

Cherokee Nation, et al. v. United States Department of the Interior, et al.

Exhibit 2 to Complaint

THE OTOE-MISSOURIA TRIBE AND STATE OF OKLAHOMA GAMING COMPACT

As of the Effective Date, the **OTOE-MISSOURIA TRIBE OF INDIANS**, a federally-recognized Indian tribe (the “*Tribe*” or “*Party*”), and the **STATE OF OKLAHOMA** (the “*State*” or “*Party*”), a state of the United States of America, collectively the “*Parties*,” hereby enter into the Tribal-State Gaming Compact (the “*Compact*”) for the purpose of authorizing and regulating the operation of Covered Games (as defined herein) on the Tribe’s Indian lands, as defined by the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2703(4) and 2719.

RECITALS

WHEREAS, the Tribe is a federally recognized Indian tribe with a governing body duly recognized by the United States, possessing sovereign powers and rights of self-government; and

WHEREAS, the State is a state of the United States of America, possessing the sovereign powers and rights of a state; and

WHEREAS, the Tribe and the State maintain a government-to-government relationship, and this Compact will help to foster mutual respect and understanding among the two (2) sovereigns; and

WHEREAS, the United States Supreme Court and the Congress of the United States have long recognized the general right of an Indian tribe to regulate activity on lands within its jurisdiction; and

WHEREAS, the Tribe desires to offer the play of Covered Games, as defined in Part 2(A)(6) of this Compact, as a means of generating revenues for purposes authorized by the Indian Gaming Regulatory Act, 25 U.S.C. § 2701, *et seq.*; and

WHEREAS, the State recognizes that the positive effects of this Compact will extend beyond the Tribe's lands to the Tribe's neighbors and surrounding communities and will generally benefit all of Oklahoma.

NOW, THEREFORE, in consideration of the mutual undertakings and agreements hereinafter set forth, the Tribe and the State agree as follows:

PART 1: RECITALS

A. The Parties agree that the recitals set forth above form a material part of this Compact and are hereby incorporated by reference.

PART 2: DEFINITIONS

A. As used in this Compact, the following terms shall be specially defined:

- 1.** “AAA” means the American Arbitration Association.

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2. "Adjusted Net Win" or any derivative thereof means the combined Net Win from all Covered Games in Facilities, with the following adjustments:

a. Account for the amounts paid for wide-area progressive Gaming Machines as set forth in subsection A(2)(d)(i) of this Part;

b. Deduct Free Play and Point Play; *and*

c. On the month the Annual Oversight Assessment is paid by the Tribe to the State pursuant to Part 10(C) of this Compact, deduct that amount paid by the Tribe to the State.

d. The following applies when calculating the Adjusted Net Win:

i. Pro-rata Portion of Wide-Area Progressive System Fees. Similar to the proprietary (in-house) progressive gaming device, the top jackpots for wide-area progressive Gaming Machines increment with the level of play. However, in the case of wide-area progressive Gaming Machines, a third-party vendor operates the system. The system spans multiple casinos. The top jackpots increment as each of the Gaming Machines in the system is played, regardless of the casino in which the Gaming Machine is located. The third-party vendor administers the system. In return, the casinos make periodic payments to the third-party vendor. The vendor payments provide for the progressive jackpot and a fee to the third-party vendor. The casinos collect the cash or cash equivalents from these Gaming Machines as drop. When a progressive jackpot is won, the third-party vendor pays the jackpot from funds collected from the casinos. If in calculating Net Win, fees to the third-party vendor in excess of those amounts necessary to fund the progressive jackpots have been applied to reduce Net Win, then for purposes of calculating Adjusted Net Win, the Tribe shall add back those amounts that did not fund the progressive jackpots. The third-party vendor shall inform the Tribe in writing as to the specific amount of the vendor payments that are contributed to the progressive system payouts (*i.e.*, jackpots).

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

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is an expense and is not deductible for the purposes of calculating Adjusted Net Win and should be treated accordingly.

iii. Free Play and Point Play. Under the terms of this Compact, the dollar amount of Free Play and Point Play may be deducted from the Net Win.

iv. Promotions, Players' Clubs, Non-Cash Prizes and Complimentaries. Any rewards, awards or prizes, in any form, received by or awarded to a Patron under any form of a players' club program (however denominated), or promotion, or as a result of Patron-related activities, are not deductible from Net Win. The Value of any complimentary given to Patrons in any form, is not deductible from Net Win. If the Tribe chooses to use non-cash prizes in connection with play on Covered Games, Net Win is reduced by the amount of the Tribe's actual cost of a non-cash prize awarded as a direct result of a win on a Covered Game.

v. Void and Expired Tickets. Voided tickets are tickets unredeemed by Patrons and later voided by a Covered Game Employee. Expired tickets are tickets unredeemed prior to expiration and later voided by a Central Computer. Voided and expired tickets are deductible from revenue when issued for purposes of calculating Adjusted Net Win. If not paid (redeemed by a Patron) within the specified date on the voided or expired ticket, add the value of the voided or expired ticket back in to revenue for purposes of calculating Adjusted Net Win. If the Tribe elects to honor a voided or expired ticket, value of the voided or expired ticket may be deductible from revenue for purposes of calculating Adjusted Net win.

3. "*Annual Oversight Assessment*" means the assessment paid by the Tribe to defray the costs associated with oversight of this compact by the State, as more fully described in Part 10(C) of this Compact.

4. "*Central Computer*" or any derivative thereof means a computer to which all Gaming Machines are linked, also known as a back-of-house system.

5. "*Compact*" means this Gaming Compact between the State and the Tribe.

6. "*Covered Game*" or any derivative thereof means all Gaming Machines, House-banked Card Games, Nonhouse-Banked Card Games, House-banked Table Games, Nonhouse-banked Table Games, and Event Wagering, which are conducted in accordance with the Standards, as applicable, if the operation of such game by the Tribe would require a Compact and if such game has been approved by the SCA. Class II gaming, as defined by IGRA, is expressly excluded from this definition.

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7. “*Covered Game Employee*” or any derivative thereof means any individual employed by the Enterprise or a third party providing management services to the Enterprise, whose responsibilities include the rendering of services with respect to the operation, maintenance or management of Covered Games. The term Covered Game Employee includes, but is not limited to, the following: managers and assistant managers; accounting personnel; surveillance and security personnel; cashiers, supervisors, and floor personnel; cage personnel; and any other person whose employment duties require or authorize access to areas of the Facility related to the conduct of Covered Games or the maintenance or storage of Covered Game components. This shall not include the Tribe’s elected officials so long as such individuals are not directly involved in the operation, maintenance, or management of Covered Game components. The Enterprise may, at its discretion, include other persons employed at or in connection with the Enterprise within the definition of Covered Game Employee.

8. “*Document*” or any derivative thereof means books, records, electronic, magnetic and computer media and other writings and materials, copies thereof, and information contained therein.

9. “*E-Sport*” or any derivative thereof means any multiplayer video game played competitively, either in-person or via remote connection, in which success principally depends upon the superior knowledge, training, experience, and adroitness of the players.

10. “*Effective Date*” means the date on which the last of the conditions set forth in Part 12(A) of this Compact occurs.

11. “*Enterprise*” means: (i) the Tribe or the Tribal agency or section of tribal management with direct responsibility for conducting Covered Games; (ii) the tribal business enterprise that conducts Covered Games; or (iii) a person, corporation or other entity that has entered into a management contract with the Tribe to conduct Covered Games, in accordance with IGRA. In any event, the Tribe shall have the ultimate and final responsibility for ensuring that the Tribe or Enterprise fulfills the responsibilities created and agreed to under this Compact. For purposes of enforcing the terms and conditions of this Compact, the Tribe is deemed to have made all promises for on and behalf of the Enterprise.

12. “*Event Wagering*” means the placing of a wager on the outcome of a Sport event, including E-Sports, or any other events, to the extent such wagers are authorized by law, subject to the following terms and conditions:

a. Type. Event Wagering shall not include either wagering on intercollegiate Sports for schools located in the State or intercollegiate Sports events occurring within the State.

b. Reservation of State Licenses. At some future time, the State may license up to five (5) non-tribal Event Wagering locations, with the same requirements as those under this Compact; provided, however, that the Tribe’s right to engage in Event Wagering shall in no way be subject to the State’s conduct of Event Wagering. For the avoidance of doubt, even if it should be

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found that the State's conduct of Event Wagering is in violation of the State's obligations, if any, under compacts with other Oklahoma tribes, such a finding shall have no effect on the Tribe's right to engage in Event Wagering.

c. Location. Event Wagering must be conducted by a Patron who is: **(i)** physically located at a Facility, or **(ii)** within 1,000 feet of the Facility, or **(iii)** within the Tribe's land-trust boundary, whichever is less. The Tribe may not conduct Event Wagering within the lands of the State.

d. Manner and Form. Event Wagering transactions by Patrons may be conducted over-the-counter or electronically, subject to Geofencing of the Facility consistent with subsection (A)(19) of this Part.

e. Vendor Approval. Any vendor who contracts with the Enterprise to provide Event Wagering risk management software services must be mutually agreed upon by the State and the Tribe, which such agreement shall not be unreasonably withheld, and such vendor shall also be subject to regulation by the State through the SCA.

f. Vendor Restrictions. The Tribe, Tribally owned or operated businesses, non-Tribally owned businesses where the Tribe has more than a One Percent (1.00%) interest, and/or Tribal officials, whether elected or unelected, shall be prohibited from having any pecuniary interest in third-party vendors providing Event Wagering risk management software services to an Enterprise

g. Licenses. The Tribe shall be permitted to conduct Event Wagering at no more than two (2) Facilities. Nothing shall prevent the Tribe from selling or leasing its right to conduct Event Wagering to any other compacting tribe who has entered into a valid compact with the State authorizing Event Wagering as of or subsequent to the Effective Date hereof; provided, however, the State shall receive notice of such a transaction within ten (10) days of the transaction. Notice to the State shall include the duration of such agreement and shall be delivered to the SCA.

13. "*Existing Facilities*" or any derivative thereof means those Facilities operated by the Tribe as of the Effective Date of this Compact.

14. "*FAA*" means the Federal Arbitration Act, Pub. L. 68-401, 43 Stat. 883, as amended, 9 U.S.C. §§ 1-16.

15. "*Facility*" or any derivative thereof means any building, or collection of buildings where Covered Games authorized by this Compact are conducted by the Enterprise, located on Indian lands as defined by IGRA. The Tribe shall have the ultimate responsibility for ensuring that a Facility conforms to the Compact as required herein.

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16. “*Free Play*” means play on any Covered Game with points or credits used by Patrons without monetary consideration, and which have no cash redemption value.

17. “*Gaming*” means the conduct of any game containing the elements of consideration, chance and prize.

18. “*Gaming Machine*” or any derivative thereof means a Covered Game that is a mechanical, electromechanical or an electronic contrivance or machine that uses a random number generator for outcome that, upon insertion of a coin, token or similar object, or upon payment of any consideration in any manner, is available to play or operate a game of chance in which the outcome depends to a material degree on an element of chance, notwithstanding that some skill may be a factor, whether the payoff is made automatically from the Gaming Machine or in any other manner. For purposes of this Compact, Gaming Machine shall not include any machine used to conduct class II gaming, as defined by IGRA.

19. “*Geofencing*” means the practice of using global positioning system (“*GPS*”) or radio frequency identification (“*RFID*”) to define a geographic boundary. Geofencing may include automatic Wi-Fi configuration as a device moves in and out of geofence boundaries, restriction on game and social apps in geofenced area, and disabling of camera and other device settings to protect sensitive data, as allowed by applicable law

20. “*House-Banked Card Game*” or any derivative thereof means any card game in which the Tribe has an interest in the outcome of the game.

21. “*House-Banked Table Game*” or any derivative thereof means any table game including, but not limited to, those table games involving a wheel, ball, or dice, which operate in a non-electronic environment and that the Tribe has interest in the outcome of the game.

22. “*IGRA*” means the Indian Gaming Regulatory Act, Pub. L. 100-497, Oct. 17, 1988, 102 Stat. 2467, codified at 25 U.S.C., § 2701 *et seq.*, which the Parties hereby adopt and incorporate into this Compact by reference.

23. “*iLottery*” means a Gaming system that may be conducted by the Oklahoma Lottery Commission, subject to applicable law, that provides for the distribution of lottery products through numerous channels that include web applications, mobile applications, mobile web, tablets and social media platforms that allows players to interface through a portal for the purpose of obtaining lottery products and ancillary services, such as account management, game purchase, game play and prize redemption; provided, however, that the Gaming elements of consideration, chance and prize require persons playing iLottery to electronically load games at the physical location of an authorized lottery retailer, and not remotely. The elements of consideration and prize shall occur at the physical location of an authorized lottery retailer, but the element of chance may occur on a mobile device, provided that each chance, including the associated result, occurs in no less than 120 second intervals. The definition of iLottery shall not include games that represent physical, Internet-based or

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monitor-based interactive lottery games which simulate Covered Games, specifically including, but not limited to, poker, roulette, slot machines, Event Wagering and blackjack.

24. “*Independent Testing Laboratory*” means a laboratory of national reputation that is demonstrably competent and qualified to scientifically test and evaluate devices for compliance with this Compact and to otherwise perform the functions assigned to it in this Compact. An Independent Testing Laboratory shall not be owned or controlled in whole or in part by the Tribe, the Enterprise, an organizational licensee as defined in the State-Tribal Gaming Act, the State, or any manufacturer, supplier or operator of gaming devices. The selection of an Independent Testing Laboratory for any purpose under this Compact shall be made from a list of one or more laboratories approved by the SCA, which such approval shall not be unreasonably withheld.

25. “*Logan County Facility*” means a Facility to be developed, constructed, opened and operated by the Tribe within the exterior boundaries of Logan County, a county lying within the State of Oklahoma, pursuant to a two-part determination under IGRA, 25 U.S.C. § 2719(b)(1), which such Facility shall be located within one (1) mile of a state or federal highway or turnpike running through Logan County.

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

27. “*NIGC*” means the National Indian Gaming Commission.

28. “*Noble County Facility*” means a Facility to be developed, constructed, opened and operated by the Tribe within the exterior boundaries of Noble County, a county lying within the State of Oklahoma, pursuant to a two-part determination under IGRA, 25 U.S.C. § 2719(b)(1), which such Facility shall be located within one (1) mile of a state or federal highway or turnpike running through Noble County.

29. “*Nonhouse-banked Card Game*” or any derivative thereof means any card game in which the Tribe has no interest in the outcome of the game, including games played in tournament formats and games in which the Tribe collects a fee from the player for participating, and all bets are placed in a common pool or pot from which all player winnings, prizes and direct costs are paid. As provided herein, administrative fees may be charged by the Tribe against any common pool in an amount equal to any amount paid to the State; provided that the Tribe may seed the pool as it determines necessary from time to time.

30. “*Nonhouse-banked Table Game*” or any derivative thereof means any table game, including, but not limited to those table games involving a wheel, ball, or dice, operated in a nonelectronic environment in which the Tribe has no interest in the outcome of the game, including games played in tournament formats and gaming in which the Tribe collects a fee from the Patron for participating and all bets are placed in a common pool or pot from which all play winnings, prizes, and direct costs are paid.

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31. "Patron" or any derivative thereof means any person who is on the premises of a Facility for the purpose of utilizing or experiencing the amenities offered by the Facility.

32. "Payne County Facility" means a Facility to be developed, constructed, opened and operated by the Tribe within the exterior boundaries of Payne County, a county lying within the State of Oklahoma, pursuant to a two-part determination under IGRA, 25 U.S.C. § 2719(b)(1), which such Facility shall be located within one (1) mile of a state or federal highway running through Payne County.

33. "Point Play" means play on a Covered Game with points earned or accrued by a Patron through previous Covered Games play, players' clubs, or any other method, and which have no cash redemption value.

34. "Principal" or any derivative thereof means, with respect to any entity, its sole proprietor or any partner, trustee, beneficiary or shareholder holding Five Percent (5.00%) or more of its beneficial or controlling ownership, either directly or indirectly, or any officer, director, principal management employee, or key employee thereof.

35. "Prize Disputes" means any dispute by and between the Enterprise and Patrons concerning a Patron's play of any Covered Game, including the amount of any prize which has been awarded, the failure to be awarded a prize, or the right to receive a refund or other compensation from the Enterprise.

36. "Rules and Regulations" means the rules and regulations promulgated by the federal government, TCA, or the SCA for implementation of this Compact.

37. "Sport" or any derivative thereof, exclusive of E-Sports and daily fantasy sports, means a contest (i) having a defined set of rules, (ii) requiring participant skill, (iii) requiring physical skill, (iv) having a broad public appeal, and (v) having achieved institutional stability where social institutions have rules which regulate it, stabilizing it as an important social practice. This shall include, but not be limited to, football, basketball, baseball, golf, tennis, hockey, boxing, mixed martial arts, wrestling, athletic contests recognized by the Olympics, and car racing.

38. "Standards" means the descriptions and specifications of electronic amusement games, electronic bonanza-style bingo games and electronic instant bingo games or components thereof as set forth in Sections 11 through 18 of the State-Tribal Gaming Act as enacted in 2004 or as amended pursuant to this Compact, including technical specifications for component parts, requirements for cashless transaction systems, software tools for security and audit purposes, and procedures for operation of such games.

39. "State" means the State of Oklahoma.

40. "State Compliance Agency" ("SCA") means the State agency that has the authority to carry out the state's responsibilities under this Compact, which shall be the Office of

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Management and Enterprise Services or its successor agency as determined by the Office of the Governor. Nothing herein shall supplant the role or duties of the Oklahoma State Bureau of Investigation under State law. The Oklahoma Horse Racing Commission and the Oklahoma Tax Commission shall have no role in regulating or oversight of any covered gaming conducted by a Tribe.

41. “*Substantial Exclusivity Fee*” or any derivative thereof means that definition provided in Part 10(B)(1) of this Compact.

42. “*Tort Claims*” means any dispute by and between the Enterprise and a Patron concerning a Patron’s claim that he or she is entitled to just and reasonable compensation from the Enterprise for injury to his or her person or property arising or deriving from an act, omission, or condition at the Facility, whether the act, omission, or condition was directly, indirectly, or vicariously caused or contributed to by the Enterprise.

43. “*Tribal Compliance Agency*” (“TCA”) means the tribal governmental agency that has the authority to carry out the Tribe’s regulatory and oversight responsibilities under this Compact. Unless and until otherwise designated by the Tribe, the TCA shall be the Otoe-Missouria Gaming Commission. No Covered Game Employee may be a member or employee of the TCA. The Tribe shall have the ultimate responsibility for ensuring that the TCA fulfills its responsibilities under this Compact. The members of the TCA shall be subject to background investigations and licensed to the extent required by any tribal or federal law, and in accordance with this Compact. The Tribe shall ensure that all TCA officers and agents are qualified for such position and receive ongoing training to obtain and maintain skills that are sufficient to carry out their responsibilities in accordance with industry standards.

44. “*Tribal Law Enforcement Agency*” means a police or security force established and maintained by the Tribe pursuant to the Tribe’s powers of self-government to carry out law enforcement duties at or in connection with a Facility.

45. “*Tribe*” or “*Tribal*” means the Otoe-Missouria Tribe of Indians, a federally recognized tribe.

PART 3: AUTHORIZATION OF COVERED GAMES

A. Scope. The Tribe and State agree that the Tribe is authorized to operate Covered Games only in accordance with this Compact. However, nothing in this Compact shall limit the Tribe’s right to operate any game that is class II under IGRA, and no class II games shall be subject to Substantial Exclusivity Fees. Furthermore, the State acknowledges that it is the current policy of Oklahoma that the Tribe has the right to conduct class III Covered Games in Oklahoma for an indefinite duration.

B. iLottery. The Tribe agrees that the substantial exclusivity provided for in this Compact shall not prohibit the operation of iLottery by the State.

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C. Certification of Gaming Machines. The Tribe shall not operate a Gaming Machine pursuant to this Compact until such game has been certified by an SCA approved Independent Testing Laboratory and the TCA as meeting the Standards, which such certification shall not be unreasonably withheld.

D. Annual Certification of Class III Revenue. On an annual basis, the Tribe shall certify by Tribal resolution that Forty-Five Percent (45.00%) of revenues from all Facilities is derived from Covered Games, until the Bureau of Indian Affairs has approved the first Section 20 application to establish Indian lands for a new Facility made by the Tribe (the “*Section 20 Approval Trigger*”), as more specifically described in Part 4(J)(2) of this Compact. Following the Section 20 Approval Trigger, the Tribe shall annually certify by Tribal resolution that Fifty Percent (50.00%) of revenues from all Facilities is derived from Covered Games.

E. Violations. A violation of Part 4 of this Compact that is not cured within thirty (30) days shall constitute a material breach, which may result in termination of this Compact, unless otherwise agreed to by the Parties.

F. New Games. If and when new forms of Covered Games become available in the market following the Effective Date of this Compact, the Tribe may propose such games be authorized pursuant to this Compact, and such new games may be authorized in an appendix approved by the Governor of the State, which such approval shall not be unreasonably withheld, without requiring amendment of the Compact.

PART 4: RULES AND REGULATIONS; AUDITING; MINIMUM OPERATIONAL REQUIREMENTS

A. Regulations. At all times during the Term of this Compact, the Tribe shall be responsible for all duties which are assigned to it, the Enterprise, the Facility, and the TCA under this Compact. The Tribe shall promulgate any Rules and Regulations necessary to implement this Compact. Nothing in this Compact shall be construed to affect the Tribe’s right to amend its Rules and Regulations, provided that any such amendment shall be in conformity with this Compact. The SCA may propose, in writing, additional Rules and Regulations related to implementation of this Compact to the TCA at any time. The TCA shall give good faith consideration to such suggestions and shall notify the SCA, in writing, within ninety (90) days of its response or action with respect thereto.

B. Compliance; Internal Control Standards. The Enterprise and all Facilities shall comply with, and all Covered Games approved under the procedures set forth in this Compact shall be operated in accordance with the requirements set forth in this Compact, including, but not limited to, those set forth in this Part. In addition, the Enterprise and all Facilities shall comply with Tribal internal control standards that equal or exceed those set forth in the NIGC’s minimum internal control standards, 25 C.F.R. Part 542.

C. Records. The Enterprise shall maintain all records relevant to this Compact in permanent form and as written or entered, whether manually or by computer. These records

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shall be maintained by the Enterprise, and be available for inspection by the SCA, for no less than five (5) years from and after the date generated. Those records shall include:

1. A log recording all surveillance activities in the monitoring room of the Facility, including, but not limited to, surveillance records kept in the normal course of business operations and in accordance with industry standards; provided, notwithstanding anything to the contrary herein, surveillance records may, at the discretion of the Enterprise, be destroyed if no incident has been reported within one (1) year following the date such records were made. Records, as used in this Compact, shall include video tapes and any other storage media;

2. Payout from the conduct of Gaming Machines;

3. Maintenance logs for all Covered Games gaming equipment used by the Enterprise;

4. Security logs as kept in the ordinary course of conducting and maintaining security at the Facility, which at a minimum shall conform to industry practices for such reports. The security logs shall document any unusual or nonstandard activities, occurrences or events at or related to the Facility or in connection with the Enterprise. Each incident, without regard to materiality, shall be assigned a sequential number for each such report. At a minimum, the security logs shall consist of the following information, which shall be recorded in a reasonable fashion noting:

a. The assigned number of the incident;

b. The date of the incident;

c. The time of the incident;

d. The location of the incident;

e. The nature of the incident;

f. The identity, including identification information, of any persons involved in the incident and any known witnesses to the incident; *and*

g. The tribal compliance officer making the report and any other persons contributing to its preparation.

5. Books and records on all Covered Game activities of the Enterprise shall be maintained in accordance with generally accepted accounting principles (“GAAP”); *and*

6. All Documents generated in accordance with this Compact, unless protected by the attorney-client privilege and/or doctrine of work product.

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D. Confidentiality. Any information or Document provided to the SCA by the Tribe, TCA or Enterprise or prepared from information obtained from the Tribe, TCA or Enterprise are confidential. If the SCA is in receipt of such confidential information from the Tribe, TCA or Enterprise, it: **(i)** may release or disclose the same only with the prior written consent of the Tribe; **(ii)** shall use the same degree of care that the SCA uses to protect its own confidential information, but in no event less than a reasonable amount of care; and **(iii)** shall not use confidential information for purposes other than those necessary to further the purpose of the Compact.

1. The prohibitions set forth in Part 4(D) of this Compact shall not be construed to prohibit:

a. The furnishing of any information to a law enforcement or regulatory agency of the State or Federal Government;

b. The SCA from making known the names of persons, firms, or corporations conducting class III Gaming pursuant to the terms of this Compact, locations at which such activities are conducted, or the dates on which such activities are conducted;

c. Disclosure of the terms of this Compact;

d. Disclosing information as necessary to audit, investigate, prosecute or arbitrate violations of this Compact or other applicable laws or to defend suits against the State;

e. Disclosures to other State agencies as required by State law, provided that the confidentiality provisions of this subsection C of this Part shall apply to the agencies receiving such information; *and*

f. Complying with subpoenas or court orders issued by a state or federal court with jurisdiction over the Parties and in matters related to Covered Games.

2. Notwithstanding the foregoing, the Tribe agrees that:

a. The following Documents may be released by the SCA to the public: **(i)** the gaming ordinance of the Tribe or TCA; **(ii)** other Documents of the Tribe, TCA or Enterprise ordinarily available to the public; **(iii)** amounts of Substantial Exclusivity Fees made pursuant to this Compact; and **(iv)** correspondence between the Tribe, TCA or Enterprise and the SCA, unless such correspondence is specifically labeled "Confidential"; *and*

b. The SCA may release to the public aggregate figures compiled by totaling comparable figures from the annual financial statements of all compacting Indian tribes.

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E. Responsible Gambling Requirements. The Enterprise agrees to craft a corporate policy that makes a clear commitment to responsible gambling including associated policies for (i) staff training, (ii) informed decision-making by Patrons, and (iii) Patron assistance.

F. Annual Independent Financial Audit. Consistent with 25 C.F.R., Section 571.12, Audit Standards, the TCA shall ensure that an annual independent financial audit of the Enterprise's conduct of Covered Games subject to this Compact is secured. The audit shall examine revenues and expenses in connection with the conduct of Covered Games in accordance with generally accepted auditing standards and shall include, but not be limited to, those matters necessary to verify the determination of Adjusted Net Win and the basis of Substantial Exclusivity Fees.

1. Auditor Selection. The auditor selected by the TCA shall be a firm of known and demonstrable experience, expertise and stature in conducting audits of this kind and scope.

2. Timing. The audit shall be concluded within five (5) months following the close of each calendar year, provided that extensions may be requested by the Tribe and shall not be refused by the State where the circumstances justifying the extension request are beyond the Tribe's control.

3. Scope. The audit of the conduct of Covered Games may be conducted as part of or in conjunction with the audit of the Enterprise, but if so conducted shall be separately stated for the reporting purposes required herein.

4. Conformance. The audit shall conform to generally-accepted auditing standards. The audit must demonstrate the validity of revenue and expenses by utilizing the data from the machine system to verify coin in, coin out, actual drop, bonus activity, net win, and expired and void ticket information. As part of the audit report, the auditor shall certify to the TCA that, in the course of the audit, the auditor discovered no matters within the scope of the audit which were determined or believed to be in violation of any provision of this Compact or the NIGC's Minimum Internal Control Standards Agreed upon Procedures ("*MICS AUP*").

5. Costs. The Enterprise shall assume all costs incurred in connection with the annual independent financial audit.

6. Submission of Audit. The audit report, management letter(s) and MICS AUP report for the conduct of Covered Games shall be submitted to the SCA within thirty (30) days of completion. The auditors' work papers concerning Covered Games and verifying all information described in this Part shall be made available to the SCA upon submission of the audit report.

7. SCA Involvement. Representatives of the SCA may meet with the auditors to discuss the work papers, the audit or any matters in connection therewith; provided, such discussions are limited to Covered Games information and pursue legitimate State Covered Games interests.

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G. Sale of Alcoholic Beverages. The sale and service of alcoholic beverages in a Facility shall be in compliance with federal and Tribal law, including such rules and regulations concerning the licensing and sale of such beverages, as well as the rules, regulations, and enforcement mechanisms promulgated by the Oklahoma Alcoholic Beverage Laws Enforcement Commission (“ABLE”), including the statutory provisions set forth in the Oklahoma Alcoholic Beverage Control Act, 37A O.S. § 1-101 *et seq.*

H. Facility Age Restriction. No person under the age of eighteen (18) shall be admitted into, or within 25 feet of, any area in a Facility where Covered Games are played, nor be permitted to operate or obtain a prize from or in connection with the operation or conducting of any Covered Game, whether directly or indirectly.

I. Destruction of Documents. Enterprise books, records and other materials documenting the conduct of Covered Games shall be destroyed only in accordance with Rules and Regulations adopted by the TCA, which at a minimum shall provide as follows:

1. Tort Claims. Material that might be utilized in connection with a potential Tort Claim pursuant to Part 5 of this Compact, including, but not limited to, incident reports, surveillance records, statements, and the like, shall be maintained at least one (1) year beyond the time which a claim can be adjudicated under Part 5 of this Compact or, if a Tort Claim is made, beyond the final disposition of such Tort Claim;

2. Prize Disputes. Material that might be utilized in connection with a Prize Dispute, including but not limited to incident reports, surveillance records, statements, and the like, shall be maintained at least one hundred eighty (180) days beyond the time which a Prize Dispute can be adjudicated under Part 5 of this Compact or, if a Prize Dispute is made, beyond the final disposition of such Prize Dispute; *and*

3. Operational Materials. Unless otherwise provided herein, all Enterprise books and records with respect to the conduct of Covered Games or the operation of the Enterprise, including, but not limited to, all interim and final financial and audit reports and materials related thereto which have been generated in the ordinary course of business, shall be maintained for the minimum period of five (5) years.

J. Location. The Tribe may establish and operate Enterprises and Facilities that operate Covered Games only on its Indian lands as defined by IGRA, 25 U.S.C. §§ 2703(4) and 2719.

1. Existing Facilities. Within thirty (30) days from and after the Effective Date of this Compact, the Tribe shall forward to the SCA all necessary documents reflecting the status of the land. This documentation shall include, but is not limited to, any application to place the land into trust status and all documents associated therewith, any and all responses from the Bureau of Indian Affairs regarding such application, and a copy of the deed filed of record in the county where the Existing Facility is located. The Tribe may operate Facilities at all locations existing as of the Effective Date of this Compact.

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2. New Facilities. In addition to its Existing Facilities, the Tribe may establish and operate the Logan County Facility, the Noble County Facility and the Payne County Facility (collectively the “*New Facilities*”), subject to the land being taken into trust pursuant to 25 U.S.C. § 2719(b)(1)(A). The Tribe shall notify the SCA of the operation of any New Facility following the Effective Date of this Compact at least ninety (90) days prior to the opening of such New Facility. Such notification shall include all documents referenced in subsection (J)(1) of this Part.

a. Section 20 Concurrence. By entering into this Compact, the State through its Governor, in order to provide a meaningful concession to the Tribe, the adequacy of which is acknowledged and by which the Tribe was materially induced to enter into this Compact, hereby agrees to concur in any determination by the Secretary of the Interior that lands relating to the Logan County Facility, the Noble County Facility and the Payne County Facility, should be taken into trust for gaming purposes, and such lands are eligible for gaming under 25 U.S.C. § 2719(b)(1)(A). The Parties agree that no other action from the State is required for approval of those lands’ eligibility for gaming.

3. Failure to Notify. Failure to notify in accordance herewith shall result in a penalty of \$5,000.00 per each thirty (30) day increment to be remitted to the SCA for purposes of deposit and expenditure in connection with Part 10(C) of this Compact, unless otherwise agreed to by the Parties. Such penalty shall be in addition to the Annual Oversight Assessment amount set forth in Part 10(C) of this Compact.

4. Limitation. Nothing herein shall be construed as expanding or otherwise altering the term Indian lands, as that term is defined in the IGRA, nor shall anything herein be construed as altering the federal process governing the tribal acquisition of Indian lands for gaming purposes.

K. Record of Games. The Enterprise shall keep a record of, and shall report at least quarterly to the SCA, the number of Covered Games and class II devices in each Facility, by the name or type of each and its identifying number, and denomination of bets accepted. This list shall include both class II and class III games. Failure to report in accordance herewith shall result in a penalty of \$5,000 per each Facility per report to be remitted to the SCA for purposes of deposit and expenditure in connection with Part 10(C) of this Compact.

L. Health Reporting. The Enterprise agrees to implement at its Facilities standards and guidelines relating to public health as promulgated or issued by the U.S. Centers for Disease Control and Prevention (“*CDC*”).

PART 5: DISPUTE RESOLUTION – THE ENTERPRISE AND PATRONS

A. Scope. Part 5 of the Compact shall apply to Prize Disputes and Tort Claims.

B. Procedure. The goal of the Enterprise and Patrons should be to resolve Prize Disputes and Tort Claims amicably and voluntarily whenever possible through private

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negotiation. Unless otherwise agreed to in writing by the Enterprise and the Patron, private negotiation shall be deemed to have failed if the Enterprise and the Patron cannot reach a settlement within ninety (90) days from and after the Enterprise receives notice by the Patron of a claim. When private negotiations are deemed to have failed, the following procedure applies:

1. AAA. Either the Enterprise or the Patron may refer Prize Disputes or Tort Claims to arbitration pursuant to the applicable rules of the AAA for the category of dispute, subject to enforcement as provided for by this Part by a federal district court.

2. Oklahoma Law. The claims, remedies, affirmative defenses, counterclaims, third-party claims, and cross-claims available through arbitration are limited to those arising under Oklahoma common-law; provided, however, that in no event shall a Tort Claim be permitted unless such Tort Claim is filed within one (1) year of the date of the event which allegedly caused the claimed loss, and provided further that in no event shall any Prize Dispute be permitted unless such Prize Dispute is filed within ten (10) days of the event which is the basis of the Prize Dispute. Failure to timely file a Tort Claim or Prize Dispute shall forever bar such claims.

3. Jurisdiction; Waiver. The Enterprise consents to the jurisdiction of such arbitration forum and court for such limited purposes and no other, and waives immunity with respect thereto.

4. Selection of Arbitrator. One (1) arbitrator shall be chosen by the Enterprise and the Patron from a list of qualified arbitrators to be provided by the AAA. If the parties cannot agree on an arbitrator, then the arbitrator shall be named by the AAA.

5. Expenses of Arbitration. The expenses of arbitration, including filing fees and fees charged by the arbitrator, shall be equally borne between the Patron and the Enterprise.

6. Enforcement. The arbitration procedures described herein are subject to, and any decision or arbitration award issued by the arbitrator under to this agreement, is enforceable under, and otherwise subject to, the provisions of the FAA.

7. Appellate Rights. An order or final decision issued by the arbitrator under the FAA is subject to appeal, as provided in the FAA. Accordingly, the Enterprise waives immunity and consents to suit therein for such limited purposes, and agrees not to raise the United States Constitution, sovereign immunity, or comparable defense to the validity of such waiver.

8. Limited Consent – Tort Claims. For Tort Claims, the consent to waive sovereign immunity provided for in this Part is granted only to the extent such claim or any award or judgment rendered thereon does not exceed the limit of available insurance coverage required under subsection (D) of this Part. Under no circumstances shall any consent to suit be effective as to any award which exceeds such applicable amounts. This consent shall only extend to the Patron actually claiming to be injured. Tort Claims shall not be assignable. In the event any assignment of the Tort Claim is made in violation of this Compact, or any person other than the Patron claiming the injury becomes a party to any action hereunder, this consent shall be

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deemed revoked for all purposes. Notwithstanding the foregoing, this consent shall not be revoked if an action on a Tort Claim is filed by (i) a court-appointed representative of a claimant's estate, (ii) an indispensable party, or (iii) a health provider or other party subrogated to the claimant's rights by virtue of any insurance policy; provided, that nothing herein is intended to, or shall constitute a consent to suit against the Enterprise as to such party except to the extent such party's claim is:

a. In lieu of and identical to the claim that would have been made by the claimant directly but for the appointment of said representative or indispensable party, and participation of such other party is in lieu of and not in addition to pursuit of the claim by the Patron, *and*

b. The claim of such other party would have been subject to the consent provided for herein if it had been made by the claimant directly.

C. Notice to Patrons. Notices explaining the procedure set forth in subsections A and B of this Part shall be prominently posted in the Facility. Such notices shall explain the method and places for making a claim, including to whom the notice should be made (*e.g.*, the "registered agent" or legal equivalent for the Enterprise).

D. Commercial General Liability Insurance for Tort Claims. During the term of this Compact, the Enterprise shall maintain commercial general liability insurance for the express purposes of covering and satisfying Tort Claims. The insurance shall have liability limits of not less than Five Hundred Thousand Dollars (\$500,000.00) for any one person and Five Million Dollars (\$5,000,000.00) for any one occurrence for personal injury, and One Million Dollars (\$1,000,000.00) for any one occurrence for property damage. No Tort Claim shall be paid, or be the subject of any award, in excess of the limit of liability. The Enterprise's commercial general liability insurance policy shall include an endorsement providing that the insurer may not invoke tribal sovereign immunity in connection with any claim made within the limit of liability. Copies of all such insurance policies shall be forwarded to the SCA.

E. Remedies in the Event of No or Inadequate Insurance for Tort Claims. In the event a tort claim is made and there is no insurance, or inadequate insurance in effect, as required under this Compact, the Enterprise shall be deemed to be in default hereunder unless, within ten (10) days of a demand by the SCA or a claimant to do so, the Enterprise has posted in an irrevocable escrow account at a state or federally chartered bank which is not owned or controlled by the Tribe, sufficient cash, a bond or other security sufficient to cover any award that might be made within the limits set forth in subsection D of this Part, and informs the claimant and the state of:

1. The posting of the cash or bond;
2. The means by which the deposit can be independently verified as to the amount and the fact that it is irrevocable until the matter is finally resolved;
3. The right of the claimant to have this claim satisfied from the deposit if

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the claimant is successful on the claim; and

4. Consent to suit in federal district court for the judicial district in which the Patron's claim arose.

PART 6: DISPUTE RESOLUTION – THE TRIBE AND THE STATE

A. Scope. This Part shall apply to disputes between the Tribe and the State arising under the Compact, including: (i) compliance with the Compact; (ii) performance required by the Compact; and/or (iii) interpretation of the Compact's terms, conditions, and provisions; provided, however, that this Part shall not apply to the market evaluation of Substantial Exclusivity Fees.

B. Process. For disputes arising hereunder, the following two (2) step process shall apply:

1. Mediation. The State and the Tribe shall be required to first mediate the dispute, using a mutually agreeable mediator, unless one party reasonably believes that irreparable harm will result thus necessitating an action, in whole or in part, for injunctive relief to be filed directly in federal court.

2. Federal Court. If injunctive relief to prevent irreparable harm is sought, or if mediation fails, the dispute shall be litigated in federal court, requiring the State and the compacting Tribe to provide limited waivers of sovereign immunity, including for purposes of enforcing any ruling or judgment entered by the federal court regarding such dispute, as well as any resulting appeal.

C. Jurisdiction; Venue. Subject to subsection (B) of this Part, the Tribe and the State consent to the jurisdiction of federal district court. Suit shall be filed in the federal judicial district where a substantial part of the events or omissions giving rise to the claim(s) asserted by either party occurred.

D. Controlling Law. The Tribe and the State consent to applicable federal and state law, whether arising by statute, ordinance, regulation, common-law, and/or in equity. The Parties acknowledge and agree that subsection D of this Part shall apply to claims, counterclaims, remedies, and affirmative defenses, whether arising at law or in equity.

E. Limited Waiver of Sovereign Immunity. The Tribe and the State waive sovereign immunity for the limited purpose described in this Part. By extension, the Tribe and the State agree not to raise the United States Constitution, sovereign immunity, or comparable defense to the validity of such waiver.

F. Exclusive Authority to Settle and Negotiate – State. The Tribe and the State expressly acknowledge and agree that the Governor for the State shall have exclusive authority to settle and negotiate any dispute arising under the Compact pursuant to Article 6, Section 8 of the Oklahoma Constitution. Such authority may be delegated to authorized agent(s) or

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representative(s), in whole or in part, except with respect to final approval of and executing the Compact on behalf of the State.

PART 7: STATE MONITORING OF COMPACT COMPLIANCE

A. SCA Authority. The SCA shall, pursuant to the provisions of this Compact, have the authority to monitor the conduct of Covered Games to ensure that the Covered Games are conducted in compliance with the provisions of this Compact. In order to properly monitor the conduct of Covered Games, agents of the SCA shall have reasonable access to all areas of the Facility related to the conduct of Covered Games as provided herein:

1. Facility Access. Access to the Facility by the SCA shall be during the Facility's normal operating hours only; provided that to the extent such inspections are limited to areas of the Facility where the public is normally permitted, SCA agents may inspect the Facility without giving prior notice to the Enterprise.

2. Compact Violations. Any suspected or claimed violations of this Compact or of law shall be directed in writing to the TCA; SCA agents shall not interfere with the functioning of the Enterprise.

3. SCA Identification. Before SCA agents may enter any nonpublic area of the Facility, they shall provide proper photographic identification to the TCA. SCA agents shall be accompanied in nonpublic areas of the Facility by a TCA agent. A one (1) hour notice by SCA to the TCA may be required to assure that a TCA officer is available to accompany SCA agents at all times while in nonpublic areas.

B. Central Computer Monitoring. The Enterprise will ensure all Gaming Machines will be connected to a central computerized monitoring and control system, which shall collect on a continual basis the unaltered activity of each Covered Game in use at the Facility, and that the wager and payout data of each Covered Game, electronically captured by the Enterprise's Central Computer, is capable of generating reports evidencing calculations of Adjusted Net Win and expired and void ticket information. The Enterprise shall produce reports, including any revisions, no later than the 20th of each month, substantiating the revenues received by the Enterprise in the preceding month upon which Substantial Exclusivity Fees paid to the State are based. Such reports shall be generated by the Central Computer and electronically submitted to the SCA.

C. SCA Annual Review. The SCA, at its own cost, shall be authorized to conduct an annual review of the Enterprise's conduct of Covered Games subject to this Compact. The review shall examine revenues in connection with the conduct of Covered Games and shall include, but not be limited to, those matters necessary to verify the determination of Adjusted Net Win and the basis of Substantial Exclusivity Fees. The Enterprise shall provide all documentation and information reasonably requested by the SCA in connection with the annual review within sixty (60) days of such written request by the SCA. The Tribe, Enterprise, and TCA shall cooperate fully and not interfere with said annual review.

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D. SCA Document Review. Subject to provisions herein, agents of the SCA shall, at its own cost, have the right to review and copy Documents of the Enterprise related to its conduct of Covered Games. The review and copying of such Documents shall be during normal business hours or hours otherwise at Enterprise's discretion. However, the SCA shall not be permitted to copy those portions of any Documents of the Enterprise related to its conduct of Covered Games that contain business or marketing strategies or other proprietary and confidential information of the Enterprise, including, but not limited to, Patron lists, business plans, advertising programs, marketing studies, and Patron demographics or profiles. No Documents of the Enterprise related to its conduct of Covered Games or copies thereof shall be released to the public by the SCA under any circumstances. For the avoidance of doubt, the right to review and copy Documents is subject to Part 4(D) of this Compact.

E. SCA Reporting. Upon completion of any SCA inspection or investigation, the SCA shall forward a written report thereof to the TCA. The TCA shall be apprised on a timely basis of all pertinent, non-confidential information regarding any violation of Federal, State, or Tribal laws, the Rules or Regulations, or this Compact. Nothing herein prevents the SCA from contacting Tribal or federal law enforcement authorities for suspected criminal wrongdoing involving the TCA. TCA may interview SCA inspectors upon reasonable notice and examine work papers and SCA in the same fashion that SCA inspectors may examine auditor's notes and make auditor inquiry unless providing such information to the TCA will compromise the interests sought to be protected. If the SCA determines that providing the information to the TCA will compromise the interests sought to be protected, then the SCA shall provide such information to the Tribe in accordance with this Compact.

F. Limitation. Nothing in this Compact shall be deemed to authorize the State to regulate the Tribe's government, including the TCA, or to interfere in any way with the Tribe's selection of its governmental officers, including members of the TCA.

PART 8: JURISDICTION

A. Subject to Parts 5 and 6 of this Compact, this Compact shall not be construed to alter Tribal, Federal or State civil adjudicatory or criminal jurisdiction.

PART 9: LICENSING

A. Covered Game Employees. Except as otherwise provided for herein, no Covered Game Employee shall be employed at a Facility or by an Enterprise unless such person is licensed in accordance with this Compact. In addition to the provisions of this Part which are applicable to the licensing of all Covered Game Employees, the requirements of 25 C.F.R., Part 556, background investigations for primary management officials and employees, and 25 C.F.R., Part 558, gaming licenses for employees and primary management officials, apply to employees and primary management officials of the Facility and Enterprise.

1. Application. All prospective Covered Game Employees shall apply to the TCA for a license. Licenses shall be issued for periods of no more than two (2) years, after which they may be renewed only following review and update of the information upon which the

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license was based; provided, the TCA may extend the period in which the license is valid for a reasonable time pending the outcome of any investigation being conducted in connection with the renewal of such license. In the event the SCA contends that any such extension is unreasonable, it may seek resolution of that issue pursuant to Part 9(A)(6) of this Compact.

2. Background Investigation. The application process shall require the TCA to obtain sufficient information and identification from the applicant to permit a background investigation to determine if a license should be issued in accordance with this Part and the Rules and Regulations. The TCA shall obtain information about a prospective Covered Game Employee that includes: (i) full name, including any aliases by which applicant has ever been known; (ii) social security number; (iii) date of birth; (iv) place of birth; (v) residential addresses for the past five (5) years; (vi) employment history for past five (5) years; (vii) driver's license number; (viii) all licenses issued and disciplinary charges filed, whether or not discipline was imposed, by any State, Federal, or Tribal regulatory authority; (ix) all criminal arrests and proceedings, except for minor traffic offenses, to which the applicant has been a party; (x) a set of fingerprints, which shall be used to conduct a criminal background check; (xi) current photograph; (xii) military service history; and (xiii) any other information the TCA determines is necessary to conduct a thorough background investigation.

3. SCA Notification. Upon obtaining the information set forth in Part 9(A)(2) above from a prospective Covered Game Employee, the TCA shall forward a copy of such information to the SCA, along with any determinations made with respect to the issuance or denial of a temporary or permanent license. The SCA may conduct its own background investigation of the applicant at SCA expense, shall notify the TCA of such investigation within a reasonable time from initiation of the investigation, and shall provide a written report to the TCA of the outcome of such investigation within a reasonable time from the receipt of a request from the TCA for such information. SCA inspector field notes and the SCA inspector shall be available upon reasonable notice for TCA review and inquiry.

4. Temporary Licensure. The TCA may issue a temporary license for a period not to exceed ninety (90) days, and the Enterprise may employ on a probationary basis, any prospective Covered Game Employee who represents in writing that he or she meets the standards set forth in this Part, provided the TCA or Enterprise is not in possession of information to the contrary. The temporary license shall expire at the end of the ninety-day period or upon issuance or denial of a permanent license, whichever event occurs first. Provided that the temporary license period may be extended at the discretion of the TCA so long as good faith efforts are being made by the applicant to provide required information, or the TCA is continuing to conduct its investigation or is waiting on information from others, and provided further that in the course of such temporary or extended temporary licensing period, no information has come to the attention of the TCA which, in the absence of countervailing information then in the record, would otherwise require denial of license. A permanent license shall be issued or denied within a reasonable time following the completion of the applicant's background investigation.

5. Prohibited Persons. In Covered Gaming, the Tribe shall not employ and shall terminate, and the TCA shall not license and shall revoke a license previously issued to, any

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Covered Game Employee who: (i) has been convicted of any felony or an offense related to any Covered Games or other gaming activity; (ii) has knowingly and willfully provided false material, statements or information on his or her employment application; or (iii) is a person whose prior activities, criminal record, or reputation, habits, and associations pose a threat to the public interest or to the effective regulation and control of the conduct of Covered Games, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of Covered Games or the carrying on of the business and financial arrangements incidental thereto; provided, however, that members of the Tribe or other federally recognized tribes, shall not be disqualified from employment based on a prior felony conviction so long as the person is not seeking to be employed as a Covered Game Employee, and provided further that any person who has a felony conviction or offense involving alcohol or drugs shall not be employed in any position requiring operation of a vehicle.

6. SCA Right to Object. The SCA may object to the employment of any individual by the Enterprise based upon the criteria set forth in paragraph 2 of subsection A of this Part. Such objection shall be in writing setting forth the basis of the objection. The SCA inspectors work papers, notes and exhibits which formed the SCA conclusion shall be available upon reasonable notice for TCA review. Within a reasonable time after such notification, the TCA shall report to the SCA on the outcome of its investigation and of any action taken or decision not to take action.

7. Additional Background Investigation. The TCA shall have the discretion to initiate or continue a background investigation of any licensee or license applicant, and to take appropriate action with respect to the issuance or continued validity of any license at any time, including suspending or revoking such license.

8. Identification. The TCA shall require all Covered Game Employees to wear, in plain view, identification cards issued by the TCA which include a photograph of the employee, his or her first name, a four-digit identification number unique to the license issued to the employee, a Tribal seal or signature verifying official issuance of the card, and a date of expiration, which shall not extend beyond such employee's license expiration date.

9. Prohibition. The Enterprise shall not enter into, or continue to make payments pursuant to, any contract or agreement for the provision of goods or services with any person or entity who does not meet the requirements of this part including, but not limited to, any person or entity whose application to the TCA for a license has been denied, or whose license has expired or been suspended or revoked.

B. Management Contracts. Pursuant to 25 C.F.R., Part 533, all management contracts must be approved by the Chair of the NIGC. The SCA shall be notified in writing by the TCA promptly after any such approval.

C. Financing Agreements. Any person or entity extending financing, directly or indirectly, to the Facility or Enterprise in excess of Fifty Thousand Dollars (\$50,000.00) in any twelve-month period shall be licensed prior to providing such financing. Principals thereof shall be subjected to background investigations and determinations in accordance with the procedures

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and standards set forth in subsection A of this Part. Licenses issued under this section shall be reviewed at least every two (2) years for continuing compliance, and shall be promptly revoked if the licensee is determined to be in violation of the standards set forth in subsection A of this Part. In connection with such a review, the TCA shall require the person or entity to update all information provided in the previous application.

1. SCA Notification. The SCA shall be notified of all financing and loan transactions with respect to Covered Games or supplies in which the amount exceeds Fifty Thousand Dollars (\$50,000.00) in any twelve (12) month period, and shall be entitled to review copies of all agreements and Documents in connection therewith.

2. Exception. Financing provided by a federally regulated or State-regulated bank, savings and loan, or trust, or other federally or State-regulated lending institution; any agency of the federal, State, Tribal or local government; or any person or entity, including, but not limited to, an institutional investor who, alone or in conjunction with others, lends money through publicly or commercially traded bonds or other commercially traded instruments, including but not limited to the holders of such bonds or instruments or their assignees or transferees, or which bonds or commercially traded instruments are underwritten by any entity whose shares are publicly traded or which underwriter, at the time of the underwriting, has assets in excess of One Hundred Million Dollars (\$100,000,000.00), shall be exempt from the licensing and background investigation requirements in subsections A and B of this Part, as well as this subsection.

D. TCA Reporting. The TCA shall report to SCA all issued licenses by Licensee name and whether temporary no less than quarterly and shall only include those licenses issued since the TCA's most recent report.

E. Violations of Part 9. Violations of this Part shall result in a penalty of Five Thousand Dollars (\$5,000.00) per violation to be remitted to the SCA for purposes of deposit and expenditure in connection with Part 10(C) of this Compact, unless otherwise agreed to by the Parties. Such penalty shall be in addition to the Annual Oversight Assessment amount set forth in Part 10(C) of this Compact.

PART 10: SUBSTANTIAL EXCLUSIVITY; ASSOCIATED FEES AND ASSESSMENTS

A. Acknowledgment. The Parties acknowledge and agree that this Compact provides the Tribe with substantial exclusivity over class III Covered Gaming consistent with the goals of IGRA.

B. Substantial Exclusivity Fees. In consideration of the Acknowledgement set forth in subsection A of this Part, the adequacy of which is hereby agreed to, and pursuant to the terms of this valid Compact, the Tribe agrees to pay the following Substantial Exclusivity Fees as provided for below:

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1. Amount – Covered Games Less and Except Event Wagering. The Tribe shall remit Substantial Exclusivity Fees to the State on Covered Games, less and except Event Wagering, as follows:

a. Existing Facilities. For Existing Facilities, the Tribe shall remit Substantial Exclusivity Fees to the State on Covered Games, less and except Event Wagering, in the amount of Four and One Half Percent (4.50%) of the Adjusted Net Win, until the Section 20 Approval Trigger, as defined in Part 3(D) of this Compact. Following the Section 20 Approval Trigger, the Tribe shall remit Substantial Exclusivity Fees to the State on Covered Games, less and except Event Wagering, in the amount of Six Percent (6.00%) of the Adjusted Net Win for Existing Facilities.

b. New Facilities. For the New Facilities described in Part 4(J)(2) of this Compact, the Tribe shall remit Substantial Exclusivity Fees to the State on Covered Games, less and except Event Wagering, as follows:

i.For the Logan County Facility, Substantial Exclusivity Fees in the amount of Twelve Percent (12.00%) of the Adjusted Net Win;

ii.For the Noble County Facility, Substantial Exclusivity Fees in the amount of Eight Percent (8.00%) of the Adjusted Net Win; *and*

iii.For the Payne County Facility, Substantial Exclusivity Fees in the amount of Eight Percent (8.00%) of the Adjusted Net Win.

c. Reevaluation Trigger. Should the Tribe's annual Adjusted Net Win revenue exceed \$300,000,000.00, the Parties shall reevaluate the Substantial Exclusivity Fees by utilizing the procedure provided for under subsection (B)(5)(e) of this Part, subject to the terms provided for therein.

2. Amounts – Event Wagering. In addition to the Substantial Exclusivity Fees, the Tribe shall remit fees to the State on Event Wagering as follows:

a. For Event Wagering, 1.10% of the Patron's Event Wagering transaction total, to be assessed in addition to the transaction total and calculated on a per wager basis.

3. Manner; Form. Such fees shall be paid no later than the twentieth (20th) day of each calendar month for revenues received by the Tribe in the preceding month. Payment of such fees shall be made to the Treasurer of the State. Nothing herein shall require the allocation of such fees to particular State purposes, including, but not limited to, the actual costs of performing the State's regulatory responsibilities hereunder.

4. Violation for Failure to Remit. A single failure to remit exclusivity fees as provided for in subsection B of this Part shall result in a penalty of Five Thousand Dollars

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(\$5,000.00) to be remitted to the SCA for purposes of deposit and expenditure in connection with subsection C of this Part for each thirty (30) day period the fee(s) remain outstanding. Such penalty shall be in addition to the Annual Oversight Assessment amount set forth in subsection C of this Part. Multiple uncured violations in a single calendar year shall constitute a material breach, which may result in termination of this Compact, unless otherwise agreed to in writing by the Parties.

5. Market Valuation of Substantial Exclusivity. The right of substantial exclusivity provided for under subsection (B) of this Part will have a definite term, as provided for in Part 12(B) of this Compact. Subject to a written agreement between the Parties, such term may renew by way of amendment for another fifteen (15) year term pursuant to the following:

a. Good Faith Meet and Confer. Within eighteen (18) months prior to expiration of the Compact, the Parties shall meet and confer in good faith for the purpose of setting substantial exclusivity rates under the Compact to reflect the value of substantial exclusivity granted for the renewal term.

b. Panel Composition and Valuation. If, following the good faith meet and confer described in subsection (B)(5)(a) of this Part, but not later than twelve (12) months prior to expiration of the Compact, no agreement is reached between the Parties, then the following binding procedure shall apply for the purpose of setting substantial exclusivity rates under the Compact to reflect the value of substantial exclusivity for the renewal term of the Compact:

i. Rules. Revenue-sharing rates shall be determined by an independent Panel, comprised of three (3) panelists to determine the substantial exclusivity rates. The proceeding shall be conducted consistent with the rules of commercial arbitration.

ii. The Panel. The State shall select one (1) panelist who is an economist or who has judicial experience (the “*State Member*” or “*Panelist*”). The Tribe shall select one (1) panelist who is an economist or who has judicial experience (the “*Tribe Member*” or “*Panelist*”). The State and the Tribe shall jointly select one (1) panelist with business and Indian law experience (the “*Jointly Selected Member*” or “*Panelist*”). In the event the State and the Tribe cannot agree on the Jointly Selected Member, then the State Member and the Tribe Member shall select the Jointly Selected Member. The State Member, the Tribe Member, and the Jointly Selected Member shall collectively comprise the “*Panel.*” Once a Panelist is selected, the Parties shall be prohibited from engaging in *ex parte* communications with that Panelist.

iii. Evidence. Each Party shall have the right to present evidence as relevant and material to support their position, including through expert testimony. The Panel may determine the admissibility,

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relevance, and materiality of evidence, and may exclude evidence deemed to be cumulative or irrelevant.

iv. Discovery. The Parties shall have the opportunity to conduct reasonable discovery, including through the use of interrogatories, depositions, requests for production, and similar tools of discovery. Discovery disputes shall be resolved by the Panel. At the request of any Party, the Panel may subpoena witnesses or documents. All principles of legal privilege, including but not limited to the attorney–client privilege, shall apply.

v. Briefing. The Parties shall simultaneously submit opening briefs on a date agreed to by the Parties. If the Parties cannot agree to a date for the submission of opening briefs, the Panel shall determine the date. Each Party shall have the right to file a response brief within ten (10) days of the opposing Party’s opening brief. There shall be no page limit to the submission of briefs.

vi. Hearing. Following the submission of briefs, the Panel shall hold a hearing and allow each Party to provide legal argument, present evidence and examine and cross-examine witnesses. At least ten (10) days prior to the hearing, the Parties shall exchange copies of exhibits and witness lists.

vii. Analysis of Data. The Panel’s determination of revenue-sharing rates shall be based on an analysis of all data pertinent to assess market valuation of the substantial exclusivity granted for the renewal term.

viii. Written Opinion. The Panel shall issue its decision in a written and reasoned opinion. If the Panel rules that substantial exclusivity rates should be revised, its opinion may be cited and relied upon if and when the Parties seek approval of the new rates from the Department of the Interior.

c. The State and the Tribe agree to be bound by the substantial exclusivity rates established by a majority of the Panel for the renewal term.

d. The process described in subsection (B)(5) of this Part shall take into account the Existing Facilities, as well as the Logan County Facility, the Noble County Facility, and the Payne County Facility, and there shall be no requirement that the Facilities all be subject to a uniform substantial exclusivity rate.

e. Substantial Exclusivity Rate Reevaluation. Should the Tribe’s annual Adjusted Net Win exceed \$300,000,000.00, the Parties agree that new

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substantial exclusivity fees shall be established. The Parties agree to the procedure provided for under subsection (B)(5) of this Part, subject to the exception that the good faith meet and confer described therein between the Parties shall be limited to sixty (60) days. Should the Parties fail to reach an agreement within sixty (60) days, then they shall proceed to the Panel valuation procedure provided for pursuant to subsection (B)(5) of this Part, and that process shall be concluded by the Panel within ninety (90) days, or such longer time as agreed to by the Parties.

f. Panel Fees and Costs. The State shall be responsible for paying the State Member's costs and fees. The Tribe shall be responsible for paying the Tribe Member's costs and fees. The remaining costs and fees incurred by the Panel, including the Jointly Selected Member's costs and fees, shall be equally divided between the State and the Tribe.

C. Annual Oversight Assessment. In addition to Substantial Exclusivity Fees, the State shall be entitled to payment for its costs incurred in connection with the oversight of Covered Games to the extent provided herein, Annual Oversight Assessment. The Annual Oversight Assessment, as more particularly described below, shall be paid in advance on a fiscal year basis for each twelve (12) months ending on June 30 of each year, in accordance with the Schedule set forth below.

1. Schedule. The Annual Oversight Assessment Schedule shall be:

i. \$25,000.00 Annual Oversight Assessment: \$0.01 to \$15,000,000.00 in annual revenue from the play of Covered Games.

ii. \$50,000.00 Annual Oversight Assessment: \$15,000,001.00 to \$50,000,000.00 in annual revenue from the play of Covered Games.

iii. \$75,000.00 Annual Oversight Assessment: \$50,000,001.00 to \$100,000,000.00 in annual revenue from the play of Covered Games.

iv. \$100,000.00 Annual Oversight Assessment: \$100,000,001.00 to \$150,000,000.00 in annual revenue from the play of Covered Games.

v. \$125,000.00 Annual Oversight Assessment: \$150,000,001.00 to \$750,000,000.00 in annual revenue from the play of Covered Games.

vi. \$250,000.00 Annual Oversight Assessment: equal to or in excess of \$750,000,001.00 in annual revenue from the play of Covered Games.

PART 11: NOTICES

A. Manner and Form. All notices required under this Compact shall be given by certified mail, return receipt requested, commercial overnight courier service, to the Governor of the State and Chairperson (or Chief Executive designee) of the Tribe.

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PART 12: DURATION & TERMINATION

A. Effective Date. The previous gaming compact entered into by and between the Tribe and the State, which was approved by the Department of the Interior and published in the *Federal Register*, is hereby agreed and stipulated by the Parties to be superseded by this Compact, and this Compact is the sole effective Compact between the Parties, constituting the entire agreement between the Parties, from and after the Effective Date hereof. This Compact will become effective upon the occurrence of all of the following:

- 1.** The Compact is approved by action of the Tribe necessary to authorize the signing of the Compact on behalf of the Tribe and render the signature effective, including any tribal resolution or other action by the Tribe conducted in compliance with tribal procedures;
- 2.** The Compact is executed by the Governor on behalf of the State; *and*
- 3.** The Compact is approved as a Tribal-State compact within the meaning of IGRA by the Secretary of the Department of the Interior and notice of that approval is published in the *Federal Register*.

B. Term. The term of this Compact shall begin on the Effective Date and end at 11:59 p.m. (CST) on December 31, 2035, unless otherwise agreed to in writing by the Parties.

C. Effect of Termination on Class III Gaming. The Tribe may continue to operate Covered Games after expiration of the term described in subsection (B) of this Part. However, in the absence of an effective gaming compact, the State shall no longer be required to provide the Tribe with substantial exclusivity for class III Covered Games.

D. Termination by Mutual Consent. The Compact may be terminated before the end of a term of the Compact by the mutual written consent of the Parties.

PART 13: ADDITIONAL TERMS & CONDITIONS

A. Amendments. This Compact shall not be amended or modified except by a writing executed by all the Parties.

B. Entire Agreement; Severability. This Compact constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral and written negotiations. If any clause or provision of this Compact is subsequently determined by any federal court to be invalid or unenforceable under any present or future law, including but not limited to the scope of Covered Games, the remainder of this Compact shall not be affected thereby. It is the intention of the Parties that if any such provision is held to be illegal, invalid or unenforceable, there will be added in lieu thereof a provision as similar to such provision as is possible to be legal, valid and enforceable.

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C. No Construction Against the Drafter. Both the Tribe and the State have cooperated in the drafting and preparation of this Compact. Hence, in any construction to be made of this Compact, the same shall not be construed for or against either the Tribe or the State.

D. Section Headings. The titles and headings of any provision herein exist for convenience and clarity only and in no way shall restrict or modify this Compact.

E. Agreement to Defend. Each Party hereto agrees to defend the validity of this Compact against challenges or attacks from non-signatories hereto.

F. Survival. This Compact shall constitute a binding agreement between the parties and shall survive any repeal or amendment of the State-Tribal Gaming Act, 3A O.S. § 260 *et seq.*

G. Federal Approval. The Parties shall cooperate in seeking approval of this Compact from an appropriate federal agency as a tribal-state compact under IGRA.

H. Delay in Compliance for Existing Facilities. For Existing Facilities, the insurance requirements imposed by Part 5(D) and the Central Computer monitoring requirements set forth under Part 7(B) shall not take effect until thirty (30) days from and after the Effective Date of this Compact.

I. Most Favored Nation. With the exception of Part 3(D) of this Compact, Part 4(J)(2) of this Compact, and Part 10(B) of this Compact, any concessions, privileges, or other contractual rights granted in Tribal-State gaming compacts to other Oklahoma tribes must be made available to the Tribe.

PART 14: EXECUTION

This Compact, when signed by the Governor of the State of Oklahoma, is approved by the State of Oklahoma. No further action by the State or any State official is necessary for this Compact to take effect upon approval by the Secretary of the Interior. The undersigned represent that they are duly authorized and have the authority to execute this Compact on behalf of the Party for whom they are signing.

[NEXT PAGE FOR SIGNATURES]

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IN WITNESS WHEREOF, the Parties have caused this Compact to be executed by their authorized representatives, who are deemed to have set their hand as of the Effective Date.

EXECUTED BY AND BETWEEN:

THE STATE OF OKLAHOMA

THE OTOE-MISSOURIA TRIBE

Governor J. Kevin Stitt
State of Oklahoma

Chairman John R. Shotton
The Otoe-Missouria Tribe

This the ____ of April, 2020.

This the ____ of April, 2020.