject to the State Gaming Agency's jurisdiction.
- (e) The Tribal Gaming Agency shall require a licensee to apply for renewal of a determination of suitability by the State Gaming Agency at such time as the licensee applies for renewal of a tribal gaming license.
- (f) Upon receipt of completed license or license renewal application information from the Tribal Gaming Agency, the State Gaming Agency may conduct a background investigation pursuant to State law to determine whether the Applicant is suitable to be licensed for association with Class III Gaming operations. While the Tribal Gaming Agency shall ordinarily be the primary source of application information, the State Gaming Agency is authorized to directly seek application information from the Applicant. The Tribal Gaming Agency shall provide to the State Gaming Agency summary reports, including any derogatory information, of the background investigations conducted by the Tribal Gaming Agency, and written statements by the Applicant for Gaming Employees, Gaming Resource Suppliers, and Financial Sources. If further investigation is required to supplement the investigation conducted by the Tribal Gaming Agency, the Applicant will be required to pay the application fee charged by the State Gaming Agency pursuant to California Business and Professions Code section 19951, subdivision (a), but any deposit requested by the State Gaming Agency pursuant to section 19867 of that code shall take into account reports of the background

investigation already conducted by the Tribal Gaming Agency and the NIGC, if any. Failure to provide information reasonably required by the State Gaming Agency to complete its investigation under State law or failure to pay the application fee or deposit can constitute grounds for denial of the application by the State Gaming Agency. The State Gaming Agency and Tribal Gaming Agency shall cooperate in sharing as much background information as possible, both to maximize investigative efficiency and thoroughness, and to minimize investigative costs.

- (g) Upon completion of the necessary background investigation or other verification of suitability, the State Gaming Agency shall issue a notice to the Tribal Gaming Agency certifying that the State has determined that the Applicant is suitable, or that the Applicant is unsuitable, for licensure in a Gaming Operation and, if unsuitable, stating the reasons therefore. Issuance of a determination of suitability does not preclude the State Gaming Agency from a subsequent determination based on newly discovered information that a person or entity is unsuitable for the purpose for which the person or entity is licensed. Upon receipt of notice that the State Gaming Agency has determined that a person or entity is or would be unsuitable for licensure, the Tribal Gaming Agency shall, except as provided in section 6.4.3, subdivisions (e) and (f), deny that person or entity a license and promptly, and in no event more than thirty (30) days from the issuance of the State Gaming Agency notification, revoke any tribal gaming license that has theretofore been issued to that person or entity; provided that the Tribal Gaming Agency may, in its discretion, reissue a tribal gaming license to the person or entity following entry of a final judgment reversing the determination of the State Gaming Agency in a proceeding in state court between the Applicant and the State Gaming Agency conducted pursuant to section 1085 of the California Code of Civil Procedure. Any right to notice or hearing in regard to a tribal gaming license shall be governed by tribal law.
- (h) Prior to denying an application for a determination of suitability, or to issuing notice to the Tribal Gaming Agency that a person or entity previously determined to be suitable had been determined unsuitable for licensure, the State Gaming Agency shall notify the Tribal Gaming Agency and afford the Tribe an opportunity to be heard. If the State

Gaming Agency denies an application for a determination of suitability, or issues notice that a person or entity previously determined suitable has been determined unsuitable for licensure, the State Gaming Agency shall provide that person or entity with written notice of all appeal rights available under State law.

- (i) The Commission, or its successor, shall maintain a roster of Gaming Resource Suppliers and Financial Sources that it has determined to be suitable pursuant to the provisions of this section, or through separate procedures to be adopted by the Commission. Upon application to the Tribal Gaming Agency for a tribal gaming license, a Gaming Resource Supplier or Financial Source that appears on the Commission's suitability roster may be licensed by the Tribal Gaming Agency in the same manner as a Gaming Resource Supplier under subdivision (d) of section 6.4.4, subject to any later determination by the State Gaming Agency that the Gaming Resource Supplier or Financial Source is not suitable or to a tribal gaming license suspension or revocation pursuant to section 6.5.1 or section 6.5.5; provided that nothing in this subdivision exempts the Gaming Resource Supplier or Financial Source from applying for a renewal of a State determination of suitability.

#### **Sec. 6.6. Submission of New Application.**

Nothing in section 6.0 shall be construed to preclude an Applicant who has been determined to be unsuitable for licensure by the State Gaming Agency, or the Tribe on behalf of such Applicant, from later submitting a new application for a determination of suitability by the State Gaming Agency in accordance with section 6.0, provided that the Applicant may not commence duties or activities until found suitable by the State Gaming Agency.

### **SECTION 7.0. APPROVAL AND TESTING OF GAMING DEVICES.**

#### **Sec. 7.1. Gaming Device Approval.**

- (a) No Gaming Device may be offered for play unless all of the following occurs:
  - (1) The manufacturer or distributor that sells, leases, or distributes such Gaming Device (i) has applied for a determination of

suitability by the State Gaming Agency at least fifteen (15) days before it is offered for play, (ii) has not been found to be unsuitable by the State Gaming Agency, and (iii) has been licensed by the Tribal Gaming Agency;

- (2) The software for the game authorized for play on the Gaming Device has been tested, approved and certified by an independent gaming test laboratory or state or national governmental gaming test laboratory (Gaming Test Laboratory) as operating in accordance with the applicable technical standards in effect as of the effective date of this Compact, or such other technical standards as the State Gaming Agency and the Tribal Gaming Agency shall agree upon (Technical Standards), which agreement shall not be unreasonably withheld;
  - (3) A copy of the certification by the Gaming Test Laboratory, specified in subdivision (a)(2), is provided to the State Gaming Agency by electronic transmission or by mail, unless the State Gaming Agency waives receipt of copies of the certification;
  - (4) The software for the game authorized for play on the Gaming Device is tested by the Tribal Gaming Agency to ensure each game authorized for play on the Gaming Device has the correct electronic signature prior to operation of the Gaming Device by the public;
  - (5) The hardware and associated equipment for each type of Gaming Device has been tested by the Gaming Test Laboratory prior to operation by the public to ensure operation in accordance with the applicable Gaming Test Laboratory standards; and
  - (6) The hardware and associated equipment for the Gaming Device has been verified or tested by the Tribal Gaming Agency to ensure operation in accordance with the manufacturer's specifications.
- (b) If either the Tribal Gaming Agency or the State Gaming Agency requests new standards for testing, approval, and certification of the

software for the game authorized for play on the Gaming Device pursuant to subdivision (a)(2), the party requesting the new standards shall provide the other party with a detailed explanation of the reason(s) for the request. If the party to which the request is made disagrees with the request, the State Gaming Agency and the Tribal Gaming Agency shall meet and confer in a good-faith effort to resolve the disagreement, which meeting and conferring shall include consultation with an independent Gaming Test Laboratory. If the disagreement is not resolved within one hundred twenty (120) days after the initial meeting between the regulators to discuss the matter, either party may submit the matter to dispute resolution under section 13.0 of this Compact.

### **Sec. 7.2. Gaming Test Laboratory Selection.**

- (a) The Gaming Test Laboratory shall be an independent commercial gaming test laboratory that is (1) recognized in the gaming industry as competent and qualified to conduct scientific tests and evaluations of Gaming Devices, and (2) licensed or approved by any state or tribal government within the jurisdiction of which the operation of Gaming Devices is authorized. At least thirty (30) days before the commencement of Gaming Activities pursuant to this Compact, or if such use follows the commencement of Gaming Activities, at least fifteen (15) days prior to reliance thereon, the Tribal Gaming Agency shall submit to the State Gaming Agency documentation that demonstrates the Gaming Test Laboratory satisfies (1) and (2) herein. If, at any time, the Gaming Test Laboratory license and/or approval required by (a)(2) herein is suspended or revoked by any of those jurisdictions or the Gaming Test Laboratory is found unsuitable by the State Gaming Agency, then the State Gaming Agency may reject the use of that Gaming Test Laboratory, and upon such rejection, the Tribal Gaming Agency shall ensure that the Gaming Test Laboratory discontinues its responsibilities under this section. Any such suspension, revocation, or determination of unsuitability shall not affect the Tribe's right to continue operating Gaming Devices that had been tested and evaluated by such Gaming Test Laboratory, but Gaming Devices tested, evaluated and approved by such Gaming Test Laboratory shall be re-tested, re-evaluated and re-approved by a substitute Gaming Test Laboratory within sixty (60) days from the date on which the Tribal Gaming Agency is notified of the

suspension, revocation, or determination of unsuitability, or if circumstances require, any other reasonable timeframe as may be mutually agreed to by the Tribal Gaming Agency and the State Gaming Agency.

- (b) The Tribe and the State Gaming Agency shall inform the Gaming Test Laboratory in writing that irrespective of the source of payment of its fees, the Gaming Test Laboratory's duty of loyalty runs equally to the State and the Tribe; provided, that if the State Gaming Agency requests that the Gaming Test Laboratory perform additional work, the State Gaming Agency shall be solely responsible for the cost of such additional work.

### **Sec. 7.3. Maintenance of Records of Testing Compliance.**

The Tribal Gaming Agency shall prepare and maintain records of its compliance with section 7.1 while any Gaming Device is on the gaming floor and for a period of one (1) year after the Gaming Device is removed from the gaming floor, and shall make those records available for inspection by the State Gaming Agency upon request.

### **Sec. 7.4. State Gaming Agency Inspections**

- (a) The State Gaming Agency, utilizing such consultants, if any, it deems appropriate and binds to the confidentiality requirements of this Compact, may inspect the Gaming Devices in operation at a Gaming Facility on a random basis not to exceed four (4) times annually to confirm that they operate and play properly pursuant to applicable Technical Standards. The inspections may be conducted onsite or remotely as a desk audit and include all Gaming Device software, hardware, associated equipment, software maintenance records, and components critical to the operation of the Gaming Device. The State Gaming Agency shall make a good-faith effort to work with the Tribal Gaming Agency to minimize unnecessary disruption to the Gaming Operation including, where appropriate, performing desk audits rather than onsite physical inspections. The Tribal Gaming Agency shall cooperate with the State Gaming Agency's reasonable efforts to obtain information that facilitates the conduct of remote but effective inspections that minimize disruption to Gaming Activities. If the State Gaming Agency determines that more than one (1) annual onsite

inspection is necessary or appropriate, it will provide the Tribal Gaming Agency with the basis for its determination that additional onsite inspections are justified. If the State Gaming Agency requires more than one (1) annual onsite inspection in successive years, the State and Tribe may meet and confer to discuss the basis for such determinations. During each random inspection, the State Gaming Agency may not remove from play more than five percent (5%) of the Gaming Devices in operation at the Gaming Facility, and may not remove a Gaming Device from play, except during inspection or testing, or from the Gaming Facility at any time, unless it obtains the concurrence of the Tribal Gaming Agency, which shall not be unreasonably withheld. The five percent (5%) limitation on removal from play of Gaming Devices shall not apply if a Gaming Device's connection to other Gaming Devices, a progressive controller or similar linked system makes limiting removal from play of no more than five percent (5%) infeasible or impossible. Whenever practicable, the State Gaming Agency shall not require removal from play any Gaming Device that the State Gaming Agency determines may be fully and adequately tested while still in play. The State Gaming Agency shall return any Gaming Device removed from a Gaming Facility to the Gaming Facility as soon as reasonably possible. The inspections may include all Gaming Device software, hardware, associated equipment, software and hardware maintenance and testing records, and components critical to the operation of the Gaming Device. The random inspections conducted pursuant to this section shall occur during normal business hours outside of weekends and holidays.

- (b) To minimize unnecessary disruption to the Gaming Operation, rather than conducting on-site inspections, the State Gaming Agency may perform "desk audits" of the Tribe's Gaming Devices currently in operation. Upon receipt of notice from the State Gaming Agency of the intent to conduct a desk audit, the Tribal Gaming Agency shall provide the State Gaming Agency with a list of all of the Tribe's Gaming Devices currently in operation, together with the information for each such Gaming Device that supports a desk audit. This information shall include, but is not limited to, the following:

- (1) Manufacturer;

- (2) Game name or theme;
- (3) Serial number;
- (4) Machine or asset number;
- (5) Manufacturer;
- (6) Location;
- (7) Denomination;
- (8) Slot type (e.g., video, reel);
- (9) Progressive type (e.g., stand alone, linked, wide area progressive);
- (10) Software ID number for all certified software in the Gaming Device, including game, base or system, boot chips and communication chip; and
- (11) Any other information deemed relevant and appropriate by the State Gaming Agency and the Tribal Gaming Agency.

The State Gaming Agency promptly shall consult with the Tribal Gaming Agency concerning any material discrepancies noted and whether those discrepancies continue to exist.

- (c) The State Gaming Agency shall notify the Tribal Gaming Agency of its intent to conduct any on-site Gaming Device inspection with prior notice sufficient to afford the presence of proper staffing and, where applicable, manufacturer's representatives, to ensure the overall efficiency of the inspection process. The inspection shall not be unreasonably delayed and must take place within thirty (30) days of notification unless the Tribal Gaming Agency and State Gaming Agency agree otherwise.
- (d) The State Gaming Agency may retain and use qualified consultants to perform the functions authorized or specified herein but any such



consultants shall be bound by the confidentiality and information use and disclosure provisions applicable to the State Gaming Agency and its employees. The State Gaming Agency shall ensure that any consultants retained by it have met the standards and requirements, including any background investigations, if required, established by applicable State Gaming Agency regulations governing contract employees prior to participating in any matter under this Compact. The State Gaming Agency shall also take all reasonable steps to ensure that consultants are free from conflicting interests in the conduct of their duties under this Compact. The Tribal Gaming Agency, in its sole discretion, may require a member or staff of the Tribal Gaming Agency or a representative of the State Gaming Agency to accompany any consultant at all times that the consultant is in a non-public area of the Gaming Facility.

#### **Sec. 7.5. Technical Standards.**

The Tribal Gaming Agency shall provide to the State Gaming Agency copies of its regulations for Technical Standards applicable to the Tribe's Gaming Devices within thirty (30) days after the effective date of this Compact, if not previously provided, and thereafter at least thirty (30) days before the effective date of any material revisions to the regulations, unless exigent circumstances require that any revisions to the regulations take effect sooner in order to ensure game integrity or otherwise to protect the public or the Gaming Operation, in which event the revisions to the regulations shall be provided to the State Gaming Agency as soon as reasonably practicable.

#### **Sec. 7.6. Transportation of Gaming Devices.**

- (a) Subject to the provisions of subdivision (b), the Tribal Gaming Agency shall not permit any Gaming Device to be transported to or from the Tribe's Indian lands except in accordance with procedures established by agreement between the State Gaming Agency and the Tribal Gaming Agency and upon at least ten (10) days' notice to the Sheriff's Department for the County in which the land is located.
- (b) Transportation of a Gaming Device from a Gaming Facility within California is permissible only if:

- (1) The final destination of the Gaming Device is a gaming facility of any tribe in California that has a compact with the State or class III procedures prescribed by the Secretary of the Interior which makes lawful the operation of Gaming Devices;
  - (2) The final destination of the Gaming Device is any other state in which possession of the Gaming Device is made lawful by State law, tribal state compact or class III procedures prescribed by the Secretary of the Interior;
  - (3) The final destination of the Gaming Device is another country, or any state or province of another country, wherein possession of Gaming Devices is lawful; or
  - (4) The final destination is a location within California for testing, repair, maintenance, or storage by a person or entity that has been licensed by the Tribal Gaming Agency and has been found suitable for licensure by the State Gaming Agency.
- (c) Any Gaming Device transported from or to the Tribe's Indian lands in violation of this section 7.6 or in violation of any permit issued pursuant thereto, is subject to summary seizure by California peace officers in accordance with California law.

## **SECTION 8.0. INSPECTIONS.**

### **Sec. 8.1. On-Site Regulation.**

This Compact reflects the previous relationship between the State and the Tribe operating pursuant to a Class III Gaming compact. It recognizes and respects the primary role of the Tribal Gaming Agency to perform on-site regulation and to protect the integrity of the Gaming Activities, the reputation of the Tribe and the Gaming Operation for honesty and fairness, and to maintain the confidence of patrons that tribal governmental gaming in California meets the highest standards of regulation and internal controls. This Compact also acknowledges and affords the State with the authority and responsibility to ensure that the Tribe complies with all of the terms of this Compact and that gaming is conducted with integrity and in a manner that protects the health, safety and other interests of the people of California.

**Sec. 8.1.1. Investigation and Sanctions.**

- (a) The Tribal Gaming Agency shall investigate any reported violation of this Compact and shall require the Gaming Operation to correct the violation upon such terms and conditions as the Tribal Gaming Agency determines are necessary.
- (b) The Tribal Gaming Agency shall be empowered by the Gaming Ordinance to impose fines or other sanctions within the jurisdiction of the Tribe against gaming licensees who interfere with or violate the Tribe's gaming regulatory requirements and obligations under IGRA, the Gaming Ordinance, or this Compact. Any right to notice or hearing in regard thereto shall be governed by tribal law. Nothing in this Compact expands, modifies, or impairs the jurisdiction of the Tribal Gaming Agency under IGRA, the Gaming Ordinance or other applicable tribal law.
- (c) The Tribal Gaming Agency shall report individual or continued violations of this Compact that pose a significant threat to gaming integrity, public health and safety, or the environment, and any failures to comply with the Tribal Gaming Agency's orders, to the Commission and the Bureau of Gambling Control in the California Department of Justice within ten (10) days of discovery.

**Sec. 8.2. Assistance by State Gaming Agency.**

The Tribe may request the assistance of the State Gaming Agency whenever it reasonably appears that such assistance may be necessary to carry out the purposes described in section 8.1.1, or otherwise to protect public health, safety, or welfare.

**Sec. 8.3. Access to Premises by State Gaming Agency; Notification; Inspections.**

- (a) Notwithstanding that the Tribe and its Tribal Gaming Agency have the primary responsibility to administer and enforce the regulatory requirements of this Compact, the State Gaming Agency, including any consultants retained by it, shall have the right to inspect the Tribe's Gaming Facility, and all Gaming Operation or Facility records relating thereto as is reasonably necessary to ensure Compact

compliance, including with adequate notice such records located in off-site facilities dedicated to their storage, subject to the conditions in subdivisions (b), (c), and (d). The State Gaming Agency shall ensure that any consultants retained by it have met the standards and requirements, including any background investigations, if required, established by applicable State Gaming Agency regulations governing contract employees prior to participating in any matter under this Compact. The State Gaming Agency shall also take all reasonable steps to ensure that consultants are free from conflicting interests in the conduct of their duties under this Compact and shall provide the Tribal Gaming Agency with prior notice of the use of any consultant. The Tribal Gaming Agency, in its sole discretion, may require a member or staff of the Tribal Gaming Agency or a representative of the State Gaming Agency to accompany any consultant at all times that the consultant is in a non-public area of the Gaming Facility. If the Tribal Gaming Agency imposes such a requirement, it shall require a representative to be available at all times for those purposes and shall ensure that the representative has the ability to gain immediate access to all non-public areas of the Gaming Facility that the State Gaming Agency consultant desires to inspect.

- (b) Except as provided in section 7.4, the State Gaming Agency may inspect public areas of the Gaming Facility at any time without prior notice during normal Gaming Facility business hours.
- (c) Inspection of areas of the Gaming Facility not normally accessible to the public may be made at any time during the normal administrative hours of the Tribal Gaming Agency, immediately after the State Gaming Agency's authorized inspector notifies the Tribal Gaming Agency of his or her presence on the premises, presents proper identification, and requests access to the non-public areas of the Gaming Facility. Inspection of areas of the Gaming Facility not normally accessible to the public may be made at any time outside the normal administrative hours of the Tribal Gaming Agency with fourteen (14) days' notice to the Tribal Gaming Agency, except that fourteen (14) days' notice is not required upon the existence of a significant irregularity that the State Gaming Agency reasonably determines may be threat to gaming integrity or public safety. The Tribal Gaming Agency, in its sole discretion, may require a member or staff of the Tribal Gaming Agency to accompany the State Gaming

Agency inspector at all times that the State Gaming Agency inspector is in a non-public area of the Gaming Facility. If the Tribal Gaming Agency imposes such a requirement, it shall require such member or staff to be available for those purposes and shall ensure that the member or staff has the ability to gain immediate access to all non-public areas of the Gaming Facility.

- (d) Nothing in this Compact shall be construed to limit the State Gaming Agency to one inspector during inspections.

**Sec. 8.4. Inspection, Copying and Confidentiality of Documents.**

- (a) Inspection and copying of Gaming Operation papers, books, and records may occur at any time after the State Gaming Agency gives notice to the Tribal Gaming Agency during the normal administrative hours of the Tribal Gaming Agency, provided that the State Gaming Agency inspectors cannot require copies of papers, books, or records in such manner or volume that it unreasonably interferes with the normal functioning of the Gaming Operation or Facility, or with the operation of the Tribal Gaming Agency.
- (b) In lieu of onsite inspection and copying of Gaming Operation papers, books, and records by its inspectors, the State Gaming Agency may request in writing that the Tribal Gaming Agency provide copies of such papers, books, and records as the State Gaming Agency deems necessary to ensure compliance with the terms of this Compact. The State Gaming Agency's written request shall describe those papers, books, and records requested to be copied with sufficient specificity to reasonably identify the requested documents. Within ten (10) days after it receives the request, or such other time as the State Gaming Agency may agree in writing, the Tribal Gaming Agency shall provide one (1) copy of the requested papers, books, and records to the requesting State Gaming Agency. An electronic version of the requested papers, books, and records may be submitted to the State Gaming Agency in lieu of a paper copy so long as the software required to access the electronic version is reasonably available to the State Gaming Agency.
- (c) Notwithstanding any other provision of California law, any confidential information and records, as defined in subdivision (d),

that the State Gaming Agency obtains or copies pursuant to this Compact shall be, and remain, the property solely of the Tribe; provided that such confidential information and records and copies may be retained by the State Gaming Agency as is reasonably necessary to assure the Tribe's compliance with this Compact or to conduct or complete any investigation of suspected criminal activity; and provided further that the State Gaming Agency may provide such confidential information and records and copies to federal law enforcement and other state agencies or consultants that the State deems reasonably necessary in order to assure the Tribe's compliance with this Compact, in order to renegotiate any provision thereof, or in order to conduct or complete any investigation of suspected criminal activity; provided that to the extent reasonably feasible, the State Gaming Agency will consult with representatives of the Tribe prior to such disclosure.

- (d) For the purposes of this section 8.4, "confidential information and records" means any and all information and records received from the Tribe pursuant to the Compact, except for information and records that are in the public domain.
- (e) The State Gaming Agency and all other state agencies and consultants to which it provides information and records obtained pursuant to subdivisions (a) or (b) of this section, which are confidential pursuant to subdivision (d), will exercise utmost care in the preservation of the confidentiality of such information and records and will apply the highest standards of confidentiality provided under California state law to preserve such information and records from disclosure until such time as the information or record is no longer confidential or disclosure is authorized by the Tribe, by mutual agreement of the Tribe and the State, or pursuant to the arbitration procedures under section 13.2. The State Gaming Agency and all other state agencies and consultants may disclose confidential information or records as necessary to fully adjudicate or resolve a dispute arising pursuant to the Compact, in which case the State Gaming Agency and all other state agencies and consultants agree to preserve confidentiality to the greatest extent feasible and available. Before the State Gaming Agency provides confidential information and records to a consultant as authorized under subdivision (b), it shall enter into a confidentiality

agreement with that consultant that meets the standards of this subdivision.

- (f) The Tribe may avail itself of any and all remedies under State law for the improper disclosure of confidential information and records. In the case of any disclosure of confidential information and records compelled by judicial process, the State Gaming Agency will endeavor to give the Tribe prompt notice of the order compelling disclosure and a reasonable opportunity to interpose an objection thereto with the court.
- (g) Except as otherwise provided in any regulation approved by the Association, the Tribal Gaming Agency and the State Gaming Agency shall confer and agree regarding protocols for the release to law enforcement agencies of information obtained during the course of background investigations.
- (h) Confidential information and records received by the State Gaming Agency from the Tribe in compliance with this Compact, or information compiled by the State Gaming Agency from those confidential records, shall be exempt from disclosure under the California Public Records Act.
- (i) Notwithstanding any other provision of this Compact, the State Gaming Agency shall not be denied access to papers, books, records, equipment, or places where such access is reasonably necessary to ensure compliance with this Compact or to conduct or complete an investigation of suspected criminal activity in connection with the Gaming Activities or the operation of the Gaming Facility or the Gaming Operation. Upon request, the State Gaming Agency shall provide the Tribal Gaming Agency with a current copy of its records retention and destruction policy.

**Sec. 8.5. Cooperation Between State Gaming Agency and Tribal Gaming Agency.**

The State Gaming Agency shall meet periodically with the Tribal Gaming Agency and both shall cooperate in all matters relating to the enforcement of the provisions of this Compact and its Appendices.

## **Sec. 8.6. Compact Compliance Review.**

The State Gaming Agency is authorized to conduct an annual Compact compliance review (also known as a “site visit”) to ensure compliance with all provisions of this Compact and any appendices hereto. Upon the discovery of an irregularity that the State Gaming Agency reasonably determines may be a threat to gaming integrity or public safety, and after consultation with the Tribal Gaming Agency, the State Gaming Agency may conduct additional periodic reviews in order to ensure compliance with all provisions of this Compact and its appendices. Nothing in this section shall be construed to supersede any other audits, inspections, investigations, and monitoring authorized by this Compact.

## **SECTION 9.0. RULES AND REGULATIONS FOR THE OPERATION AND MANAGEMENT OF THE GAMING OPERATION AND FACILITY.**

### **Sec. 9.1. Adoption of Regulations for Operation and Management; Minimum Standards.**

It is the responsibility of the Tribal Gaming Agency to conduct on-site gaming regulation and control in order to enforce the terms of this Compact, of IGRA, of NIGC gaming regulations, of State Gaming Agency regulations, and of the Gaming Ordinance to protect the integrity of the Gaming Activities, the reputation of the Tribe and the Gaming Operation for honesty and fairness, and to maintain the confidence of patrons that tribal governmental gaming in California meets the highest standards of fairness and internal controls. To meet those responsibilities, the Tribal Gaming Agency shall be vested with the authority to promulgate, and shall promulgate and enforce, rules and regulations governing, at a minimum, the following subjects pursuant to the standards and conditions set forth therein:

- (a) The enforcement of all relevant laws and rules with respect to the Gaming Activities, Gaming Operation and Gaming Facility, and the conduct of investigations and hearings with respect thereto, and to any other subject within its jurisdiction.
- (b) The physical safety of Gaming Facility patrons and employees, and any other persons while in the Gaming Facility. Except as provided in section 12.2, nothing herein shall be construed, however, to make applicable to the Tribe any State laws, regulations, or standards governing the use of tobacco.



- (c) The physical safeguarding of assets transported to, within, and from the Gaming Facility.
- (d) The prevention of illegal activity within the Gaming Facility or with regard to the Gaming Operation or Gaming Activities, including, but not limited to, the establishment and maintenance of employee procedures designed to permit detection of any irregularities, theft, cheating, fraud, and the like, consistent with industry practice and a surveillance system as provided in subdivision (e).
- (e) Maintenance of a closed-circuit television surveillance system consistent with industry standards for gaming facilities of the type and scale operated by the Tribe, which system shall be approved by, and may not be modified without the approval of, the Tribal Gaming Agency. The Tribal Gaming Agency shall maintain current copies of the Gaming Facility floor plan and closed-circuit television surveillance system at all times.
- (f) Maintenance of a list of persons permanently excluded from the Gaming Facility who, because of their past behavior, criminal history, or association with persons or organizations, pose a threat to the integrity of the Gaming Activities of the Tribe or to the integrity of regulated gambling within the state. The Tribal Gaming Agency and the State Gaming Agency shall make a good faith effort to share information regarding such permanent exclusions. Nothing herein is intended to grant any third party the right to sue based upon any sharing of information.
- (g) The conduct of an audit of the Gaming Operation, not less than annually, by an independent certified public accountant, in accordance with industry standards.
- (h) Submission to, and prior approval by, the Tribal Gaming Agency of the rules and regulations of each Class III Gaming game to be operated by the Tribe, and of any changes in those rules and regulations. No Class III Gaming game may be offered for play that has not received Tribal Gaming Agency approval.

- (i) Maintenance of a copy of the rules, regulations, and procedures for each game as played, including, but not limited to, the method of play and the odds and method of determining amounts paid to winners.
- (j) Specifications and standards to ensure that information regarding the method of play, odds, and payoff determinations is visibly displayed or available to patrons in written form in the Gaming Facility and to ensure that betting limits applicable to any gaming station shall be displayed at that gaming station.
- (k) Maintenance of a cashier's cage in accordance with tribal internal control standards that meet or exceed industry standards for such facilities.
- (l) Specification of minimum staff and supervisory requirements for each Gaming Activity to be conducted.
- (m) Technical standards and specifications in conformity with the requirements of this Compact for the operation of Gaming Devices and other games authorized herein or as provided in any regulation approved by the Association.

### **Sec. 9.2. Manner in Which Incidents Are Reported.**

The Tribal Gaming Agency shall require the recording of any and all occurrences within the Gaming Facility that deviate from normal operating policies and procedures (hereinafter "incidents"). The Tribal Gaming Agency shall transmit copies of incident reports that it reasonably believes concern a significant or continued threat to public safety or gaming integrity to the State Gaming Agency within a reasonable period of time, not to exceed seven (7) days, after the incident. The procedure for recording incidents pursuant to this section 9.2 shall also do all of the following:

- (a) Specify that security personnel record all incidents, regardless of an employee's determination that the incident may be immaterial (all incidents shall be identified in writing).
- (b) Require the assignment of a sequential number to each report.
- (c) Provide for permanent reporting in indelible ink in a bound notebook

from which pages cannot be removed and in which entries are made on each side of each page and/or in electronic form, provided the information is recorded in a manner so that, once the information is entered, it cannot be deleted or altered and is available to the State Gaming Agency pursuant to this section and sections 8.3 and 8.4.

- (d) Require that each report include, at a minimum, all of the following:
  - (1) The record number.
  - (2) The date.
  - (3) The time.
  - (4) The location of the incident.
  - (5) A detailed description of the incident.
  - (6) The persons involved in the incident.
  - (7) The security department employee assigned to the incident.

**Sec. 9.3. Minimum Internal Control Standards (MICS).**

- (a) The Tribe shall conduct its Gaming Activities pursuant to an internal control system that implements minimum internal control standards for Class III Gaming that are no less stringent than those contained in the Minimum Internal Control Standards of the NIGC (25 C.F.R. § 542), as they existed on October 10, 2008, and as they may be amended from time to time, without regard to the NIGC’s authority to promulgate, enforce, or audit the standards. These standards are posted on the State Gaming Agency website(s) and are referred to herein as the “Compact MICS.” This requirement is met through compliance with the provisions set forth in this section and in sections 9.1 and 9.2 or in the alternative by compliance with the state-wide uniform regulation CGCC-8, as it may be amended from time to time.
- (b) In the event CGCC-8 is rescinded or otherwise ceases to exist, or if the NIGC withdraws its regulation at 25 C.F.R. § 542, the Minimum Internal Control Standards of the NIGC as they existed on October

10, 2008, and as they may be amended from time to time, shall continue to serve as the Minimum Internal Control Standards for the purposes of this Compact. Any change, modification, or amendment thereto shall be effected by action of the Association.

- (c) The minimum internal control standards set forth in the Compact MICS shall apply to all Gaming Activities, Gaming Facilities and the Gaming Operation; however, the Compact MICS are not applicable to any class II gaming activities. Should the terms in the Compact MICS be inconsistent with this Compact, the terms in this Compact shall prevail.

#### **Sec. 9.4. Program to Mitigate Problem Gambling.**

The Gaming Operation shall establish a program, approved by the Tribal Gaming Agency, to mitigate pathological and problem gambling by implementing the following measures:

- (a) It shall train Gaming Facility supervisors and gaming floor employees on responsible gaming and to identify and manage problem gambling.
- (b) It shall make available to patrons at conspicuous locations and ATMs in the Gaming Facility educational and informational materials that aim at the prevention of problem gambling and that specify where to find assistance, and shall display at conspicuous locations and at ATMs within the Gaming Facility signage bearing a toll-free help-line number where patrons may obtain assistance for gambling problems.
- (c) It shall establish self-exclusion measures whereby a self-identified problem gambler may request the halt of promotional mailings, the revocation of privileges for casino services, the denial or restraint on the issuance of credit and check cashing services, and exclusion from the Gaming Facility.
- (d) It shall establish involuntary exclusion measures that allow the Gaming Operation to halt promotional mailings, deny or restrain the issuance of credit and check cashing services, and deny access to the Gaming Facility to patrons who have exhibited signs of problem gambling.

- (e) It shall make diligent efforts to prevent underage individuals from loitering in the area of the Gaming Facility where the Gaming Activities take place.
- (f) It shall assure that advertising and marketing of the Gaming Activities at the Gaming Facility contain a responsible gambling message and a toll-free help-line number for problem gamblers, where practical, and that it makes no false or misleading claims.

Nothing herein is intended to grant any third party the right to sue based on any alleged deficiency or violation of these measures. Any deficiency in the effectiveness of these measures or standards, as opposed to compliance with the program and measures specified above, does not constitute a material breach of this Compact.

#### **Sec. 9.5. State Civil and Criminal Jurisdiction.**

Nothing in this Compact expands, modifies or impairs the civil or criminal jurisdiction of the State, local law enforcement agencies and state courts under Public Law 280 (18 U.S.C. § 1162; 28 U.S.C. § 1360) or IGRA to the extent applicable. Except as provided below, all State and local law enforcement agencies and State courts shall exercise jurisdiction to enforce the State's criminal laws on the Tribe's Indian lands, including the Gaming Facility and all related structures, in the same manner and to the same extent, and subject to the same restraints and limitations, imposed by the laws of the State and the United States, as is exercised by state and local law enforcement agencies and state courts elsewhere in the state. However, no Gaming Activity conducted by the Tribe pursuant to this Compact may be deemed to be a civil or criminal violation of any law of the State. Except for such Gaming Activity conducted pursuant to this Compact, criminal jurisdiction to enforce State gambling laws on the Tribe's Indian lands, and to adjudicate alleged violations thereof, is hereby transferred to the State pursuant to 18 U.S.C. § 1166(d).

#### **Sec. 9.6. Tribal Gaming Agency Members.**

- (a) The Tribe shall take all reasonable steps to ensure that members of the Tribal Gaming Agency are free from corruption, undue influence, compromise, and conflicting interests in the conduct of their duties under this Compact; shall adopt a conflict-of-interest code to that end; and shall ensure the prompt removal of any member of the Tribal

Gaming Agency who is found to have acted in a corrupt or compromised manner, or is found to have violated the conflict of interest code.

- (b) The Tribe shall conduct a background investigation on each prospective member of the Tribal Gaming Agency; provided that if such member is elected through a tribal election process, that member may not participate in any Tribal Gaming Agency matters under this Compact unless a background investigation has been concluded and the member has been found to be suitable.
- (c) The Tribe shall conduct a background investigation on each prospective employee of the Tribal Gaming Agency to ensure he or she satisfies the requirements of section 6.4.7.

**Sec. 9.7. Uniform Tribal Gaming Regulations.**

- (a) Uniform Tribal Gaming Regulations CGCC-1, CGCC-2, CGCC-7, and CGCC-8 (as in effect on the date the parties execute this Compact), adopted by the State Gaming Agency and approved by the Association, shall apply to the Gaming Operation until amended or repealed, without further action by the State Gaming Agency, the Tribe, the Tribal Gaming Agency or the Association.
- (b) Any subsequent Uniform Tribal Gaming Regulations adopted by the State Gaming Agency and approved by the Association shall apply to the Gaming Operation until amended or repealed.
- (c) No State Gaming Agency regulation adopted pursuant to this section 9.7 shall be effective with respect to the Tribe's Gaming Operation unless it has first been approved by the Association and the Tribe has had an opportunity to review and comment on the proposed regulation.
- (d) Every State Gaming Agency regulation adopted pursuant to this section 9.7 that is intended to apply to the Tribe (other than a regulation proposed or previously approved by the Association) shall be submitted to the Association for consideration prior to submission of the regulation to the Tribe for comment as provided in subdivision (c). A regulation adopted pursuant to this section 9.7 that is

disapproved by the Association shall not be submitted to the Tribe for comment unless it is re-adopted by the State Gaming Agency as a proposed regulation, in its original or amended form, with a detailed, written response to the Association's objections.

- (e) Except as provided in subdivision (f), no regulation of the State Gaming Agency adopted pursuant to this section 9.7 shall be adopted as a final regulation with respect to the Tribe's Gaming Operation before the expiration of thirty (30) days after submission of the proposed regulation to the Tribe for comment as a proposed regulation, and after consideration of the Tribe's comments, if any.
- (f) In exigent circumstances (e.g., imminent threat to public health and safety), the State Gaming Agency may adopt a regulation that becomes effective immediately. Any such regulation shall be accompanied by a detailed, written description of the exigent circumstances, and shall be submitted immediately to the Association for consideration. If the regulation is disapproved by the Association, it shall cease to be effective, but may be re-adopted by the State Gaming Agency as a proposed regulation, in its original or amended form, with a detailed, written response to the Association's objections, and thereafter submitted to the Tribe for comment as provided in subdivision (e).
- (g) The Tribe may object to a State Gaming Agency regulation adopted pursuant to this section 9.7 on the ground that it is unnecessary, unduly burdensome, or unfairly discriminatory, and may seek repeal or amendment of the regulation through the dispute resolution process of section 13.0.

#### **SECTION 10.0. PATRON DISPUTES.**

The Tribal Gaming Agency shall promulgate regulations consistent with fairness and prevailing industry standards governing patron disputes over the play or operation of any game, including any refusal to pay to a patron any alleged winnings from any Gaming Activities, which regulations must meet the following minimum standards:

- (a) A patron must make a written complaint to personnel of the Gaming Operation over the play or operation of any Class III Gaming game

within seven (7) days of the play or operation at issue (Initial Complaint).

- (1) The Gaming Operation must provide the patron with a written decision within fifteen (15) days of receipt of the Initial Complaint, and must provide the patron with written notice of the patron's right to request, in writing, resolution of the dispute by the Tribal Gaming Agency if the Initial Complaint is not resolved to the patron's satisfaction. The patron must make the request to the Tribal Gaming Agency within fifteen (15) days of receiving the Gaming Operation's written notice. If the patron is dissatisfied with the Tribal Gaming Agency's resolution of the dispute, the patron may seek resolution in either the Tribe's tribal court system, once a tribal court system is established, or until a tribal court system is established, through the tribal claims commission pursuant to subdivision (c).
  - (2) The written notice provided by the Gaming Operation must contain notice of all procedural provisions in subdivision (a)(1). If the patron is not provided with written notice by the Gaming Operation within thirty (30) days of the patron's submission of the Initial Complaint, then the patron may seek resolution of the dispute by the Tribal Gaming Agency up to one hundred eighty (180) days after submission of the Initial Complaint.
  - (3) An explanation of the dispute resolution process shall be posted or otherwise made available in each Gaming Facility.
- (b) Upon receipt by the Tribal Gaming Agency of the patron's complaint, the Tribal Gaming Agency shall conduct an investigation, shall provide to the patron a copy of its regulations concerning patron complaints, and shall render a decision consistent with industry practice. The Tribal Gaming Agency's decision shall be issued within sixty (60) days of the patron's complaint to the Tribal Gaming Agency, shall be in writing, shall be based on the facts surrounding the dispute, and shall set forth the reasons for the decision.
  - (c) If the patron is dissatisfied with the decision of the Tribal Gaming Agency issued pursuant to subdivision (b), or no decision is issued within the sixty (60)-day period, the patron may request that the



dispute be resolved either in the Tribe's tribal court system, once a tribal court system is established, or until a tribal court system is established, by a three (3)-member tribal claims commission consisting of a representative of the tribal government and at least one (1) commissioner who is not a member of the Tribe. The tribal court system or tribal claims commission must afford the patron with a dispute resolution process that incorporates the essential elements of fairness and due process. No member of the tribal court system or tribal claims commission may be employed by the Gaming Facility or Gaming Operation. Resolution of the dispute before the tribal court system or tribal claims commission shall be at no cost to the patron (excluding patron's attorney's fees). Consistent with industry practice, if any alleged winnings are found to be a result of a mechanical, electronic or electromechanical failure and not due to the intentional acts or gross negligence of the Tribe or its agents, the patron's claim for the winnings shall be denied but the patron shall be awarded reimbursement of the amounts wagered by the patron that were lost as a result of any mechanical, electronic or electromechanical failure.

- (d) The Tribe shall consent to tribal court system or tribal claims commission adjudication to the extent of the amount of winnings in controversy, and discovery in the tribal court system or tribal claims commission proceedings shall be governed by section 1283.05 of the California Code of Civil Procedure.
- (e) Any party dissatisfied with the award of the tribal court system or the tribal claims commission may invoke the jurisdiction of the tribal appellate court, if one is established, or in the absence of a tribal appellate court, the JAMS Optional Arbitration Appeal Procedure (or if those rules no longer exist, the closest equivalent).
- (f) If there is no tribal appellate court, the cost and expenses of the JAMS Optional Arbitration Appeal Procedure (hereafter also known as the "JAMS appeal") shall be initially borne equally by the Tribe and the patron (for purposes of this section, the "parties") and both parties shall pay their share of the JAMS appeal costs at the time the JAMS appeal option is elected, but the JAMS arbitrator shall award costs and expenses to the prevailing party (but not attorney's fees). The JAMS appeal shall take place in Del Norte County, California,

shall use one (1) arbitrator and shall not be a de novo review, but shall be based solely upon the record developed in the tribal court system or tribal claims commission. The JAMS appeal arbitrator shall review all determinations of the tribal court system or tribal claims commission on matters of law, but shall not set aside any factual determinations of the tribal court system or tribal claims commission if the determination is supported by substantial evidence. The JAMS appeal arbitrator will review the decision of the tribal court system or tribal claims commission under the substantial evidence standard. The JAMS appeal arbitrator does not take new evidence but reviews the record of the decision below to make sure there is substantial evidence that reasonably supports that decision. The JAMS appeal arbitrator's appellate function is not to decide whether he or she would have reached the same factual conclusions but to decide whether a reasonable fact-finder could have come to the same conclusion based on the facts in the record. If there is a conflict in the evidence and a reasonable fact-finder could have resolved the conflict either way, the decision of the tribal court system or tribal claims commission will not be overturned on appeal.

- (g) To effectuate its consent to the tribal court system, tribal claims commission, tribal appellate court and the JAMS Optional Arbitration Appeal Procedure (or if those rules no longer exist, the closest equivalent) in the patron dispute ordinance, the Tribe, in the exercise of its sovereignty, expressly waives, and also waives its right to assert, its sovereign immunity in connection with the jurisdiction of the tribal court system, tribal claims commission, tribal appellate court and JAMS Optional Arbitration Appeal Procedure, and in connection with any suit to (i) enforce an obligation under this section 10.0, or (ii) enforce or execute a judgment based upon the award of the tribal court system, tribal claims commission, tribal appellate court and the JAMS Optional Arbitration Appeal Procedure arbitrator, to the extent of the amount of winnings in controversy.

## **SECTION 11.0. OFF-RESERVATION ENVIRONMENTAL IMPACTS.**

### **Sec. 11.1. Existing Memorandum of Understanding; Intergovernmental Agreement With County.**

- (a) Notwithstanding anything to the contrary herein, the Memorandum of Understanding (DN CO AGMT # 2002-023), made as of January 22, 2002, by and between the County of Del Norte and the Tribe (MOU) constitutes an Intergovernmental Agreement under section 11.1, subdivision (b), below. The MOU covers all Projects described and addressed within the September 2006 Final Environmental Impact Statement Elk Valley Rancheria Martin Ranch Fee-to-Trust and Casino Project and the January 4, 2008 Record of Decision [regarding the] Trust Acquisition of the 203.5-acre Martin Ranch Site in Del Norte County, California, for the Elk Valley Rancheria, California, whether heretofore commenced or commenced during the term of this Compact, so long as the County and the Tribe agree, within ninety (90) days after the effective date of this Compact, to extend the MOU's termination date to a mutually agreed-upon date, and for so long as the extended MOU or any subsequent amendment thereto is in effect. Nothing in this subdivision (a) shall be deemed to require the County and the Tribe to modify any provision of the MOU other than the termination date, unless the County and the Tribe mutually agree otherwise. If the Tribe is not successful in its efforts to extend or amend the MOU, the Tribe will comply with the process specified in section 11.3, subdivision (b) and, if necessary, subdivision (c), and section 11.4.
- (b) In consideration of the Tribe's exceptional history of environmental stewardship and respectful engagement with non-tribal governmental entities, in the event that the Tribe intends to: (i) commence a Project that would result in a new or expanded Gaming Facility in which the Tribe is to operate no more than four hundred (400) Gaming Devices and the new or expanded Gaming Facility will be located at the site of the Tribe's existing Gaming Facility, which is located at 2500 Howland Hill Road, Crescent City, California 95531; or (ii) exceed the activity described and addressed for the four hundred (400) Gaming Devices within the 2006 Final Environmental Impact Statement Elk Valley Rancheria Martin Ranch Fee-to-Trust and Casino Project and the January 4, 2008 Record of Decision [regarding

the] Trust Acquisition of the 203.5-acre Martin Ranch Site in Del Norte County, California, for the Elk Valley Rancheria, California, the Tribe shall identify the Significant Effects on the Off-Reservation Environment from the proposed Project and negotiate to reach an agreement with the County (and City, if applicable) regarding reasonable, appropriate, and effective mitigation of the Significant Effects on the Off-Reservation Environment (Intergovernmental Agreement) prior to commencement of the Project. Continuation of the Tribe's Gaming Activities within its existing Gaming Facility is not subject to this section, and does not require a new Intergovernmental Agreement, unless the Tribe commences a Project as defined in section 2.21. If the Tribe is not successful in its efforts to negotiate an Intergovernmental Agreement through the process provided in this subdivision, the Tribe will comply with the process specified in the remainder of this section 11.0.

- (c) If the Tribe intends to commence a Project that will result in the operation of more than four hundred (400) Gaming Devices, the Tribe and State, upon the Tribe's request pursuant to section 15.0 of this Compact, will commence good faith negotiations to address the environmental review of that Project.

**Sec. 11.2. Tribal Environmental Protection Ordinance and Environmental Review Process for Project.**

- (a) Subject to the provisions of section 11.1, on or before the effective date of this Compact, or not less than ninety (90) days before the commencement of a Project, as defined in section 2.21, the Tribe shall adopt an ordinance (the "Tribal Environmental Protection Ordinance") incorporating the processes and procedures required under this section 11.0 and providing for the preparation, circulation, and consideration by the Tribe of a tribal environmental impact report (TEIR) concerning the potential Significant Effects on the Off-Reservation Environment of any and all Projects to be commenced on or after the effective date of this Compact. In fashioning the Tribal Environmental Protection Ordinance, the Tribe will incorporate the relevant policies and purposes of the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA) consistent with legitimate governmental interests of the Tribe and the State, as reflected in this section 11.0. The Tribe will submit the draft

Tribal Environmental Protection Ordinance to the State along with a written request for its review within ninety (90) days, expressly stated to be pursuant to this section 11.2, subdivision (a). If within ninety (90) days after receiving it, which time may be extended upon the State's request, the State identifies aspects of the Tribal Environmental Protection Ordinance that it believes do not effectively incorporate the policies and purposes of this section 11.0, NEPA, and CEQA, the matter will be resolved in accordance with the dispute resolution provisions of section 13.0.

- (b) While each TEIR shall be specific to the Project at issue, the Tribal Environmental Protection Ordinance shall require that the TEIR address, at a minimum, the impacts of the Project on the following: (i) air quality; (ii) water resources; (iii) traffic; (iv) public services; and (v) hazardous materials.
- (c) The term "TEIR" includes any environmental assessment, environmental impact report, or environmental impact statement prepared in conformity with the Tribal Environmental Protection Ordinance, NEPA, or CEQA, as applicable.
- (d) Prior to the preparation of a TEIR, the Tribe may determine whether the proposed activity falls within a categorical exemption under CEQA or a categorical exclusion under NEPA that would be applicable to a similar project located off tribal lands, in which case the proposed Project would be exempt from the requirements of this section 11.0. The Tribe shall notify the State in writing of any such determination, and the basis therefor, within thirty (30) days after the determination is made. If the State disputes the propriety of the categorical exemption or exclusion, such dispute shall be resolved in accordance with the dispute resolution provisions of section 13.0.

**Sec. 11.3. TEIR Procedures.**

- (a) Before commencement of a Project, the Tribe shall:
  - (1) Inform the public of the planned Project through posting on a publicly accessible website or similarly accessible medium and publication at least one (1) time in a newspaper of general circulation in the area of the Project;

- (2) Take appropriate actions under the Tribal Environmental Protection Ordinance, including but not limited to the preparation of a draft TEIR, to determine whether the Project will have any Significant Effects on the Off-Reservation Environment; and thereafter, take appropriate actions under the Tribal Environmental Protection Ordinance to address any Significant Effects on the Off-Reservation Environment identified in the Tribe's draft TEIR. The draft TEIR shall include, among other things:
  - (A) A description of the physical environmental conditions in the vicinity of the Project (the environmental setting and existing baseline conditions), as they exist at the time the draft TEIR is prepared;
  - (B) If the Project is identified to have Significant Effects on the Off-Reservation Environment for which there is no reasonable or effective mitigation, the TEIR will consider alternatives to the Project in both location and scale, provided that the TEIR need not address alternatives that would cause the Tribe to forgo its right to engage in or reduce the scale of the Gaming Activities authorized by this Compact on its Indian lands, or require amendment or reconsideration of any existing tribal land use plans;
  - (C) Whether any proposed mitigation would be feasible; and
  - (D) Any direct growth-inducing impacts of the Project that are within the Tribe's sole control;
- (3) For the purpose of receiving and responding to comments, submit the draft TEIR concerning the proposed Project to the State Clearinghouse in the Office of Planning and Research (the "State Clearinghouse"), the State Gaming Agency and the County board of supervisors (or if the Tribe's Gaming Facility is or is to be located within the boundaries of an incorporated city or the City, to the city council) for distribution to the public, all of whom shall have thirty (30) days after receipt of the draft TEIR to submit written comments to the Tribe on the draft TEIR;

- (4) Consult with the board of supervisors of the County or counties within which the Tribe's Project is located, or is to be located, and, if the Project is within a city or the City, with the city council (collectively, the "Board"), and if requested by the Board, meet with them to discuss mitigation of Significant Effects on the Off-Reservation Environment;
- (5) Conduct a public meeting and provide an opportunity for public comment, including but not limited to those members of the public residing off-reservation within the vicinity of the Gaming Facility such as might be adversely affected by the proposed Project, after which the public shall have thirty (30) days to submit written comments to the Tribe on the draft TEIR;
- (6) If the draft TEIR identifies significant adverse traffic impacts to any portion of the state highway system or facilities (Traffic Impacts) under the jurisdiction of the California Department of Transportation (Caltrans) that are directly attributable in whole or in substantial part to the Project, then the Tribe shall give written notice to Caltrans of the Tribe's intent to meet and confer with Caltrans for the purpose of developing measures that will mitigate identified Traffic Impacts in an Intergovernmental Agreement. If the Tribe and Caltrans fail, after meeting and conferring, to reach an enforceable Intergovernmental Agreement on appropriate measures to mitigate the Traffic Impacts, then the Tribe and Caltrans may pursue the process set forth in section 11.3, subdivision (c);
- (7) Prepare a final TEIR, giving due consideration to the comments, if any, received from the State, the Board and members of the public. The final TEIR shall consist of:
  - (A) The draft TEIR or a revision of the draft;
  - (B) Comments and recommendations received on the draft TEIR either verbatim or in summary;
  - (C) A list of persons, organizations, and public agencies commenting on the draft TEIR;

- (D) The Tribe's responses to significant environmental issues raised in the review and consultation process, reflecting the Tribe's good-faith, reasoned analysis and consideration of each substantive comment bearing on any Significant Effect on the Off-Reservation Environment;
  - (E) Proposed measures to mitigate each Significant Effect on the Off-Reservation Environment identified in the final TEIR; and
  - (F) Any other information added by the Tribe;
- (8) Publish the final TEIR together with a decision by the tribal governing body (the "Report and Decision") regarding the Project in accordance with the Tribal Environmental Protection Ordinance within twenty (20) days after the Report and Decision are finalized. Notice of the Report and Decision shall be published at least one (1) time in a newspaper of general circulation in the area of the Project and a copy of the Report and Decision shall be published on the Tribe's website, if any, and submitted to the State Clearinghouse, the State Gaming Agency and the Board;
- (9) The Report and Decision may include a determination by the Tribe that some Significant Effects on the Off-Reservation Environment are unavoidable but acceptable after balancing the economic, legal, social, technological, or other benefits of the Project to the Tribe and the surrounding community, against its unavoidable environmental risks. If the specific economic, legal, social, technological, or other benefits of a proposed project outweigh the unavoidable Significant Effects on the Off-Reservation Environment, the Significant Effects on the Off-Reservation Environment may be considered acceptable if:
- (i) the Report and Decision identifies the specific overriding economic, legal, social, technological or other considerations(s) at issue;
  - (ii) the determination that the unavoidable environmental risks outweigh the overriding consideration(s) is supported by substantial evidence in the record upon which the Report and Decision are based;
  - (iii) alternative means, if feasible, to address the unavoidable environmental risks or the



community adversely affected by those risks have been adopted and implemented; and (iv) all other mitigation measures identified in the TEIR that are feasible are adopted and implemented. If the State disputes the propriety of a determination of infeasibility made under this subdivision (a)(9), the dispute shall be resolved using the dispute resolution procedures set forth in section 11.4, subdivisions (c) and (d).

- (b) If invoked by the Board, the following dispute resolution processes shall be utilized and completed before the Tribe begins construction of the Project:
  - (1) If, after reviewing the Tribe's Report and Decision, the Board believes that the final TEIR fails to identify a Significant Effect on the Off-Reservation Environment or that the Tribe's proposed mitigation measures, if any, are inadequate, or if the Board believes that the Tribe is not complying with a commitment to undertake mitigation measures agreed to in a Report and Decision (Compliance Issue(s)), it may, within thirty (30) days after receipt of the Report and Decision, or at any time after discovering information regarding a potential failure by the Tribe to comply with a commitment to mitigate, request in writing that the Board meet and confer with the Tribe in good faith for the purpose of attempting to reach a mutually satisfactory resolution of the issue within sixty (60) days of the date of service of the request. Any issues resolved through the meet and confer process shall be reduced to writing in an enforceable Intergovernmental Agreement, signed by the Tribe and the Board, and changes shall be made to the final TEIR and Report and Decision, as appropriate.
  - (2) Notice of any issue arising under this section 11.3, subdivision (b) requiring the Board and the Tribe to meet and confer shall be delivered by Certified Mail – Return Receipt Requested to the following representatives of the respective Parties:

If to the Tribe: Elk Valley Rancheria,  
California  
Attn: Chairperson  
2332 Howland Hill Road  
Crescent City, California 95531

If to the Board: County of Del Norte  
Attn: Chairperson  
981 H Street, Suite 210  
Crescent City, California 95531

- (3) In the event that the Board and the Tribe are unable to resolve through the procedures of section 11.3, subdivision (b)(1) of this Compact any differences regarding whether the Tribe's Project raises one (1) or more Compliance Issues, the Tribe shall initiate the procedures of section 11.3, subdivision (c).
- (c) If the Tribe and the Board or the Tribe and Caltrans are unable to resolve all differences identified and addressed under the procedures of section 11.3, subdivision (b)(1) or subdivision (a)(6), respectively, the following procedures shall apply:
- (1) The Tribe shall, within ten (10) days after completion of the meet and confer process with the Board or Caltrans, provide the State with a written copy of the Report and Decision, and a written description of the unresolved Compliance Issue questions or unresolved Traffic Impacts mitigation questions. The Board or Caltrans, as applicable, may provide a written description of the unresolved Compliance Issue questions or unresolved Traffic Impacts mitigation questions to the State, with a copy to the Tribe, within ten (10) days after completion of the meet and confer process.
  - (2) The State shall thereafter have forty-five (45) days to review the materials submitted under subdivision (c)(1), which time may be extended by agreement between the State and the Tribe.
  - (3) If the State contends that the Report and Decision raises one (1) or more Compliance Issues, or that the Tribe is not complying with a commitment to undertake mitigation measures agreed to in a Report and Decision, or that the Tribe's proposed

measures to mitigate identified Traffic Impacts are inadequate, the State shall, within the forty-five (45)-day review period, so notify the Tribe in writing (the “Non-Compliance Notice”), to schedule a meeting to discuss the State’s concerns. If the State concludes that there are no Compliance Issues, it shall send notice of that conclusion to the Tribe and the Board or Caltrans, as appropriate.

- (4) Within thirty (30) days after the Tribe’s receipt of the Non-Compliance Notice, the State and the Tribe shall meet and confer in good faith for the purpose of attempting to reach a mutually satisfactory resolution of the outstanding issues. Any issues resolved through the meet and confer process shall be reduced to writing in appropriate form, signed by the State and the Tribe, and appropriate changes shall be made to the final TEIR and Report and Decision, and the Intergovernmental Agreement or the Traffic Impacts Intergovernmental Agreement between the Tribe and the Board or the Tribe and Caltrans, as appropriate.
- (5) If all Compliance Issue questions or Traffic Impacts mitigation questions are not resolved as a result of the meet and confer process, the State may initiate the dispute resolution processes set forth in section 11.4.

#### **Sec. 11.4. Environmental Review Dispute Resolution Process**

Disputes that are unresolved using the procedures of section 11.3, subdivision (c) shall be resolved using the following Environmental Review Dispute Resolution Process (ERDR Process).

- (a) The ERDR Process shall be initiated by the State serving a written notice on the Tribe within thirty (30) days after the conclusion of the meet and confer process of section 11.3, subdivision (c), identifying with particularity those issues that the State alleges constitute Compliance Issue questions or Traffic Impacts mitigation questions.
- (b) The dispute shall thereupon be resolved by a single arbitrator selected from the environmental review panel (the “Panel”). The Panel shall consist of six (6) arbitrators selected by the Tribe and the State within thirty (30) days after the State’s initiation of the ERDR Process, or

such later date as the Tribe and the State shall agree to in writing. Each member of the Panel shall have relevant experience in environmental law. The State and the Tribe shall meet and sequentially randomly draw three (3) names from the six (6) Panel members, and the State and the Tribe each shall be allowed to strike one name from the list. A coin toss shall determine which party may strike the first name. The Tribe and the State shall share equally the costs of the arbitrator.

- (c) Within thirty (30) days after being designated, the arbitrator shall initiate proceedings to determine, as appropriate, whether the Report and Decision raises one or more Compliance Issues, whether the Tribe is not complying with a commitment to undertake mitigation measures agreed to in a Report and Decision, or whether the Tribe's proposed measures to mitigate identified Traffic Impacts are inadequate. The arbitrator may determine the matter on the written submissions of the parties, or may conduct an evidentiary hearing and receive oral testimony and argument. In making a determination whether the final TEIR fails to identify a Significant Effect on the Off-Reservation Environment or whether the Tribe's proposed mitigation measures in a Report and Decision, if any, are adequate, the arbitrator shall uphold the Report and Decision unless the arbitrator finds: (i) that the Report and Decision is not supported by the findings; or (ii) the findings are not supported by substantial evidence in light of the whole record; or (iii) the Tribe has not substantially complied with the substantive provisions of the Tribe's Tribal Environmental Protection Ordinance.
- (d) Within twenty (20) days after closing the record, the arbitrator shall issue a written decision determining whether the Report and Decision raises one or more Compliance Issues, whether the Tribe is not complying with a commitment to undertake mitigation measures agreed to in a Report and Decision, or whether the Tribe's proposed measures to mitigate identified Traffic Impacts are inadequate, and, where appropriate, shall identify specific provisions and aspects of the Report and Decision that fail to comply with the requirements of section 11.3, subdivision (a). In the event a decision is rendered finding that the Report and Decision raises one or more Compliance Issues, or finding that the Tribe is not complying with a commitment to undertake mitigation measures agreed to in a Report and Decision,

or finding that the Tribe's proposed measures to mitigate identified Traffic Impacts are inadequate, the Tribe shall take such actions as are necessary to correct, revise, amend or supplement the Report and Decision or applicable Intergovernmental Agreement(s), as appropriate, to address and correct any deficiencies identified in the arbitrator's decision.

- (e) Following the issuance of the Tribe's corrected, revised, amended or supplemental Report and Decision (the "Amended Report and Decision") or applicable Intergovernmental Agreement(s), as appropriate, the Tribe shall provide a written copy to the State. The State shall thereupon have thirty (30) days to review the Amended Report and Decision or applicable Intergovernmental Agreement(s) for compliance with the arbitrator's decision. If the State is satisfied that the Tribe has corrected the deficiencies identified in the arbitrator's decision, the State shall so notify the Tribe within the thirty (30)-day review period and the ERDR Process shall thereupon be concluded. In the event the State contends that the Tribe has failed to correct such deficiencies, the State shall so notify the Tribe in writing, identifying with particularity the remaining deficiencies.
- (f) If the State contends that the Tribe has failed to correct deficiencies identified in the arbitrator's decision, the Tribe and the State shall thereupon repeat the dispute resolution processes identified in section 11.4, subdivisions (a) through (h) until any remaining issues identified by the State are determined to be substantially addressed by the Tribe in accordance with the requirements of section 11.3, subdivision (a).
- (g) To effectuate this section, and in the exercise of its sovereignty, the Tribe agrees to expressly waive, and to waive its right to assert, sovereign immunity in connection with the arbitrator's jurisdiction and in any action to (i) enforce the other party's obligation to arbitrate, (ii) enforce or confirm any arbitral award rendered in the arbitration, or (iii) enforce or execute a judgment based upon the award.
- (h) Upon the Tribe's issuance of a Report and Decision under section 11.3, subdivision (a)(8) that does not result in the State issuing a Non-Compliance Notice pursuant to section 11.3, subdivision (c)(3), or upon the Tribe's issuance of an Amended Report and Decision or applicable Intergovernmental Agreement(s) at the conclusion of the

process described in this section 11.4, the Tribe and the State shall enter into a letter agreement (the “Agreement”) under which the Tribe shall agree to comply with the applicable Report and Decision and any applicable Intergovernmental Agreement(s) agreed to during the process contemplated by this section 11.4. Any contention by the State that the Tribe has failed to comply with the Agreement shall be resolved in accordance with the dispute resolution provisions of section 13.0.

### **Sec. 11.5. Apprise of Progress**

During the conduct of a Project, the Tribe shall keep the Board and potentially affected members of the public apprised of the Project’s progress.

## **SECTION 12.0. PUBLIC AND WORKPLACE HEALTH, SAFETY, AND LIABILITY.**

### **Sec. 12.1. General Requirements.**

The Tribe shall not conduct Class III Gaming in a manner that endangers the public health, safety, or welfare, provided, however, that nothing herein shall be construed to make applicable to the Tribe any State laws or regulations governing the use of tobacco.

### **Sec. 12.2. Tobacco Smoke.**

Notwithstanding section 12.1, the Tribe where reasonable and feasible after consideration of engineering, economic and scientific factors and consistent with business needs shall provide a non-smoking area in the Gaming Facility and utilize a ventilation system throughout the Gaming Facility that exhausts tobacco smoke to the extent reasonably feasible under state-of-the-art technology existing as of the date of the construction or significant renovation of the Gaming Facility, and further agrees not to offer or sell tobacco to anyone younger than the minimum age specified in State law to legally purchase tobacco products.

### **Sec. 12.3. Health and Safety Standards.**

To protect the health and safety of patrons and employees of the Gaming Facility, the Tribe shall, for the Gaming Facility:

- (a) Adopt and comply with standards no less stringent than State public health standards for food and beverage handling. The Tribe will allow, during normal hours of operation, inspection of food and beverage services in the Gaming Facility by State or County health inspectors, whichever inspector would have jurisdiction but for the Gaming Facility being on Indian lands, to assess compliance with these standards, unless inspections are routinely made by an agency of the United States government to ensure compliance with equivalent standards of the United States Public Health Service. Any report by the State, County, or federal health inspectors shall be transmitted within ten (10) days of receipt of the Tribe's actual receipt to the State Gaming Agency and the Tribal Gaming Agency. This includes any document that includes a citation or finding. Nothing herein shall be construed as submission of the Tribe to the jurisdiction of those State or County health inspectors, but any violations of the standards may be the subject of dispute resolution pursuant to section 13.0.
  
- (b) Adopt and comply with standards no less stringent than federal water quality and safe drinking water standards applicable in California. The Tribe will allow, during normal hours of operation, inspection and testing of water quality at the Gaming Facility by State or County health inspectors, whichever inspector would have jurisdiction but for the Gaming Facility being on Indian lands, to assess compliance with these standards, unless inspections and testing are routinely made by an agency of the United States pursuant to federal law to ensure compliance with federal water quality and safe drinking water standards. Any report by the State, County, or federal health inspectors shall be transmitted within ten (10) days of receipt of the Tribe's actual receipt to the State Gaming Agency and the Tribal Gaming Agency. Nothing herein shall be construed as submission of the Tribe to the jurisdiction of those State or County health inspectors, but any violations of the standards may be the subject of dispute resolution pursuant to section 13.0.
  
- (c) Comply with the building and safety standards set forth in section 6.4.2.
  
- (d) Adopt and comply with standards no less stringent than federal workplace and occupational health and safety standards. The Tribe will allow inspection of Gaming Facility workplaces by State

inspectors, during normal hours of operation, to assess compliance with these standards; provided that there is no right to inspection by State inspectors where an inspection has been conducted by an agency of the United States pursuant to federal law during the previous twelve (12) months and the Tribe has provided a copy of the federal agency's report to the State Gaming Agency within ten (10) business days of receipt of any report as a result of the federal inspection.

- (e) Adopt and comply with tribal codes to the extent consistent with the provisions of this Compact regarding public health and safety.
- (f) Adopt and comply with standards no less stringent than federal laws and State laws that would apply if the Tribe were defined as an "employer" under such laws forbidding harassment, including sexual harassment, in the workplace, forbidding employers from discrimination in connection with the employment of persons to work or working for the Gaming Operation or in the Gaming Facility on the basis of race, color, religion, ancestry, national origin, gender, marital status, medical condition, sexual orientation, age, or disability, and forbidding employers from retaliation against persons who oppose discrimination or participate in employment discrimination proceedings (hereinafter "harassment, retaliation, or employment discrimination"); provided that nothing herein shall preclude the Tribe from giving a preference in employment to members of federally recognized Indian tribes pursuant to a duly adopted tribal ordinance.
  - (1) The Tribe shall obtain and maintain an employment practices liability insurance policy consistent with industry standards for non-tribal casinos and underwritten by an insurer with an A.M. Best rating of A or higher which provides coverage of at least three million dollars (\$3,000,000) per occurrence for unlawful harassment, retaliation, or employment discrimination arising out of the claimant's employment in, in connection with, or relating to the operation of, the Gaming Operation, Gaming Facility or Gaming Activities. To effectuate the insurance coverage, the Tribe, in the exercise of its sovereignty, expressly waives, and also waives its right to assert, sovereign immunity and any and all defenses based thereon up to the greater of three million dollars (\$3,000,000) or the limits of the employment practices liability insurance policy, in accordance with the tribal



ordinance referenced in subdivision (f)(2) below, in connection with any claim for harassment, retaliation, or employment discrimination arising out of the claimant's employment in, in connection with, or relating to the operation of, the Gaming Operation, Gaming Facility or Gaming Activities; provided, however, that nothing herein requires the Tribe to agree to liability for punitive damages or to waive its right to assert sovereign immunity in connection therewith. The employment practices liability insurance policy shall acknowledge in writing that the Tribe has expressly waived, and also waived its right to assert, sovereign immunity and any and all defenses based thereon for the purpose of adjudication and/or arbitration of those claims for harassment, retaliation, or employment discrimination up to the limits of such policy and for the purpose of enforcement of any ensuing award or judgment and shall include an endorsement providing that the insurer shall not invoke tribal sovereign immunity up to the limits of such policy; however, such endorsement or acknowledgement shall not be deemed to waive or otherwise limit the Tribe's sovereign immunity for any portion of the claim that exceeds such policy limits or three million dollars (\$3,000,000), whichever is greater. Nothing in this provision shall be interpreted to supersede any requirement in the Tribe's employment discrimination complaint ordinance that a claimant must exhaust administrative remedies as a prerequisite to adjudication and/or arbitration.

- (2) The Tribe's harassment, retaliation, or employment discrimination standards shall be subject to enforcement pursuant to an employment discrimination complaint ordinance which shall be adopted by the Tribe prior to the effective date of this Compact and made available to all employees and their legal representatives. The ordinance shall continuously provide at least the following:
  - (A) That tribal law provisions that are the same as California law shall govern all claims of harassment, retaliation, or employment discrimination arising out of the claimant's employment in, in connection with, or relating to the operation of, the Gaming Operation, Gaming Facility or

Gaming Activities; provided that California law governing punitive damages need not be a part of the ordinance. Nothing in this provision shall be construed as a submission of the Tribe to the jurisdiction of the California Department of Fair Employment and Housing or the California Fair Employment and Housing Commission, or any successor agencies thereto.

- (B) That a claimant shall have one hundred eighty (180) days from the date that an alleged discriminatory act occurred to file a written notice with the Tribe that he or she has suffered prohibited harassment, retaliation, or employment discrimination.
- (C) That, in the exercise of its sovereignty, the Tribe expressly waives, and also waives its right to assert, sovereign immunity with respect to the dispute resolution processes expressly authorized in this section 12.3, subdivision (f) relating to claims for harassment, retaliation, or employment discrimination, as described in subdivision (f)(2)(G), below, but only up to the greater of three million dollars (\$3,000,000) or the limits of the employment practices liability insurance policy referenced in subdivision (f)(1) above; provided, however, such waiver shall not be deemed to waive or otherwise limit the Tribe's sovereign immunity for any portion of the claim that exceeds three million dollars (\$3,000,000) or the insurance policy limits, whichever is greater.
- (D) The ordinance shall allow for the claim to be resolved either in the Tribe's tribal court system, once a tribal court system is established, or by a three (3)-member tribal claims commission consisting of one tribal government representative and at least one (1) commissioner who is not a member of the Tribe. No member of the tribal court or tribal claims commission may be employed by the Gaming Facility or Gaming Operation. Resolution of the dispute before the tribal court system or tribal claims commission shall be at no

cost to the claimant (excluding claimant's attorney's fees).

- (E) Discovery in the tribal court or tribal claims commission proceedings shall be governed by procedures comparable to section 1283.05 of the California Code of Civil Procedure.
- (F) Any party dissatisfied with the award of the tribal court or tribal claims commission may at the party's election appeal the matter to a tribal court of appeal, if one is established, or invoke the JAMS Optional Arbitration Appeal Procedure (and if those rules no longer exist, the closest equivalent). If there is no tribal court of appeal, the cost and expenses of the JAMS Optional Arbitration Appeal Procedure (hereafter, "JAMS appeal") shall be initially borne equally by the Tribe and the claimant (for purposes of this subdivision (f)(2)(F), the "parties") and both parties shall pay their share of the JAMS appeal costs at the time the JAMS appeal option is elected, but the JAMS arbitrator shall award costs and expenses to the prevailing party (but not attorney's fees). If a tribal court of appeal is available, the party electing the JAMS appeal option shall bear all costs and expenses of the JAMS appeal, regardless of the outcome, and each party will bear their own attorney's fees. The JAMS appeal shall take place in the County and shall use one (1) arbitrator, agreed upon by the parties, and shall not be a de novo review, but shall be based solely upon the record developed in the tribal court or tribal claims commission proceeding. The JAMS appeal shall review all determinations of the tribal court or tribal claims commission on matters of law, but shall not set aside any factual determinations of the tribal court or tribal claims commission if such determination is supported by substantial evidence. If there is a conflict in the evidence and a reasonable fact-finder could have found for either party, the decision of the tribal court or tribal claims commission will not be overturned on appeal.

- (G) To effectuate its consent to the tribal court system, tribal claims commission and the JAMS Optional Arbitration Appeal Procedure in this subdivision (f), the Tribe, in the exercise of its sovereignty, expressly waives, and also waives its right to assert, sovereign immunity in connection with the jurisdiction of the tribal court, tribal claims commission and the JAMS Optional Arbitration Appeal Procedure and in any action to enforce an obligation provided in this section 12.3, subdivision (f) or to enforce or execute a judgment based upon the award.
- (3) The employment discrimination complaint ordinance required under subdivision (f)(2) may require, as a prerequisite to invoking the dispute resolution processes expressly authorized in this section 12.3, subdivision (f), that the claimant exhaust the Tribe’s administrative remedies, if any exist, in the form of a tribal employment discrimination complaint resolution process, for resolving the claim in accordance with the following standards:
- (A) Upon notice that the claimant alleges that he or she has suffered prohibited harassment, retaliation, or employment discrimination, the Tribe or its designee shall provide notice by personal service or certified mail, return receipt requested, that the claimant is required to proceed with the Tribe’s employment discrimination complaint resolution process in the event that the claimant wishes to pursue his or her claim.
  - (B) The claimant must bring his or her claim within one hundred eighty (180) days of receipt of the written notice (“limitation period”) of the Tribe’s employment discrimination complaint resolution process as long as the notice thereof is served personally on the claimant or by certified mail with an executed return receipt by the claimant and the one hundred eighty (180)-day limitation period is prominently displayed on the front page of the notice.

- (C) Adjudication may be stayed until the completion of the Tribe's employment discrimination complaint resolution process or one hundred eighty (180) days from the date the claim was filed, whichever first occurs, unless the parties mutually agree upon a longer period.
  - (D) The decision of the Tribe's employment discrimination complaint resolution process shall be in writing, shall be based on the facts surrounding the dispute, shall be a reasoned decision, and shall be rendered within one hundred eighty (180) days from the date the claim was filed, unless the parties mutually agree upon a longer period.
- (4) Within fourteen (14) days following notification that a claimant claims that he or she has suffered harassment, retaliation, or employment discrimination, the Tribe shall provide notice by personal service or certified mail, return receipt requested, that the claimant is required within the specified limitation period to first exhaust the Tribe's employment discrimination complaint resolution process, if any exists, and if dissatisfied with the resolution, is entitled to adjudicate his or her claim before the tribal court or tribal claims commission at no cost to the claimant (except for the claimant's attorney's fees).
  - (5) In the event the Tribe fails to adopt the ordinance specified in subdivision (f)(2), such failure shall constitute a breach of this Compact.
  - (6) The Tribe shall provide written notice of the employment discrimination complaint ordinance and the procedures for bringing a complaint in its employee handbook. The Tribe also shall post and keep posted in prominent and accessible places in the Gaming Facility where notices to employees and applicants for employment are customarily posted, a notice setting forth the pertinent provisions of the employment discrimination complaint ordinance and information pertinent to the filing of a complaint.

- (g) Adopt and comply with standards that are no less stringent than State laws prohibiting a gambling enterprise from cashing any check drawn against a federal, state, county, or city fund, including but not limited to, Social Security, unemployment insurance, disability payments, or public assistance payments.
- (h) Adopt and comply with standards that are no less stringent than State laws, if any, prohibiting a gambling or other gaming enterprise from providing, allowing, contracting to provide, or arranging to provide alcoholic beverages, for no charge or at reduced prices, as an incentive or enticement.
- (i) Adopt and comply with standards that are no less stringent than State laws, if any, prohibiting extensions of credit.
- (j) Comply with provisions of the Bank Secrecy Act, P.L. 91-508, October 26, 1970, 31 U.S.C. §§ 5311-5314, as amended, and all reporting requirements of the Internal Revenue Service, insofar as such provisions and reporting requirements are applicable to gambling establishments.
- (k) With regard to Gaming Employees, adopt and comply with the Fair Labor Standards Act, 29 U.S.C. § 201 et seq., the United States Department of Labor regulations implementing the Fair Labor Standards Act, 29 C.F.R. § 500 et seq., and the State's minimum wage law set forth in California Labor Code section 1182.12 and its implementing regulations. Notwithstanding the foregoing, only the federal minimum wage laws set forth in the Fair Labor Standards Act, 29 Code of Federal Regulations, part 500 et seq., shall apply to tipped Gaming Employees. Nothing herein shall make applicable State law concerning overtime.

#### **Sec. 12.4. Tribal Gaming Facility Standards Ordinance.**

The Tribe shall adopt in the form of an ordinance, or ordinances, the standards described in subdivisions (a) through (k) of section 12.3 to which the Gaming Facility and Gaming Operation are held, and shall transmit the ordinance(s) to the State Gaming Agency not later than thirty (30) days after the effective date of this Compact. In the absence of a promulgated tribal standard in respect to a matter identified in those subdivisions, or the express adoption of an

applicable federal and/or State statute or regulation, as the case may be, in respect of any such matter, the otherwise applicable federal and/or State statute or regulation shall be deemed to have been adopted by the Tribe as the applicable standard.

**Sec. 12.5. Insurance Coverage and Claims.**

- (a) The Tribe shall obtain and maintain commercial general liability insurance consistent with industry standards for non-tribal casinos in the United States underwritten by an insurer with an A.M. Best rating of A or higher which provides coverage of no less than ten million dollars (\$10,000,000) per occurrence for bodily injury, personal injury, and property damage arising out of, connected with, or relating to the operation of the Gaming Operation, Gaming Facility or Gaming Activities (Policy). To effectuate the insurance coverage, the Tribe shall expressly waive, and waive its right to assert, sovereign immunity up to the greater of ten million dollars (\$10,000,000) or the limits of the Policy, in accordance with the tribal ordinance referenced in subdivision (b) below, in connection with any claim for bodily injury, personal injury, or property damage, arising out of, connected with, or relating to the operation of the Gaming Operation, Gaming Facility, or the Gaming Activities, including, but not limited to, injuries resulting from entry onto the Tribe's land for purposes of patronizing the Gaming Facility or providing goods or services to the Gaming Facility; provided, however, that nothing herein requires the Tribe to agree to liability for punitive damages or to waive its right to assert sovereign immunity in connection therewith. The Policy shall acknowledge in writing that the Tribe has expressly waived, and waived its right to assert, sovereign immunity for the purpose of resolution or arbitration of those claims under the terms of this section, up to the greater of ten million dollars (\$10,000,000) or the limits of the Policy, and for the purpose of enforcement of any ensuing award or judgment, and shall include an endorsement providing that the insurer shall not invoke tribal sovereign immunity up to the limits of the Policy; however, such endorsement or acknowledgement shall not be deemed to waive or otherwise limit the Tribe's sovereign immunity for any portion of the claim that exceeds ten million dollars (\$10,000,000) or the Policy limits, whichever is greater.

- (b) The Tribe shall adopt, and at all times hereinafter shall maintain in continuous force, an ordinance that provides for all of the following:
- (1) The ordinance shall provide that the standards of California tort law regarding claims of bodily injury, personal injury, or property damage arising out of, connected with, or relating to the operation of the Gaming Operation, Gaming Facility, or the Gaming Activities, including but not limited to injuries resulting from entry onto the Tribe's land for purposes of patronizing the Gaming Facility or providing goods or services to the Gaming Facility, shall be used to determine liability; provided that California law governing punitive damages need not be a part of the ordinance. Nothing herein shall subject the Tribe to any award of punitive damages. Further, the Tribe may include in the ordinance required by this subdivision a requirement that a person with claims for money damages against the Tribe file those claims within the time periods applicable for the filing of claims for money damages against public entities under California Government Code section 810 et seq.
  - (2) The ordinance shall also expressly provide for waiver of the Tribe's sovereign immunity and its right to assert sovereign immunity with respect to the resolution of such claims in the Tribe's tribal court system, once a tribal court system is established, or until a tribal court system is established, by a tribal claims commission, and in the tribal appellate court, once a tribal appellate court is established, or until a tribal appellate court is established, in the Jams Optional Arbitration Appeal Procedure, but only up to the greater of ten million dollars (\$10,000,000) or the Policy limits; provided, however, such waiver shall not be deemed to waive or otherwise limit the Tribe's sovereign immunity for any portion of the claim that exceeds ten million dollars (\$10,000,000) or the Policy limits, whichever is greater.
  - (3) The ordinance shall allow for the claim to be resolved either in the Tribe's tribal court system, once a tribal court system is established, or by a three (3)-member tribal claims commission consisting of one (1) representative of the tribal government and at least one (1) commissioner who is not a member of the Tribe. The tribal court or tribal claims commission must afford the



claimant with a dispute resolution process that incorporates the essential elements of fairness and due process. Discovery in the tribal court or claims commission proceedings shall be governed by section 1283.05 of the California Code of Civil Procedure. No member of the tribal court or the tribal claims commission may be employed by the Gaming Facility or Gaming Operation. Resolution of the dispute before the tribal court system or tribal claims commission shall be at no cost to the claimant (excluding claimant's attorney's fees).

- (4) The Tribe shall consent to the tribal court system, tribal claims commission, tribal appellate court, or the JAMS Optional Arbitration Appeal Procedure to the extent of the limits of the Policy.
- (5) Any party dissatisfied with the award of the tribal court or tribal claims commission may, at the party's election, invoke the jurisdiction of the tribal appellate court, if one is established, or the JAMS Optional Arbitration Appeal Procedure (or if those rules no longer exist, the closest equivalent), provided that if there is a tribal appellate court, the party making the election of JAMS must bear all costs and expenses of JAMS and the JAMS arbitrators associated with the JAMS Optional Arbitration Appeal Procedure, regardless of the outcome. If there is no tribal appellate court, the cost and expenses of the JAMS Optional Arbitration Appeal Procedure shall be initially borne equally by the Tribe and the claimant (for purposes of this section, the "parties") and both parties shall pay their share of the JAMS appeal costs at the time the JAMS appeal option is elected, but the JAMS arbitrator shall award costs and expenses to the prevailing party (but not attorney's fees). The applicable JAMS Optional Arbitration Appeal Procedure, hereafter also known as the "JAMS appeal proceeding," shall take place in Del Norte County, California, shall use one (1) arbitrator agreed upon by the parties, and shall not be a de novo review, but shall be based solely upon the record developed in the tribal court or tribal claims commission proceeding. The JAMS appeal proceeding shall review all determinations of the tribal court or tribal claims commission on matters of law, but shall not set aside any factual determinations of the tribal court or tribal

claims commission if such determination is supported by substantial evidence. The JAMS Optional Arbitration Appeal Procedure arbitrator does not take new evidence but reviews the record of the decision below to make sure there is substantial evidence that reasonably supports that decision. The JAMS Optional Arbitration Appeal Procedure arbitrator's appellate function is not to decide whether he or she would have reached the same factual conclusions but to decide whether a reasonable fact-finder could have come to the same conclusion based on the facts in the record. If there is a conflict in the evidence and a reasonable fact-finder could have found for either party, the decision of the tribal court or tribal claims commission will not be overturned on appeal.

- (6) To effectuate its consent to the tribal court system or tribal claims commission, and the JAMS Optional Arbitration Appeal Procedure in the ordinance, the Tribe, in the exercise of its sovereignty, expressly waives, and also waives its right to assert, its sovereign immunity in connection with the jurisdiction of the tribal court system, tribal claims commission, and JAMS Optional Arbitration Appeal Procedure (or if those rules no longer exist, the closest equivalent), and in any suit to (i) enforce an obligation under this section 12.5, or (ii) enforce or execute a judgment based upon the award of the tribal court system, tribal claims commission, or the JAMS Optional Arbitration Appeal Procedure arbitrator.
- (7) The ordinance may also require that the claimant first exhaust the Tribe's administrative remedies for resolving the claim (hereinafter the "Tribal Dispute Process") in accordance with the following standards: The claimant must bring his or her claim within one hundred eighty (180) days of receipt of written notice of the Tribal Dispute Process as long as notice thereof is served personally on the claimant or by certified mail with an executed return receipt by the claimant and the one hundred eighty (180)-day limitation period is prominently displayed on the front page of the notice. The ordinance shall provide that any other dispute resolution process may be stayed until the completion of the Tribal Dispute Process or one hundred eighty (180) days from the date the claim is filed in the Tribal Dispute Process,

whichever first occurs, unless the parties mutually agree to a longer period.

- (c) Upon notice that a claimant claims to have suffered an injury or damage covered by this section, the Tribe shall provide notice by personal service or certified mail, return receipt requested, that the claimant is required within the limitation period provided by subdivision (b)(7) to first exhaust the Tribal Dispute Process, if any, and if dissatisfied with the resolution, entitled to engage in claims resolution as described in subdivisions (b)(3) through (6).
- (d) In the event the Tribe fails to adopt the ordinance specified in subdivision (b), the tort law of the State of California, including applicable statutes of limitations, shall apply to all claims of bodily injury, personal injury, and property damage arising out of, connected with, or relating to the operation of the Gaming Operation, Gaming Facility, or the Gaming Activities, including but not limited to injuries resulting from entry onto the Tribe's land for purposes of patronizing the Gaming Facility or providing goods or services to the Gaming Facility; and the Tribe expressly waives, and waives its right to assert, sovereign immunity up to ten million dollars (\$10,000,000) or the limits of the Policy, whichever is greater, in connection with any proceedings in the tribal court system, tribal claims commission, tribal appellate court, and JAMS Optional Arbitration Appeal Procedure, and in any suit to (i) enforce an obligation under this section, or (ii) enforce or execute a judgment based upon the award of the tribal court system, tribal claims commission, tribal appellate court or the JAMS Optional Arbitration Appeal Procedure arbitrator, of any such claims, any court proceedings based on such proceedings, including the award resulting therefrom, and any ensuing judgments.
- (e) The Tribe shall not invoke on behalf of any employee or agent, the Tribe's sovereign immunity in connection with any claim for, or any judgment based on any claim for, intentional injury to persons or property committed by the employee or agent, without regard to the Tribe's liability insurance limits. Nothing in this subdivision prevents the Tribe from invoking sovereign immunity on its own behalf or authorizes a claim against the Tribe or a tribally owned entity.
- (f) Any judgment in favor of a claimant shall be solely recoverable from the proceeds of the Policy.

- (g) This section 12.5 does not apply to or otherwise authorize tort claims by Gaming Employees for work-related bodily injury, personal injury, or property damage.
- (h) In the event the Tribe fails to adopt the ordinance specified in subdivision (b), such failure shall constitute a breach of this Compact.

**Sec. 12.6. Participation in State Programs Related to Employment.**

- (a) The Tribe may participate in the State's workers' compensation program with respect to employees employed at the Gaming Operation and the Gaming Facility. The workers' compensation program includes, but is not limited to, State laws relating to the securing of payment of compensation through one (1) or more insurers duly authorized to write workers' compensation insurance in this state or through self-insurance as permitted under the State's workers' compensation laws. If the Tribe participates in the State workers' compensation program, it agrees that all disputes arising from the workers' compensation laws shall be heard by the Workers' Compensation Appeals Board pursuant to the California Labor Code. The Tribe hereby consents to the jurisdiction of the Workers' Compensation Appeals Board and the courts of the State of California for purposes of enforcement. The parties agree that independent contractors doing business with the Tribe are bound by all state workers' compensation laws and obligations.
- (b) In lieu of permitting the Gaming Operation to participate in the State's workers' compensation system, the Tribe may create and maintain a system that provides redress for employee work-related injuries through requiring insurance or self-insurance, which system must include a scope of coverage, provision of up to ten thousand dollars (\$10,000) in medical treatment for alleged injury until the date that liability for the claim is accepted or rejected, employee choice of physician (either after thirty (30) days from the date of the injury is reported or if a medical provider network has been established, within the medical provider network), quality and timely medical treatment provided comparable to the state's medical treatment utilization schedule, availability of an independent medical examination to resolve disagreements on appropriate treatment (by an Independent Medical Reviewer on the state's approved list, a Qualified Medical

Evaluator on the state's approved list, or an Agreed Medical Examiner upon mutual agreement of the employer and employee), the right to notice, hearings before an independent tribunal, a means of enforcement against the employer, and benefits (including, but not limited to, disability, rehabilitation and return to work) comparable to those mandated for comparable employees under State law. Not later than the effective date of this Compact, or sixty (60) days prior to the commencement of Gaming Activities under this Compact, the Tribe will advise the State of its election to participate in the State's workers' compensation system or, alternatively, will forward to the State all relevant ordinances that have been adopted and all other documents establishing the system and demonstrating that the system is fully operational and compliant with the comparability standard set forth above. The parties agree that independent contractors doing business with the Tribe must comply with all state workers' compensation laws and obligations.

- (c) The Tribe agrees that it will participate in the State's program for providing unemployment compensation benefits and unemployment compensation disability benefits with respect to employees employed at the Gaming Operation or Gaming Facility, which participation shall include compliance with the provisions of the California Unemployment Insurance Code, and the Tribe consents to the jurisdiction of the state agencies charged with the enforcement of that Code and of the courts of the State of California for purposes of enforcement.
- (d) As a matter of comity, the Tribe shall, with respect to persons, including nonresidents of California, employed at the Gaming Operation or Gaming Facility, withhold all amounts due to the State as provided in the California Unemployment Insurance Code and, except for tribal members living on the Tribe's reservation, as provided in the California Revenue and Taxation Code and the regulations thereunder, as may be amended from time to time, and shall forward such amounts to the State. The Tribe shall file with the Franchise Tax Board a copy of any information return filed with the Secretary of the Treasury, as provided in the California Revenue and Taxation Code and the regulations thereunder, except those pertaining to tribal members living on the Tribe's reservation. For purposes of this subdivision, "reservation" refers to the Tribe's Indian lands within

the meaning of IGRA or lands otherwise held in trust for the Tribe by the United States, and “tribal members” refers to the enrolled members of the Tribe.

- (e) As a matter of comity, the Tribe shall, with respect to the earnings of any person employed at the Gaming Operation or Gaming Facility, comply with all earnings withholding orders for support of a child, or spouse or former spouse, and all other orders by which the earnings of an employee are required to be withheld by an employer pursuant to chapter 5 (commencing with section 706.010) of division 1 of title 9 of part 2 of the California Code of Civil Procedure, and with all earnings assignment orders for support made pursuant to chapter 8 (commencing with section 5200) of part 5 of division 9 of the California Family Code or section 3088 of the California Probate Code.

#### **Sec. 12.7. Emergency Services Accessibility.**

The Tribe shall make reasonable provisions for adequate emergency fire, medical, and related relief and disaster services for patrons and employees of the Gaming Facility.

#### **Sec. 12.8. Alcoholic Beverage Service.**

Purchase, sale, and service of alcoholic beverages by or to patrons shall be subject to state alcoholic beverage laws.

#### **Sec. 12.9. Possession of Firearms.**

The possession of firearms by any person in the Gaming Facility is prohibited at all times, except for federal, state, or local law enforcement personnel, or tribal law enforcement or security personnel authorized by tribal law and federal or State law to possess firearms at the Gaming Facility.

#### **Sec. 12.10. Labor Relations.**

The Gaming Activities authorized by this Compact may only commence after the Tribe has adopted an ordinance identical to the Tribal Labor Relations Ordinance attached hereto as Appendix B, and the Gaming Activities may only continue as long as the Tribe maintains the ordinance. The Tribe shall provide

written notice to the State that it has adopted the ordinance, along with a copy of the ordinance, on or before the effective date of this Compact.

## **SECTION 13.0. DISPUTE RESOLUTION PROVISIONS.**

### **Sec. 13.1. Voluntary Resolution; Court Resolution.**

In recognition of the government-to-government relationship of the Tribe and the State, the parties shall make their best efforts to resolve disputes that arise under this Compact by good faith negotiations whenever possible. Therefore, except for the right of either party to seek injunctive relief against the other when circumstances are deemed to require immediate relief, the Tribe and the State shall seek to resolve disputes by first meeting and conferring in good faith in order to foster a spirit of cooperation and efficiency in the administration and monitoring of the performance and compliance of the terms, provisions, and conditions of this Compact, as follows:

- (a) Either party shall give the other, as soon as possible after the event giving rise to the concern, a written notice setting forth the facts giving rise to the dispute and with specificity, the issues to be resolved.
- (b) The other party shall respond in writing to the facts and issues set forth in the notice within fifteen (15) days of receipt of the notice, unless both parties agree in writing to an extension of time.
- (c) The parties shall meet and confer in good faith by telephone or in person in an attempt to resolve the dispute through negotiation within thirty (30) days after receipt of the notice set forth in subdivision (a), unless both parties agree in writing to an extension of time.
- (d) If the dispute is not resolved to the satisfaction of the parties after the first meeting, either party may seek to have the dispute resolved by an arbitrator in accordance with this section, but neither party shall be required to agree to submit to arbitration.
- (e) Disputes that are not otherwise resolved by arbitration or other mutually agreed means may be resolved in the United States District Court in the judicial district where the Tribe's Gaming Facility is located, or if the federal court lacks jurisdiction, in any state court of

competent jurisdiction in or over the County. The disputes to be submitted to court action include, but are not limited to, claims of breach of this Compact, provided that the remedies expressly provided in section 13.4, subdivision (a)(ii) are the sole and exclusive remedies available to either party for issues arising out of this Compact and supersede any remedies otherwise available, whether at law, tort, contract, or in equity and, notwithstanding any other provision of law or this Compact, neither the State nor the Tribe shall be liable for damages or attorney fees in any action based in whole or in part on issues arising out of this Compact, or based in whole or in part on the fact that the parties have either entered into this Compact, or have obligations under this Compact. The parties are entitled to all rights of appeal permitted by law in the court system in which the action is brought.

- (f) In no event may the Tribe be precluded from pursuing any arbitration or judicial remedy against the State on the ground that the Tribe has failed to exhaust its State administrative remedies, and in no event may the State be precluded from pursuing any arbitration or judicial remedy against the Tribe on the ground that the State has failed to exhaust any tribal administrative remedies.

### **Sec. 13.2. Arbitration Rules for the Tribe and the State.**

Arbitration between the Tribe and the State shall be conducted before a JAMS arbitrator in accordance with JAMS Comprehensive Arbitration. Discovery in the arbitration proceedings shall be governed by section 1283.05 of the California Code of Civil Procedure, provided that no discovery authorized by that section may be conducted without leave of the arbitrator. The parties shall equally bear the cost of JAMS and the JAMS arbitrator. Either party dissatisfied with the award of the arbitrator may at the party's election invoke the JAMS Optional Arbitration Appeal Procedure (or if those rules no longer exist, the closest equivalent). In any JAMS arbitration under this section 13.2, the parties will bear their own attorney's fees. The arbitration shall take place within seventy-five (75) miles of the Gaming Facility, or as otherwise mutually agreed by the parties and the parties agree that either party may file a state or federal court action to (i) enforce the parties' obligation to arbitrate, (ii) confirm, correct, or vacate the arbitral award rendered in the arbitration in accordance with section 1285 et seq. of the California Code of Civil Procedure, or (iii) enforce or execute a judgment based upon the award. The Tribe agrees not to assert, and will waive, any defense



alleging improper venue or forum *non conveniens* as to any state court located within the County or any federal court located in the Northern District of California in any such action brought with respect to the arbitration award.

**Sec. 13.3. No Waiver or Preclusion of Other Means of Dispute Resolution.**

This section 13.0 may not be construed to waive, limit, or restrict any remedy to address issues not arising out of this Compact that is otherwise available to either party, nor may this section 13.0 be construed to preclude, limit, or restrict the ability of the parties to pursue, by mutual agreement, any other method of Compact dispute resolution, including, but not limited to, mediation.

**Sec. 13.4. Limited Waiver of Sovereign Immunity.**

- (a) For the purpose of actions or arbitrations based on disputes between the State and the Tribe that arise under this Compact and the enforcement of any judgment or award resulting therefrom, the State and the Tribe expressly waive their right to assert their sovereign immunity from suit and enforcement of any ensuing judgment or arbitral award and consent to the arbitrator's jurisdiction and further consent to be sued in federal or state court, as the case may be, provided that (i) the dispute is limited solely to issues arising under this Compact, (ii) neither the Tribe nor the State makes any claim for restitution or monetary damages, except that payment of any money expressly required by the terms of this Compact may be sought, and solely injunctive relief, specific performance (including enforcement of a provision of this Compact expressly requiring the payment of money to one or another of the parties), and declaratory relief (limited to a determination of the respective obligations of the parties under the Compact) may be sought, and (iii) nothing herein shall be construed to constitute a waiver of the sovereign immunity of either the Tribe or the State with respect to any third party that is made a party or intervenes as a party to the action.
  
- (b) In the event that intervention, joinder, or other participation by any additional party in any action between the State and the Tribe would result in the waiver of the Tribe's or the State's sovereign immunity as to that additional party, the waivers of either the Tribe or the State provided herein may be revoked, except where joinder is required, as

determined by the court, to preserve the court's jurisdiction, in which case the State and the Tribe may not revoke their waivers of sovereign immunity as to each other.

- (c) The waivers and consents to jurisdiction expressly provided for under this section 13.0 and elsewhere in the Compact shall extend to all arbitrations and civil actions expressly authorized by this Compact, including, but not limited to, actions to compel arbitration, any arbitration proceeding herein, any action to confirm, modify, or vacate any arbitral award or to enforce any judgment, and any appellate proceeding emanating from any such proceedings, whether in state or federal court.
- (d) Except as stated herein or elsewhere in this Compact, no other waivers or consents to be sued, either express or implied, are granted by either party, whether in state statute or otherwise, including but not limited to Government Code section 98005.

## **SECTION 14.0. EFFECTIVE DATE AND TERM OF COMPACT.**

### **Sec. 14.1. Effective Date.**

This Compact shall not be effective unless and until all of the following have occurred:

- (a) The Compact is ratified in accordance with State law; and
- (b) Notice of approval or constructive approval is published in the Federal Register as provided in 25 U.S.C. § 2710(d)(3)(B).

### **Sec. 14.2. Term of Compact; Termination.**

- (a) Once effective, this Compact shall be in full force and effect for State law purposes for twenty-five (25) years following the effective date.
- (b) Subsequent to exhausting the section 13.0 dispute resolution provisions unless the circumstances are deemed to require immediate relief, either party may bring an action in federal court, after providing a thirty (30)-day written notice of an opportunity to cure any alleged breach of this Compact, for a declaration that the other party has

materially breached this Compact or that a material part of this Compact has been invalidated. If the federal court rules that a party has materially breached this Compact, then the party found to have committed the breach shall have thirty (30) days after a final decision has been issued by the court after any appeals to cure the material breach. If the material breach is not cured within thirty (30) days, then in addition to the declaration of material breach and any equitable remedies explicitly identified in section 13.0 that may have been awarded, the non-breaching party may seek, in the same federal court action, termination of the Compact as a further judicially imposed remedy. The court may order termination based on a finding (i) that the respondent party has breached its Compact obligations, and (ii) that the respondent party failed to cure the material breach within the time allowed. In the event a federal court determines that it lacks jurisdiction over such an action, the action may be brought in the Superior Court for Del Norte County, and any finding that termination is warranted shall be effective thirty (30) days after issuance of the termination order by the federal district court or superior court, as the case may be. The parties expressly waive, and also waive their right to assert, their sovereign immunity from suit for purposes of an action under this subdivision, subject to the waiver qualifications stated in section 13.4.

- (c) If this Compact does not take effect by November 1, 2018, it shall be deemed null and void unless the Tribe and the State agree in writing to extend the date.

## **SECTION 15.0. AMENDMENTS; RENEGOTIATIONS.**

### **Sec. 15.1. Amendment by Agreement.**

The terms and conditions of this Compact may be amended at any time by the mutual and written agreement of both parties during the term of this Compact set forth in section 14.2, provided that each party voluntarily consents to such negotiations, including the scope of such negotiations, in writing. Any amendments to this Compact shall be deemed to supersede, supplant and extinguish all previous understandings and agreements on the subject.

**Sec. 15.2. Negotiations for a New Compact.**

No sooner than eighteen (18) months before the termination date of this Compact set forth in section 14.2, either party may request the other party to enter into negotiations to extend the term of this Compact or to enter into a new Class III Gaming compact. If the parties have not agreed to extend the term of this Compact or have not entered into a new compact by the termination date in section 14.2, this Compact shall automatically be extended for one (1) year. If the parties are engaged in negotiations that both parties agree in writing is proceeding towards conclusion of a new or amended compact, this Compact shall automatically be extended for an additional two (2) years.

**Sec. 15.3. Requests to Amend or to Negotiate a New Compact.**

All requests to amend this Compact or to negotiate to extend the term of this Compact or to negotiate for a new Class III Gaming compact shall be in writing, addressed to the Tribal Chair or the Governor, as the case may be, and shall include the activities or circumstances to be negotiated, together with a statement of the basis supporting the request. If the request meets both the requirements of this section and section 15.1 for an amendment to this Compact, or the requirements of this section and section 15.2 for a new class III gaming compact, and all parties agree in writing to negotiate, the parties shall confer promptly and determine within forty-five (45) days of the request a schedule for commencing negotiations, and both parties shall negotiate in good faith. The Tribal Chair and the Governor of the State are hereby authorized to designate the person or agency responsible for conducting the negotiations, and shall execute any documents necessary to do so.

**SECTION 16.0. NOTICES.**

Unless otherwise indicated by this Compact, all notices required or authorized to be served shall be served by first-class mail or facsimile transmission to the following addresses, or to such other address as either party may designate by written notice to the other:

Governor  
Governor’s Office  
State Capitol  
Sacramento, California 95814

Tribal Chairperson  
Elk Valley Rancheria, California  
2332 Howland Hill Road  
Crescent City, California 95531

## **SECTION 17.0. CHANGES TO IGRA.**

This Compact is intended to meet the requirements of IGRA as it reads on the effective date of this Compact, and, when reference is made to IGRA or to an implementing regulation thereof, the referenced provision is deemed to have been incorporated into this Compact as if set out in full. Subsequent changes to IGRA that diminish the rights of the State or the Tribe may not be applied retroactively to alter the terms of this Compact, except to the extent that federal law validly mandates retroactive application without the State's or the Tribe's respective consent.

## **SECTION 18.0. MISCELLANEOUS.**

### **Sec. 18.1. Third-Party Beneficiaries.**

Notwithstanding any provision of law, this Compact is not intended to, and shall not be construed to, create any right on the part of a third party to bring an action to enforce any of its terms.

### **Sec. 18.2. Complete Agreement.**

This Compact, together with all appendices, sets forth the full and complete agreement of the parties and supersedes any prior agreements or understandings with respect to the subject matter hereof.

### **Sec. 18.3. Construction.**

Neither the presence in another tribal-state Class III Gaming compact of language that is not included in this Compact, nor the absence in another tribal-state Class III Gaming compact of language that is present in this Compact shall be a factor in construing the terms of this Compact. In the event of a dispute between the parties as to the language of this Compact or the construction or meaning of any term hereof, this Compact will be deemed to have been drafted by the parties in equal parts so that no presumptions or inferences concerning its terms or interpretation may be construed against any party to this Compact.

#### **Sec. 18.4. Successor Provisions.**

Wherever this Compact makes reference to a specific statutory provision, regulation, or set of rules, it also applies to the provision or rules, as they may be amended from time to time, and any successor provision or set of rules.

#### **Sec. 18.5. Ordinances and Regulations.**

Whenever the Tribe adopts or materially amends any ordinance or regulations required to be adopted and/or maintained under this Compact, in addition to any other Compact obligations to provide a copy to others, the Tribe shall provide a copy of such adopted or materially amended ordinance or regulations to the State Gaming Agency upon the State Gaming Agency's request therefor.

#### **Sec. 18.6. Calculation of Time.**

In computing any period of time prescribed by this Compact, the day of the event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday under the Tribe's laws, State law, or federal law. Unless otherwise specifically provided herein, the term "days" shall be construed as calendar days.

#### **Sec. 18.7. Force Majeure.**

In the event of a force majeure event, including but not limited to: an act of God; accident; fire; flood; earthquake; or other natural disaster; strike or other labor dispute; riot or civil commotion; act of public enemy; enactment of any rule; order or act of a government or governmental instrumentality; effects of an extended restriction of energy use; and other causes of a similar nature beyond the Tribe's control that causes the Tribe's Gaming Operation or Facility to be inoperable or operate at significantly less capacity; the parties agree to meet and confer for the purpose of discussing the event and appropriate actions, if any, given the circumstances.

### **Sec. 18.8. Not a Model Compact.**

This Compact addresses the specific relationship between the Tribe and the State and is not intended to be, nor shall it be construed as, a model compact or a template for compacts with other tribes.

### **Sec. 18.9. Representations.**

- (a) The Tribe expressly represents that as of the date of the undersigned's execution of this Compact, the undersigned has the authority to execute this Compact on behalf of the Tribe, and will provide to the Governor written proof of such authority and proof of the approval of this Compact by the Tribe's membership, including any waiver of sovereign immunity and the right to assert sovereign immunity in this Compact.
- (b) The Tribe further represents that it is (i) recognized as eligible by the Secretary of the Interior for special programs and services provided by the United States to Indians because of their status as Indians, and (ii) recognized by the Secretary of the Interior as possessing powers of self-government.
- (c) In entering into this Compact, the State expressly relies upon the foregoing representations by the Tribe, and the State's entry into the Compact is expressly made contingent upon the truth of those representations as of the date of the Tribe's execution of this Compact through the undersigned. If the Tribe fails to timely provide written proof of the undersigned's aforesaid authority to execute this Compact, including any waiver of sovereign immunity and the right to assert sovereign immunity therein, or written proof of ratification by the Tribe's membership, the Governor shall have the right to declare this Compact null and void.

- (d) This Compact shall not be presented to the California State Legislature for a ratification vote until the Tribe has provided the written proof required in subdivision (a) to the Governor.

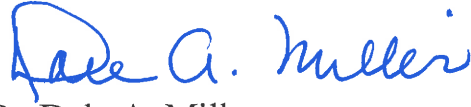
IN WITNESS WHEREOF, the undersigned sign this Compact on behalf of the State of California and Elk Valley Rancheria, California.

STATE OF CALIFORNIA

Elk Valley Rancheria, California



By Edmund G. Brown Jr.  
Governor of the State of California



By Dale A. Miller  
Chairperson of Elk Valley Rancheria,  
California

Executed this 31<sup>st</sup> day of August,  
2017, at Sacramento, California

Executed this 29<sup>th</sup> day of August,  
2017, at Crescent City,  
California

**ATTEST:**

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Alex Padilla  
Secretary of State, State of California



## APPENDICES

- A. Description and Map of Elk Valley Rancheria, California's Gaming Eligible Land
- B. Tribal Labor Relations Ordinance

## **Appendix A**




### **Description and Map of Elk Valley Rancheria and Indian Lands**

The land referred to herein is situated in the County of Del Norte, State of California, and has the following parcel identifying numbers:

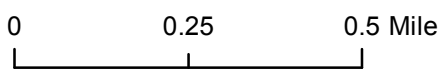
APN 112-071-01  
APN 112-071-10  
APN 112-071-11  
APN 112-071-16  
APN 112-071-06  
APN 112-071-08  
APN 112-072-06  
APN 112-072-02  
APN 112-073-08  
APN 112-073-21  
APN 112-073-17  
APN 112-073-13  
APN 112-020-68  
APN 112-020-69  
APN 115-020-28

# ELK VALLEY RANCHERIA TRUST PROPERTIES & PARCEL NUMBERS



-  EVR - Original 100 Acres
-  Trust Properties
-  Trust land - No Class III Gaming under Compact

Data Source: ESRI, Del Norte County  
Created by: EVR Environmental Services  
This map is for illustration purposes only  
Date: July 25, 2017



## **Appendix B**

### **Tribal Labor Relations Ordinance**

#### **Section 1: Threshold of Applicability**

- (a) If the Tribe employs 250 or more persons in a tribal casino and related facility, it shall adopt this Tribal Labor Relations Ordinance (TLRO or Ordinance). For purposes of this Ordinance, a “tribal casino” is one in which class III gaming is conducted pursuant to the tribal-state compact. A “related facility” is one for which the only significant purpose is to facilitate patronage of the class III gaming operations.
- (b) Upon the request of a labor union or organization which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work, the Tribal Gaming Commission shall certify the number of employees in a tribal casino or other related facility as defined in subsection (a) of this Section 1. Either party may dispute the certification of the Tribal Gaming Commission to the Tribal Labor Panel, which is defined in Section 13 herein.

#### **Section 2: Definition of Eligible Employees**

- (a) The provisions of this ordinance shall apply to any person (hereinafter “Eligible Employee”) who is employed within a tribal casino in which class III gaming is conducted pursuant to a tribal-state compact or other related facility, the only significant purpose of which is to facilitate patronage of the class III gaming operations, except for any of the following:
  - (1) any employee who is a supervisor, defined as any individual having authority, in the interest of the Tribe and/or employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment;

- (2) any employee of the Tribal Gaming Commission;
  - (3) any employee of the security or surveillance department, other than those who are responsible for the technical repair and maintenance of equipment;
  - (4) any cash operations employee who is a “cage” employee or money counter; or
  - (5) any dealer.
- (b) On [month] 1 of each year, the Tribal Gaming Commission shall certify the number of Eligible Employees employed by the Tribe to the administrator of the Tribal Labor Panel.

### **Section 3: Non-Interference with Regulatory or Security Activities**

Operation of this Ordinance shall not interfere in any way with the duty of the Tribal Gaming Commission to regulate the gaming operation in accordance with the Tribe’s National Indian Gaming Commission- approved gaming ordinance. Furthermore, the exercise of rights hereunder shall in no way interfere with the tribal casino’s surveillance/security systems, or any other internal controls system designed to protect the integrity of the Tribe’s gaming operations. The Tribal Gaming Commission is specifically excluded from the definition of Eligible Employees.

### **Section 4: Eligible Employees Free to Engage in or Refrain From Concerted Activity**

Eligible Employees shall have the right to self-organization, to form, to join, or assist employee organizations, to bargain collectively through representatives of their own choosing, to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities.

## **Section 5: Unfair Labor Practices for the Tribe**

It shall be an unfair labor practice for the Tribe and/or employer or their agents:

- (a) to interfere with, restrain or coerce Eligible Employees in the exercise of the rights guaranteed herein;
- (b) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it, but this does not restrict the Tribe and/or employer and a certified union from agreeing to union security or dues check off;
- (c) to discharge or otherwise discriminate against an Eligible Employee because s/he has filed charges or given testimony under this Ordinance; or
- (d) after certification of the labor organization pursuant to Section 10, to refuse to bargain collectively with the representatives of Eligible Employees.

## **Section 6: Unfair Labor Practices for the Union**

It shall be an unfair labor practice for a labor organization or its agents:

- (a) to interfere, restrain or coerce Eligible Employees in the exercise of the rights guaranteed herein;
- (b) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a primary or secondary boycott or a refusal in the course of his employment to use, manufacture, process, transport or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce or other terms and conditions of employment. This section does not apply to Section 11;
- (c) to force or require the Tribe and/or employer to recognize or bargain with a particular labor organization as the representative of Eligible

Employees if another labor organization has been certified as the representative of such Eligible Employees under the provisions of this TLRO;

- (d) to refuse to bargain collectively with the Tribe and/or employer, provided it is the representative of Eligible Employees subject to the provisions herein; or
- (e) to attempt to influence the outcome of a tribal governmental election, provided, however, that this section does not apply to tribal members.

### **Section 7: Tribe and Union Right to Free Speech**

- (a) The Tribe's and union's expression of any view, argument or opinion or the dissemination thereof, whether in written, printed, graphic or visual form, shall not constitute or be evidence of interference with, restraint, or coercion if such expression contains no threat of reprisal or force or promise of benefit.
- (b) The Tribe agrees that if a union first offers in writing that it and its local affiliates will comply with (b)(1) and (b)(2), the Tribe shall comply with the provisions of (c) and (d).
  - (1) For a period of three hundred sixty-five (365) days following delivery of a Notice of Intent to Organize (NOIO) to the Tribe:
    - (A) not engage in strikes, picketing, boycotts, attack websites, or other economic activity at or in relation to the tribal casino or related facility; and refrain from engaging in strike-related picketing on Indian lands as defined in 25 U.S.C. § 2703(4);
    - (B) not disparage the Tribe for purposes of organizing Eligible Employees;
    - (C) not attempt to influence the outcome of a tribal government election; and
    - (D) during the three hundred sixty-five (365) days after the Tribe received the NOIO, the Union must collect dated

and signed authorization cards pursuant to Section 10 herein and complete the secret ballot election also in Section 10 herein. Failure to complete the secret ballot election within the three hundred sixty five (365) days after the Tribe received the NOIO shall mean that the union shall not be permitted to deliver another NOIO for a period of two years (730 days).

- (2) Resolve all issues, including collective bargaining impasses, through the binding dispute resolution mechanisms set forth in Section 13 herein.
- (c) Upon receipt of a NOIO, the Tribe shall:
- (1) within two (2) days provide to the union an election eligibility list containing the full first and last names of the Eligible Employees within the sought-after bargaining unit and the Eligible Employees' last known addresses and telephone numbers and email addresses;
  - (2) for period of three hundred sixty-five (365) days thereafter, Tribe will not do any action nor make any statement that directly or indirectly states or implies any opposition by the Tribe to the selection by such employees of a collective bargaining agent, or preference for or opposition to any particular union as a bargaining agent. This includes refraining from making derisive comments about unions; publishing or posting pamphlets, fliers, letters, posters or any other communication which could reasonably be interpreted as criticizing the union or advising Eligible Employees to vote "no" against the union. However, the Tribe shall be free at all times to fully inform Eligible Employees about the terms and conditions of employment it provides to employees and the advantages of working for the Tribe; and
  - (3) resolve all issues, including collective bargaining impasses, through the binding dispute resolution mechanisms set forth in Section 13 herein.



- (d) The union's offer in subsection (b) of this Section 7 shall be deemed an offer to accept the entirety of this Ordinance as a bilateral contract between the Tribe and the union, and the Tribe agrees to accept such offer. By entering into such bilateral contract, the union and Tribe mutually waive any right to file any form of action or proceeding with the National Labor Relations Board for the three hundred sixty-five (365)-day period following the NOIO.
- (e) The Tribe shall mandate that any entity responsible for all or part of the operation of the casino and related facility shall assume the obligations of the Tribe under this Ordinance. If at the time of the management contract, the Tribe recognizes a labor organization as the representative of its employees, certified pursuant to this Ordinance, the labor organization will provide the contractor, upon request, the election officer's certification which constitutes evidence that the labor organization has been determined to be the majority representative of the Tribe's Eligible Employees.

#### **Section 8: Access to Eligible Employees**

- (a) Access shall be granted to the union for the purposes of organizing Eligible Employees, provided that such organizing activity shall not interfere with patronage of the casino or related facility or with the normal work routine of the Eligible Employees and shall be done on non-work time in non-work areas that are designated as employee break rooms or locker rooms that are not open to the public. The Tribe may require the union and or union organizers to be subject to the same licensing rules applied to individuals or entities with similar levels of access to the casino or related facility, provided that such licensing shall not be unreasonable, discriminatory, or designed to impede access.
- (b) The Tribe, in its discretion, may also designate additional voluntary access to the Union in such areas as employee parking lots and non-casino facilities located on tribal lands.
- (c) In determining whether organizing activities potentially interfere with normal tribal work routines, the union's activities shall not be permitted if the Tribal Labor Panel determines that they compromise the operation of the casino:

- (1) security and surveillance systems throughout the casino, and reservation;
  - (2) access limitations designed to ensure security;
  - (3) internal controls designed to ensure security; or
  - (4) other systems designed to protect the integrity of the Tribe's gaming operations, tribal property and/or safety of casino personnel, patrons, employees or tribal members, residents, guests or invitees.
- (d) The Tribe agrees to facilitate the dissemination of information from the union to Eligible Employees at the tribal casino by allowing posters, leaflets and other written materials to be posted in non-public employee break areas where the Tribe already posts announcements pertaining to Eligible Employees. Actual posting of such posters, notices, and other materials shall be by employees desiring to post such materials.

### **Section 9: Indian Preference Explicitly Permitted**

Nothing herein shall preclude the Tribe from giving Indian preference in employment, promotion, seniority, lay-offs or retention to members of any federally recognized Indian tribe or shall in any way affect the Tribe's right to follow tribal law, ordinances, personnel policies or the Tribe's customs or traditions regarding Indian preference in employment, promotion, seniority, lay-offs or retention. Moreover, in the event of a conflict between tribal law, tribal ordinance or the Tribe's customs and traditions regarding Indian preference and this Ordinance, the tribal law, tribal ordinance, or the Tribe's customs and traditions shall govern.

### **Section 10: Secret Ballot Elections**

- (a) The election officer shall be chosen within three (3) business days of notification by the labor organization to the Tribe of its intention to present authorization cards, and the same election officer shall preside thereafter for all proceedings under the request for recognition; provided, however, that if the election officer resigns, dies, or is

incapacitated for any other reason from performing the functions of this office, a substitute election officer shall be selected in accordance with the dispute resolution provisions herein. Dated and signed authorized cards from thirty percent (30%) or more of the Eligible Employees within the bargaining unit verified by the elections officer will result in a secret ballot election. The election officer shall make a determination as to whether the required thirty percent (30%) showing has been made within one (1) working day after the submission of authorization cards. If the election officer determines the required thirty percent (30%) showing of interest has been made, the election officer shall issue a notice of election. The election shall be concluded within thirty (30) calendar days of the issuance of the notice of election.

- (b) Upon the showing of interest to the election officer pursuant to subsection (a), within two (2) working days the Tribe shall provide to the union an election eligibility list containing the full first and last names of the Eligible Employees within the sought after bargaining unit and the Eligible Employees' last known addresses and telephone numbers and email addresses. Nothing herein shall preclude a Tribe from voluntarily providing an election eligibility list at an earlier point of a union organizing campaign with or without an election. The election shall be conducted by the election officer by secret ballot pursuant to procedures set forth in a consent election agreement in substantially the same form as Attachment 1. In the event either that a party refuses to enter into the consent election agreement or that the parties do not agree on the terms, the election officer shall issue an order that conforms to the terms of the form consent election agreement and shall have authority to decide any terms upon which the parties have not agreed, after giving the parties the opportunity to present their views in writing or in a telephonic conference call. The election officer shall be a member of the Tribal Labor Panel chosen in the same manner as a single arbitrator pursuant to the dispute resolution provisions herein at Section 13(b)(2). All questions concerning representation of the Tribe and/or Eligible Employees by a labor organization shall be resolved by the election officer.
- (c) The election officer shall certify the labor organization as the exclusive collective bargaining representative of a unit of employees if the labor organization has received the support of a majority of the

Eligible Employees in a secret ballot election that the election officer determines to have been conducted fairly. The numerical threshold for certification is fifty percent (50%) of the Eligible Employees plus one. If the election officer determines that the election was conducted unfairly due to misconduct by the Tribe and/or employer or union, the election officer may order a re-run election. If the election officer determines that there was the commission of serious Unfair Labor Practices by the Tribe, or in the event the union made the offer provided for in Section 7(b) that the Tribe violated its obligations under Section 7(c), that interferes with the election process and precludes the holding of a fair election, and the labor organization is able to demonstrate that it had the support of a majority of the employees in the unit at any time before or during the course of the Tribe's misconduct, the election officer shall certify the labor organization as the exclusive bargaining representative.

- (d) The Tribe or the union may appeal within five (5) days any decision rendered after the date of the election by the election officer to a three (3) member panel of the Tribal Labor Panel mutually chosen by both parties, provided that the Tribal Labor Panel must issue a decision within thirty (30) days after receiving the appeal.
- (e) A union which loses an election and has exhausted all dispute remedies related to the election may not invoke any provisions of this ordinance at that particular casino or related facility until one (1) year after the election was lost.

### **Section 11: Collective Bargaining Impasse**

- (a) Upon recognition, the Tribe and the union will negotiate in good faith for a collective bargaining agreement covering bargaining unit employees represented by the union.
- (b) Except where the union has made the written offer set forth in Section 7(b), if collective bargaining negotiations result in impasse, the union shall have the right to strike. Strike-related picketing shall not be conducted on Indian lands as defined in 25 U.S.C. § 2703(4).

- (c) Where the union makes the offer set forth in Section 7(b), if collective bargaining negotiations result in impasse, the matter shall be resolved as set forth in Section 13(c).

## **Section 12: Decertification of Bargaining Agent**

- (a) The filing of a petition signed by thirty percent (30%) or more of the Eligible Employees in a bargaining unit seeking the decertification of a certified union, will result in a secret ballot election. The election officer shall make a determination as to whether the required thirty percent (30%) showing has been made within one (1) working day after the submission of authorization cards. If the election officer determines the required thirty percent (30%) showing of interest has been made, the election officer shall issue a notice of election. The election shall be concluded within thirty (30) calendar days of the issuance of the notice of election.
- (b) The election shall be conducted by an election officer by secret ballot pursuant to procedures set forth in a consent election agreement in substantially the same form as Attachment 1. The election officer shall be a member of the Tribal Labor Panel chosen in the same manner as a single arbitrator pursuant to the dispute resolution provisions herein at Section 13(b)(2). All questions concerning the decertification of the union shall be resolved by an election officer. The election officer shall be chosen upon notification to the Tribe and the union of the intent of the Eligible Employees to present a decertification petition, and the same election officer shall preside thereafter for all proceedings under the request for decertification; provided however that if the election officer resigns, dies or is incapacitated for any other reason from performing the functions of this office, a substitute election officer shall be selected in accordance with the dispute resolution provisions herein.
- (c) The election officer shall order the labor organization decertified as the exclusive collective bargaining representative if a majority of the Eligible Employees support decertification of the labor organization in a secret ballot election that the election officer determines to have been conducted fairly. The numerical threshold for decertification is fifty percent (50%) of the Eligible Employees plus one (1). If the election officer determines that the election was conducted unfairly

due to misconduct by the Tribe and/or employer or the union the election officer may order a re-run election or dismiss the decertification petition.

- (d) A decertification proceeding may not begin until one (1) year after the certification of a labor union if there is no collective bargaining agreement. Where there is a collective bargaining agreement, a decertification petition may only be filed no more than ninety (90) days and no less than sixty (60) days prior to the expiration of a collective bargaining agreement. A decertification petition may be filed any time after the expiration of a collective bargaining agreement.
- (e) The Tribe or the union may appeal within five (5) days any decision rendered after the date of the election by the election officer to a three (3) member panel of the Tribal Labor Panel chosen in accordance with Section 13(c), provided that the Tribal Labor Panel must issue a decision within thirty (30) days after receiving the appeal.

### **Section 13: Binding Dispute Resolution Mechanism**

- (a) All issues shall be resolved exclusively through the binding dispute resolution mechanisms herein.
- (b) The method of binding dispute resolution shall be a resolution by the Tribal Labor Panel, consisting of ten (10) arbitrators appointed by mutual selection of the parties which panel shall serve all tribes that have adopted this ordinance. The Tribal Labor Panel shall have authority to hire staff and take other actions necessary to conduct elections, determine units, determine scope of negotiations, hold hearings, subpoena witnesses, take testimony, and conduct all other activities needed to fulfill its obligations under this Ordinance.
  - (1) Each member of the Tribal Labor Panel shall have relevant experience in federal labor law and/or federal Indian law with preference given to those with experience in both. Names of individuals may be provided by such sources as, but not limited to, Indian Dispute Services, Federal Mediation and Conciliation Service, and the American Academy of Arbitrators.

- (2) Unless either party objects, one (1) arbitrator from the Tribal Labor Panel will render a binding decision on the dispute under the Ordinance. If either party objects, the dispute will be decided by a three (3)-member panel, unless arbitrator scheduling conflicts prevent the arbitration from occurring within thirty (30) days of selection of the arbitrators, in which case a single arbitrator shall render a decision. If one (1) arbitrator will be rendering a decision, five (5) Tribal Labor Panel names shall be submitted to the parties and each party may strike no more than two (2) names. If the dispute will be decided by a three (3)-member panel, seven (7) Tribal Labor Panel names will be submitted and each party can strike no more than two (2) names. A coin toss shall determine which party may strike the first name. The arbitrator will generally follow the American Arbitration Association's procedural rules relating to labor dispute resolution. The arbitrator must render a written, binding decision that complies in all respects with the provisions of this Ordinance within thirty (30) days after a hearing.
- (c)
  - (1) Upon certification of a union in accordance with Section 10 of this Ordinance, the Tribe and union shall negotiate for a period of ninety (90) days after certification. If, at the conclusion of the ninety (90)-day period, no collective bargaining agreement is reached and either the union and/or the Tribe believes negotiations are at an impasse, at the request of either party, the matter shall be submitted to mediation with the Federal Mediation and Conciliation Service. The costs of mediation and conciliation shall be borne equally by the parties.
  - (2) Upon appointment, the mediator shall immediately schedule meetings at a time and location reasonably accessible to the parties. Mediation shall proceed for a period of thirty (30) days. Upon expiration of the thirty (30)-day period, if the parties do not resolve the issues to their mutual satisfaction, the mediator shall certify that the mediation process has been exhausted. Upon mutual agreement of the parties, the mediator may extend the mediation period.

- (3) Within twenty-one (21) days after the conclusion of mediation, the mediator shall file a report that resolves all of the issues between the parties and establishes the final terms of a collective bargaining agreement, including all issues subject to mediation and all issues resolved by the parties prior to the certification of the exhaustion of the mediation process. With respect to any issues in dispute between the parties, the report shall include the basis for the mediator's determination. The mediator's determination shall be supported by the record.
- (d) In resolving the issues in dispute, the mediator may consider those factors commonly considered in similar proceedings.
- (e) Either party may seek a motion to compel arbitration or a motion to confirm or vacate an arbitration award, under this Section 13, in the appropriate state superior court, unless a bilateral contract has been created in accordance with Section 7, in which case either party may proceed in federal court. The Tribe agrees to a limited waiver of its sovereign immunity for the sole purpose of compelling arbitration or confirming or vacating an arbitration award issued pursuant to the Ordinance in the appropriate state superior court or in federal court. The parties are free to put at issue whether or not the arbitration award exceeds the authority of the Tribal Labor Panel.



## Attachment 1

### CONSENT ELECTION AGREEMENT PROCEDURES

Pursuant to the Tribal Labor Relations Ordinance adopted pursuant to section 12.10 of the compact, the undersigned parties hereby agree as follows:

1. Jurisdiction. Tribe is a federally recognized Indian tribal government subject to the Ordinance; and each employee organization named on the ballot is an employee organization within the meaning of the Ordinance; and the employees described in the voting unit are Eligible Employees within the meaning of the Ordinance.

2. Election. An election by secret ballot shall be held under the supervision of the elections officer among the Eligible Employees as defined in Section 2 of the Ordinance of the Tribe named above, and in the manner described below, to determine which employee organization, if any, shall be certified to represent such employees pursuant to the Ordinance.

3. Voter Eligibility. Unless otherwise indicated below, the eligible voters shall be all Eligible Employees who were employed on the eligibility cutoff date indicated below, and who are still employed on the date they cast their ballots in the election, i.e., the date the voted ballot is received by the elections officer. Eligible Employees who are ill, on vacation, on leave of absence or sabbatical, temporarily laid off, and employees who are in the military service of the United States shall be eligible to vote.

4. Voter Lists. The Tribe shall electronically file with the elections officer a list of eligible voters within two (2) business days after receipt of a Notice of Election.

5. Notice of Election. The elections officer shall serve Notices of Election on the Tribe and on each party to the election. The Notice shall contain a sample ballot, a description of the voting unit and information regarding the balloting process. Upon receipt, the Tribe shall post such Notice of Election conspicuously on all employee bulletin boards in each facility of the employer in which members of the voting unit are employed. Once a Notice of Election is posted, where the union has made the written offer set forth in Section 7(b) of the Tribal Labor Relations Ordinance, the Tribe shall continue to refrain from

publishing or posting pamphlets, fliers, letters, posters or any other communication which should be interpreted as criticism of the union or advises employees to vote “no” against the union. The Tribe shall be free at all times to fully inform employees about the terms and conditions of employment it provides to employees and the advantages of working for the Tribe.

6. Challenges. The elections officer or an authorized agent of any party to the election may challenge, for good cause, the eligibility of a voter. Any challenges shall be made prior to the tally of the ballots.

7. Tally of Ballots. At the time and place indicated below, ballots shall be co-mingled and tabulated by the elections officer. Each party shall be allowed to station an authorized agent at the ballot count to verify the tally of ballots. At the conclusion of the counting, the elections officer shall serve a Tally of Ballots on each party.

8. Objections and Post-election Procedures. Objections to the conduct of the election may be filed with the elections officer within five (5) calendar days following the service of the Tally of Ballots. Service and proof of service is required.

9. Runoff Election. In the event a runoff election is necessary, it shall be conducted at the direction of the elections officer.

10. Wording on Ballot. The choices on the ballot shall appear in the wording and order enumerated below.

FIRST: [\*\*\*]

SECOND: [\*\*\*]

THIRD: [\*\*\*]

11. Cutoff Date for Voter Eligibility: [\*\*\*]

12. Description of the Balloting Process. A secret ballot election will take place within thirty (30) days after delivery of the voter list referenced in paragraph 4. The employer will determine the location or locations of the polling places for the election. There must be at least one (1) neutral location (such as a high school, senior center, or similar facility) which is not within the gaming facility and employees must also be afforded the option of voting by mail through procedures established by the elections officer. Such procedures must include provisions that

provide meaningful protection for each employee's ability to make an informed and voluntary individual choice on the issue of whether to accept or reject a union. Such procedures must also ensure that neither employer nor union representatives shall observe employees personally marking, signing, and placing their ballot in the envelope. Only voters, designated observers and the election officer or supporting staff can be present in the polling area. Neither employer nor union representatives may campaign in or near the polling area. If the election officer or supporting staff questions an employee's eligibility to vote in the election, the ballot will be placed in a sealed envelope until eligibility is determined. The box will be opened under the supervision of the election officer when voting is finished. Ballots submitted by mail must be received by the elections officer no later than the day of the election in order to be counted in the official tally of ballots.

13. Voter List Format and Filing Deadline: Not later than two (2) business days after receipt of the Notice of Election, the Tribe shall file with the elections officer, at [\*\*address\*\*], an alphabetical list of all eligible voters including their job titles, work locations and home addresses.

Copies of the list shall be served concurrently on the designated representative for the [\*\*\*]; proof of service must be concurrently filed with elections officer.

In addition, the Tribe shall submit to the elections officer on or before [\*\*\*], by electronic mail, a copy of the voter list in an Excel spreadsheet format, with columns labeled as follows: First Name, Last Name, Street Address, City, State, and Zip Code. Work locations and job titles need not be included in the electronic file. The file shall be sent to [\*\*\*].

14. Notices of Election: Shall be posted by the Tribe no later than [\*\*\*].

15. Date, Time and Location of Counting of Ballots: Beginning at [\*\*time\*\*] on [\*\*date\*\*], at the [\*\*address\*\*].

16. Each signatory to this Agreement hereby declares under penalty of perjury that s/he is a duly authorized agent empowered to enter into this Consent Election Agreement.

(Name of Party)
By
(Title) (Date)

(Name of Party)
By
(Title) (Date)

(Name of Party)
By
(Title) (Date)

(Name of Party)
By
(Title) (Date)

Date approved: \_\_\_\_\_

**[\*\*Author\*\*]**  
Elections Officer