



THE SECRETARY OF THE INTERIOR
WASHINGTON

NOV 12 2002

The Honorable Cyrus Schindler
Nation President
Seneca Nation of Indians
Route 438
Irving, New York 14081

Dear President Schindler:

We have completed our review of the Tribal-State Gaming Compact (Compact) for the conduct of Class III gaming activities between the Seneca Nation of Indians (Nation) and the State of New York (State), executed on August 18, 2002, and received by the Department on September 10, 2002. Generally, the Compact authorizes the Tribe to conduct Class III gaming at three sites: an identified area within the City of Niagara Falls, or an alternative site within the County of Niagara; an unidentified area within the County of Erie or the City of Buffalo; and an on-reservation site. The Compact requires that the Tribe pay the State a percentage of the Tribe's gaming revenue in exchange for several benefits including an exclusive 10,500 square-mile area in Western New York and start-up benefits, provided by the State. The Tribe agrees to purchase the gaming sites with funds from the Seneca Nation Settlement Act of 1990, 25 U.S.C. § 1774 (Settlement Act) reserving five million dollars for housing adjacent to the gaming sites.

Under the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2710(d)(8)(C), the Secretary may approve or disapprove the Compact within forty-five days of its submission. If the Secretary does not approve or disapprove the Compact within forty-five days, IGRA states that the Compact is considered to have been approved by the Secretary, "but only to the extent the compact is consistent with the provisions of [IGRA]." Under IGRA the Department must determine whether the Compact violates IGRA, any other provision of Federal law that does not relate to jurisdiction over gaming on Indian lands, or the trust obligations of the United States to Indians.

As part of the Department's review of the Compact, on September 30, 2002, we sent a letter to the parties seeking clarification of various provisions of the Compact. The responses we received from the State and the Nation have resolved most of our questions, as well as resolving some additional issues raised by non-compacting parties. We have also held several meetings and conference calls with the parties to discuss the Compact and our concerns.

I have decided to allow this Compact to take effect without Secretarial action. I use this approach reluctantly. In enacting IGRA, Congress provided limited reasons for Secretarial approval or disapproval. However, because I want to express my views on important policy

concerns regarding the Compact, concerns that fall outside of the limited reasons in IGRA for Secretarial disapproval, I must avail myself of the opportunity to do so. I believe the State and Nation negotiated in good faith, however, I could not affirmatively approve the Compact because of the effect it is likely to have on future compacts.¹

General Observations

Since taking office, I have had the opportunity to review and decide a number of Indian gaming-related matters. I do not have the luxury of reviewing any compact without considering the trends that will emerge with each successive compact. As I have reviewed this and previous compacts, my concerns regarding IGRA and the interplay with other aspects of Indian policy have become sufficient to warrant this explanation.

I fully support Indian gaming as envisioned by the drafters of IGRA – that Indian tribes should have the full economic opportunity of gaming within the boundaries of reservations existing at the time of IGRA's passage. But I am also mindful that when tribes seek to game on off-reservation land, the State has a greater governmental interest in regulating tribal off-reservation gaming activities. Tribes are increasingly seeking to develop gaming facilities in areas far from their reservations, focusing on selecting a location based on market potential rather than exercising governmental jurisdiction on existing Indian lands. It is understandable that tribes who are geographically isolated may desire to look beyond the boundaries of their reservation to take advantage of the economic opportunities of Indian gaming. However, I believe that IGRA does not envision that off-reservation gaming would become pervasive.

Even with this concern in mind, I have concluded that this Compact appropriately permits gaming on the subject lands because Congress has expressly provided for the Nation to acquire certain lands pursuant to the Settlement Act. I am nevertheless concerned that elements of this Compact may be used by future parties to proliferate off-reservation gaming development on lands not identified as part of a Congressional settlement but instead on lands selected solely based on economic potential, wholly devoid of any other legitimate connection. Thus, to the extent that other states and tribes model future compacts after this one, and seek to have the United States take land into trust for these gaming ventures, they should understand that my

^{1/} It seems to me that the Department and compacting parties could work more closely on an informal basis to improve the compact development and review process. While I do not want to intrude into the parties' arms-length negotiations, I am concerned that the Department receives a compact that is a fait accompli without much opportunity for the Department to express its policy views, except as part of the 45-day review process. Thus, as the process currently works, compacting parties have only the guidance of previous compacts as a starting point for the parameters of their negotiations. I believe that the process would be enhanced if both parties availed themselves of the Department's informal guidance prior to the delivery of their finalized compact to my desk for review. At times, parties have been able to make changes during the 45-day review process, however, the parties here informed the Department that it would be impossible to make changes to this Compact within the review period. Departmental input, prior to the compact being submitted, might have been extremely helpful here.

views regarding land acquired through a Congressional settlement are somewhat different from my views when a tribe is seeking a discretionary off-reservation trust acquisition or a two-part determination under IGRA. While I do not intend to signal an absolute bar on off-reservation gaming, I am extremely concerned that the principles underlying the enactment of IGRA are being stretched in ways Congress never imagined when enacting IGRA.

Revenue Sharing and Geographic Exclusivity

Section 12(a) of the Compact grants the Nation the exclusive right to operate specifically defined gaming devices within a 10,500 square-mile, geographic area in Western New York.² In exchange for this geographic exclusivity right, Section 12 requires the Nation to make graduated revenue-sharing payments to the State (from 18% to 25% of net drop, less a local share) over the course of the 14-year duration of the Compact. If the State violates the exclusivity provision in Section 12(a)(1), the payment to the State ceases as to the particular category of gaming device for which exclusivity no longer exists. If the State violates the exclusivity provision in Section 12(a)(2), the payment to the State ceases altogether.³

The Department has sharply limited the circumstances under which Indian tribes can make direct payments to a state for purposes other than defraying the costs of regulating Class III gaming activities. To date, the Department has approved payments to a state only when the state has agreed to provide the tribe with substantial exclusivity for Indian gaming, *i.e.*, where a compact provides a tribe with substantial economic benefits in the form of a right to conduct Class III gaming activities that are on more favorable terms than any rights of non-Indians to conduct similar gaming activities in the state. The payment to the state must be appropriate in light of the exclusivity right conferred on the tribe.

The Nation and the State have advanced arguments that the geographic exclusivity defined in Section 12(a)(1) of the Compact is substantial and meaningful, pointing out that this zone of exclusivity is a 10,500 square-mile area in Western New York that, based on professional analysis of the market from which the Nation's gaming facility would draw, includes primary (up to 50 miles), secondary (51-99 miles), and tertiary (100-150 miles) customer markets for any

^{2/} Section 12(a)(1) of the Compact provides the following description of the geographic area: "(i) to the east, State Route 14 from Sodus Point to the Pennsylvania border with New York; (ii) to the north, the border between New York and Canada; (iii) to the south, the Pennsylvania border with New York; (iv) to the west, the border between Pennsylvania and New York."

^{3/} The Department asked if the Nation's exclusive right to operate slot machines within the zone of exclusivity was lost and the Nation therefore ceased making revenue payments, whether it would violate the provision of New York law permitting the possession of slot machines only pursuant to a gaming compact where the State receives a negotiated percentage of the net drop. The State has argued that by negotiating this Compact with the Nation that includes the receipt of a negotiated percentage of the net drop, it has met its obligation under the law, even if revenue payments decline to zero. We concur with the State's interpretation of the meaning of its law and conclude that the State has met its legal obligation.

established Buffalo and Niagara Falls gaming facility. According to the economic analysis provided by the Nation, the total revenues currently anticipated from the gaming operations over the term of the Compact, exceed five billion dollars, of which the State would receive less than one billion dollars, and a portion of those State funds would go to local governments. The Nation estimates its anticipated return after all expenses to significantly exceed two billion dollars over the fourteen-year term of the Compact.

The Nation argues that exclusivity in a gaming market of this size is extremely valuable and justifies on its own the average seventeen percent revenue share that the State will receive under the Compact after the local payment. However, the Nation and the State argue that the State is also providing the Nation with other substantial benefits in exchange for the revenue share. Section 11 of the Compact commits the State to transfer the Niagara Falls Convention Center for the sum of one dollar, which will enable the Nation to realize substantial savings, approximately forty million dollars, on otherwise significant development and start-up costs. Other forms of State assistance that the Nation bargained for and obtained are the State's agreement to use its sovereign power of eminent domain to acquire other parcels of land required for the project. Finally, Section 11 of the Compact secures for the Nation the opportunity to operate two off-reservation gaming facilities within the populous and well-visited geographic markets of Buffalo and Niagara Falls.

While I believe that the Nation is receiving a substantial economic benefit that justifies the revenue sharing, I am very troubled that the parties have chosen to exclude other tribes within the area of geographic exclusivity. The Compact creates two areas of exclusivity – one the entire Western portion of New York and another a twenty-five-mile radius of any gaming facility authorized under this Compact. Those provisions support my conclusion that the revenue sharing is justified. However, the drafters of this Compact have excluded Indian gaming from most of the area of exclusivity. The choice to specifically deny other tribes gaming opportunities is the primary reason I have chosen not to affirmatively approve this Compact.

It is worth noting, however, that the Compact does create an exception for two non-compacting tribes, the Tuscarora Indian Nation and the Tonawanda Band of Seneca Indians, in both of these areas of exclusivity. Without violating the terms of the Compact, the State may negotiate with these Tribes to establish a gaming facility either on federally-recognized Indian lands existing on the effective date of this Compact or outside of the twenty-five-mile radius within Western New York.

The Tonawanda Band and the Tuscarora Nation have notified us that they strongly object to approval of the Compact because, in their view, it violates the trust obligation of the United States to the two Nations by including provisions that explicitly restrict the economic opportunities that would otherwise be available to them under federal law, without their consent. There is no question that in approving the Compact, the Department would essentially ratify an agreement that has the effect of restricting the economic opportunities of the Tonawanda Band and the Tuscarora Nation because the State has a strong incentive not to permit these two Nations

to conduct gaming off-reservation within the twenty-five mile (exclusivity) radius, to avoid losing revenue-sharing payments to which it is otherwise entitled from the Nation.

I have reviewed whether this provision violates our trust obligation to Indians, and I conclude that it does not. Under the terms of the Compact, the State does not violate the exclusivity provision of the Compact if the Tonawanda Band and the Tuscarora Nation game on existing federally-recognized Indian lands. Thus, there is no disincentive to the State to negotiate for on-reservation gaming activities. The remaining question is, therefore, whether any tribe enjoys a legal right to off-reservation gaming under IGRA. I believe that Congress in enacting IGRA, struck a delicate balance between State and tribal interests that did not create an absolute right to off-reservation gaming.

Even though this provision does not violate my trust obligation to Indians, I am still troubled that parties in future compacts may pit tribe against tribe. While I believe that it was unintentional here, especially because both the Tonawanda Band and the Tuscarora Nation are regarded as traditionally opposed to gaming, I do not welcome the prospect of future compacts pitting tribes against one another. While I understand that the State is required to negotiate in good-faith with all Indian tribes and it has assured us that it understands its obligation under law, I still find a provision excluding other Indian gaming anathema to basic notions of fairness in competition and, if pushed to its extreme by future compacts, inconsistent with the goals of IGRA.⁴

To summarize, this Compact provides for substantial geographic exclusivity coupled with other valuable consideration. It is for this reason that I believe this revenue-sharing arrangement is consistent with IGRA.

Lands Acquired through the Seneca Nation Settlement Act

Subsections 11(b)(4) and (c) of the Compact provide for the use of settlement funds derived from the Seneca Nation Settlement Act of 1990, 25 U.S.C. § 1774 (Settlement Act) to "acquire the parcels in the City of Niagara Falls and the City of Buffalo" for the purpose of gaming. Under the terms of the Settlement Act, the Nation may use settlement funds to acquire "land within the aboriginal area in State or situated within or near proximity to former reservations lands." The Settlement Act also provides that unless the Secretary determines that lands acquired pursuant to the Act should not be subject to 25 U.S.C. § 177, such lands shall be held in "restricted fee" as opposed to being held in trust by the United States.

In reviewing whether the proposed gaming parcels meet the Settlement Act's requirement that the lands are "situated within or near proximity to former reservations lands," the Nation has

^{4/} Moreover, notwithstanding this or any other provision of this Compact, the Department will continue to entertain any Section 20 two-part determination applications submitted by an Indian tribe within the State of New York pursuant to IGRA.

provided sufficient documentation demonstrating that the exterior boundaries of the Nation's former Buffalo Creek Reservation overlap a portion of the present day boundary of the City of Buffalo and is within fourteen miles of the City of Niagara Falls exterior boundary. Moreover, the exterior boundary of the Nation's former Tonawanda Reservation is within fourteen miles of the City of Buffalo and within twenty-two miles of the City of Niagara Falls. While the Settlement Act does not define "within or near proximity" and there is no legislative history for guidance, it is our opinion that the two cities of Niagara Falls and Buffalo are "situated within or near proximity to" the Nation's former Buffalo Creek and Tonawanda reservations for purposes of the Settlement Act.

I want to emphasize, however, that the analysis regarding off-reservation land as part of a Congressionally-approved settlement greatly differs from the analysis the Department engages in when the issue is simply a trust acquisition for off-reservation gaming. Here, Congress tied the acquisition of lands through the Settlement Act to lands in "near proximity" to the Nation's former reservation. This decision rests squarely on a Congressionally-approved settlement of a land claim. Consequently, my analysis of "within or near proximity" should be understood as limited to the interpretation of the Settlement Act alone.

Indian Lands under IGRA

IGRA permits a tribe to conduct gaming activities on Indian lands if the tribe has jurisdiction over those lands, and only if the tribe uses that jurisdiction to exercise governmental power over the lands. There is no question that the Settlement Act requires the parcels to be placed in "restricted fee" status. As such, these parcels will come within the definition of "Indian lands" in IGRA if the Nation exercises governmental power over them. The Department assumes that the Nation will exercise governmental powers over these lands when they are acquired in restricted fee. It is our opinion that the Nation will have jurisdiction over these parcels because they meet the definition of "Indian country" under 18 U.S.C. § 1151. Historically, Indian country is land that, generally speaking, is subject to the primary jurisdiction of the Federal Government and the tribe inhabiting it. As interpreted by the courts, Indian country includes lands which have been set aside by the Federal Government for the use of Indians and subject to federal superintendence. In this regard, it is clear that lands placed in restricted status under the Settlement Act are set aside for the use of the Nation, and that such restricted status contemplated federal superintendence over these lands. Finally, the Settlement Act authorizes lands held in restricted status to expand the Nations' reservation boundaries, or become part of the Nation's reservation. Accordingly, we believe that the Settlement Act contemplates that lands placed in restricted status be held in the same legal manner as existing Nation's lands are held and thus, subject to the Nation's jurisdiction.

Application of Section 20 of IGRA

Section 20 of IGRA, 25 U.S.C. § 2719 contains a general prohibition on gaming on lands acquired in trust by the Secretary for the benefit of an Indian tribe after October 17, 1988, unless

one of several statutory exceptions is applicable to the land. Under the Compact, the Nation plans to use the provisions of the Settlement Act to acquire the land in restricted fee, rather than in trust. The Department has examined whether Section 20 of IGRA applies to the Compact. We have reviewed whether Congress intended, by using the words "in trust" in Section 20 of IGRA, to completely prohibit gaming on lands acquired in restricted fee status by an Indian tribe after October 17, 1988. I cannot conclude that Congress intended to limit the restriction to gaming on after-acquired land to only *per se* trust acquisitions. The Settlement Act clearly contemplates the acquisition of Indian lands which would otherwise constitute after-acquired lands. To conclude otherwise would arguably create unintended exceptions to the Section 20 prohibitions and undermine the regulatory regime prescribed by IGRA. I believe that lands held in restricted fee status pursuant to an Act of Congress such as is presented within this Compact must be subject to the requirements of Section 20 of IGRA.

The legislative history to the Settlement Act makes clear that one of its purposes was to settle some of the Nation's land claim issues. Thus, the Nation's parcels to be acquired pursuant to the Compact and the Settlement Act will be exempt from the prohibition on gaming contained in Section 20 because they are lands acquired as part of the settlement of a land claim, and thus fall within the exception in 25 U.S.C. § 2719(b)(1)(B)(i).

Use of Remaining Settlement Act Funds for Housing

Section 11(c) of the Compact provides for the "acquisition of parcels to meet the housing needs of the Nation's members." IGRA provides that a gaming compact will govern gaming activities on Indian lands of the Indian tribe and "may include provisions relating to . . . any other subjects that are directly related to the operation of gaming activities." It has been the policy of the Department that a Class III gaming compact can only include provisions that are "directly related" to the operation of gaming activities, and cannot include provisions that are not germane to gaming activities. The Department has taken this position because it represents a common sense approach to the interpretation of IGRA.

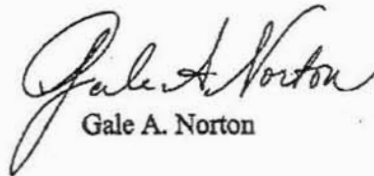
In response to our inquiry, the Nation has advised us that land acquired for housing under Section 11(c) of the Compact is directly related to the operation of gaming activities because the primary purpose in acquiring such parcels is to provide housing for tribal members next to the Nation's gaming facilities. However, because Section 11(c) of the Compact does not require any relation to the gaming activities, we believe that the Nation's argument that this provision is directly related to gaming is tenuous and strains the directly related criterion required by IGRA.

Conclusion

In conclusion, while I believe that the Nation and the State worked hard to negotiate a Compact that met the parties' immediate needs, I believe the policy considerations outlined above counsel against an affirmative-approval. Since I did not approve or disapprove the Compact within 45 days, the Compact is considered to have been approved, "but only to the

extent the compact is consistent with the provisions of [IGRA]." The Compact takes effect when notice is published in the *Federal Register* pursuant to Section 11(d)(3)(B) of IGRA, 25 U.S.C. § 22710(d)(3)(B).

Sincerely,



Gale A. Norton

Identical letter sent to:
The Honorable George E. Pataki

AUG 29 2002

NATION-STATE
GAMING COMPACT
BETWEEN THE
SENECA NATION OF INDIANS
AND THE
STATE OF NEW YORK

Volume I

NATION-STATE GAMING COMPACT

BETWEEN THE

SENECA NATION OF INDIANS

AND THE

STATE OF NEW YORK

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NATION-STATE GAMING COMPACT
BETWEEN THE
SENECA NATION OF INDIANS
AND THE
STATE OF NEW YORK

This Compact is made and entered into between the Seneca Nation of Indians, a sovereign Indian nation ("Nation") and the State of New York ("State") pursuant to the provisions of the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701 *et seq.* ("IGRA").

WHEREAS, the Nation is a sovereign Indian nation recognized by the United States of America, possessing all sovereign rights and powers pertaining thereto; and

WHEREAS, the State is a state of the United States of America, possessing all sovereign rights and powers pertaining thereto.

NOW, THEREFORE, the NATION and the STATE, consistent with the Memorandum of Understanding between the State Governor and the President of the Seneca Nation of Indians executed on June 20th 2001, and in consideration of the undertakings and agreements hereinafter set forth, hereby enter into this Class III Gaming Compact.

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1. **DEFINITIONS.**

For purposes of this Compact, including the Appendices:

- (a) "Appendix" means an appendix to this Compact, all of which are incorporated by reference herein. "Appendices" means more than one Appendix.
- (b) "Certified Mail" means certified or registered mail, Federal Express, United Parcel Service, Express Mail or any similar mail delivery service generating a return receipt or a signature of the recipient, confirming delivery of that mail. Certified Mail does not include electronic mail.
- (c) "Class III Gaming" has the meaning ascribed to such term in 25 U.S.C. §2703(8).
- (d) "Class III Gaming Employee" means an individual employee of the Nation Gaming Operation who renders Class III Gaming-related employee services in a Nation Gaming Facility.
- (e) "Class III Gaming Employee License" means a license issued by the SGA to a Class III Gaming Employee pursuant to the procedures set forth in Appendix C.
- (f) "Class III Gaming Key Employee" means a natural person employed by the Nation Gaming Operation in a supervisory capacity empowered to make discretionary decisions that affect gaming operations as determined by the SGA.

- (g) "Class III Gaming Service Enterprise" means an entity or individual, other than a Class III Gaming Employee, that provides Class III Gaming services, Class III Gaming supplies or Class III Gaming equipment to a Nation Gaming Facility.
- (h) "Class III Gaming Service Enterprise License" means a license issued by the SGA to a Class III Gaming Service Enterprise pursuant to the procedures set forth in Appendix D.
- (i) "Class III Non-Gaming Employee" means an individual employee of the Nation Gaming Operation working in a Gaming Facility who is not a Class III Gaming Employee.
- (j) "Class III Non-Gaming Employee License" means a license issued by the SGA to a Class III Gaming Employee pursuant to the procedures set forth in Appendix C.
- (k) "Compact" means this Nation-State Gaming Compact between the Nation and the State and all Appendices attached hereto.
- (l) "Effective Date" has the meaning set forth in Paragraph 4(a).
- (m) "Gaming Device" means two categories of gaming devices:
 - (i) 'slot machines' as that term is defined in Section 9(a) of Appendix A; and,
 - (ii) 'video lottery games' as that term is defined in Section 9(a) of Appendix A.
- (n) "Gaming Facility" means those portions of a structure in

which the Nation conducts Class III Gaming pursuant to this Compact. For purposes of this definition, a Gaming Facility shall be deemed to include only those areas of a structure that the Nation uses for Class III Gaming operations. Notwithstanding the foregoing, no areas of a structure exclusively used for Class I or Class II gaming or for non-gaming activities shall be considered part of a Gaming Facility.

- (o) "Immediate Family Member" means the spouse, parent, or child of a person, or a parent or child of the spouse of that person.
- (p) "Licensing Review Commission" means the entity established to implement the appeal procedures set forth in Appendices C-E.
- (q) "Material Breach" means a material, uncured breach of this Compact.
- (r) "MOU" means the Memorandum of Understanding between the State Governor and the President of the Seneca Nation of Indians executed on June 20, 2001, incorporated by reference herein.
- (s) "Nation" means the Seneca Nation of Indians, its authorized officials, agents or representatives acting in their official capacities.
- (t) "Nation Gaming Operation" means the enterprise, business or entity operated or authorized by the Nation to operate or conduct any form of Class III Gaming on Nation lands

pursuant to this Compact; provided, however, that this Compact shall apply to operations of such enterprise, business or activity only to the extent that such operations are directly related to Class III Gaming undertaken by the Nation pursuant to this Compact.

- (u) "Nation Law Enforcement Agency" means the agency of the Nation established and maintained by the Nation pursuant to the Nation's sovereign powers to carry out law enforcement within the lands of the Nation.
- (v) "Non-Class III Gaming Registration" means a registration issued by the SGA to an enterprise or other person pursuant to the procedures set forth in Appendix E.
- (w) "Paragraph" means a numbered paragraph of this Compact.
- (x) "Party" means either the Nation or the State.
- (y) "Parties" means the Nation and the State.
- (z) "Seneca Gaming Authority" or "SGA" means the entity established by the Nation responsible for regulating Class III Gaming undertaken by the Nation pursuant to this Compact.
- (aa) "State" means the State of New York, acting through the Governor as chief executive officer and such other officials, agents or representatives that he or she has duly authorized, acting in their official capacities.
- (bb) "State Gaming Officials" or "SGO" means the officials

designated by the State to fulfill the State's responsibility to ensure Nation Gaming Operation and SGA compliance with the terms of this Compact.

(cc) "State Contribution" has the meaning set forth in Paragraph 12(b)(i).

2. **NO NON-GAMING RELATED ISSUES.**

Nothing in this Compact affects any matter not specifically addressed herein.

3. AUTHORIZED CLASS III GAMING.

The Nation shall conduct only those Class III Gaming games specifically listed in Appendix A, in accordance with the specifications set forth in Appendices A and B.

4. **TERM OF COMPACT.**

- (a) Effective Date. This Compact shall be effective after publication of notice of approval by the Secretary of the Interior of the United States in the Federal Register in accordance with 25 U.S.C. §2710(d)(3)(B), provided that the Compact has been executed and certified by the Governor of the State and by the Nation pursuant to a referendum vote authorizing such execution ("Effective Date").
- (b) Termination Date. This Compact shall terminate on the fourteenth (14th) anniversary of the Effective Date, unless renewed pursuant to Paragraph 4(c) or terminated pursuant to Paragraph 4(d).
- (c) Renewals.
 - (1) Unless either Party objects in writing delivered to the other Party no later than one hundred twenty (120) days prior to the expiration of the fourteen (14)-year term established pursuant to Paragraph 4(b), the term of this Compact shall be renewed automatically for an additional period of seven (7) years.
 - (2) In the event either Party does timely object to the automatic renewal of the term of this Compact, the Parties shall meet promptly following the receipt of such written objection and use their best efforts to address the objecting Party's concerns through frequent and regular good faith

negotiations. In the event the objecting Party's concerns cannot be resolved within a period of one hundred twenty (120) days following the commencement of such negotiations, the Party may submit only the issue of the other Party's good faith in the renewal negotiations to the Party Dispute Resolution provisions set forth in Paragraph 14; provided, however, that during the pendency of dispute resolution, the terms of this Compact shall remain in effect.

(d) Early Termination.

- (1) Either Party may terminate this Compact at any time if any of the following occurs:
 - a. The IGRA is repealed;
 - b. The Nation adopts a referendum revoking the Nation's authority to conduct Class III Gaming; or,
 - c. The other Party commits a Material Breach.
- (2) To effectuate an elective termination pursuant to this subparagraph, the terminating Party shall serve notice of such termination upon the other Party in accordance with Paragraph 17(c), which notice shall be effective no earlier than six (6) months following the date on which the other Party receives such notice.

5. **NATION REGULATORY AUTHORITY**

- (a) General Responsibility. The SGA shall have responsibility for the on-site regulation of Class III Gaming undertaken by the Nation pursuant to this Compact. The SGA's authority and responsibility shall be as set forth in this Compact and its Appendices.
- (b) Specific Elements of SGA's Regulatory Responsibilities. The Nation shall ensure that the SGA regulates the Class III Gaming undertaken by the Nation pursuant to this Compact in a manner that ensures compliance with the provisions set forth in Appendix J.
- (c) Inspectors. SGA shall employ inspectors who shall be present in all Gaming Facilities during all hours of operation and who shall be under the authority of the SGA and not the Nation Gaming Operation.
- (d) Access. Such inspectors shall be afforded access to all areas of the Gaming Facilities during all hours of operation without notice.
- (e) Investigations. SGA inspectors shall have authority to investigate any matter relating to the regulation of the Nation's Class III Gaming operations pursuant to this Compact.
- (f) Provision of Reports; Process and Resolution of Disputes. The SGA shall cooperate with the SGO and shall make immediately available to the SGO all patron complaints, incident reports, gaming violations, surveillance logs,

and security reports. If a report indicates that a complaint, violation or incident has not been resolved, the report shall state what remedial steps have been or will be taken to resolve the matter. A follow-up report shall indicate the final disposition of the matter. If the SGO believes that the action or inaction taken by the SGA violates the provisions of this Compact or its Appendices, the Parties shall meet to settle the matter. If the Parties cannot agree, the Nation or the State may initiate the Party Dispute Resolution procedure set forth in Paragraph 14.

- (g) Fines. The SGA shall be empowered by Nation regulation to impose fines and other appropriate sanctions on the Nation Gaming Operation and its employees, licensees and vendors within the jurisdiction of the Nation for violations of this Compact and its Appendices. The SGA shall immediately notify the State, in writing of any fine or sanction imposed pursuant to this subparagraph.

- (h) Restriction on SGA. All SGA employees and officials, and Immediate Family Members of such employees and officials, shall have no financial interest in Class III Gaming undertaken by the Nation pursuant to this Compact, other than an interest that accrues solely by virtue of Nation citizenship. No SGA employee or official shall be employed by a person or entity required to be licensed pursuant to this Compact. This provision shall be in addition to, not in derogation of, any applicable Nation law regarding conflicts of interest.

- (i) Identification Badges. The SGA shall issue color-coded

identification badges to all SGO and other State personnel working at a Gaming Facility, which badges shall be worn by the SGO and other State personnel at all times when on the premises of the Gaming Facility. Such badges shall remain the property of SGA and must be returned at the conclusion of the official's work at the Gaming Facility.

6. **STATE RESPONSIBILITY.**

- (a) Generally. The SGO shall have responsibility to ensure Nation compliance with the terms of this Compact.
- (b) Officials. Those officials designated by the State to fulfill the role set forth in Paragraph 6(a) above shall collectively be known as the "SGO".
- (c) Access. For purposes of fulfilling its responsibilities as set forth in Paragraph 6(a), SGO shall be afforded immediate, unfettered access to all areas of the Gaming Facilities during all hours of operation without notice. SGO shall be afforded full access to areas of the Gaming Facilities in which money is counted or kept only when accompanied by SGA personnel, or when SGA otherwise provides permission. The State shall not cause to be present at the Gaming Facilities more employees than are reasonably necessary to carry out its responsibilities under Paragraph 6(a).
- (d) Notice of violations. The State shall promptly notify the Nation and the SGA of any alleged violations of this Compact with sufficient detail to allow the SGA to investigate and if necessary rectify the alleged violation.
- (e) Conduct of State personnel. SGO shall take all reasonable measures to avoid interfering with the conduct of Class III Gaming and related activities and operations of the Nation Gaming Operation.

- (f) Records Access. In fulfilling the State role under this Compact, SGO may request, and the SGA shall promptly provide during hours of operation, access to business and accounting records of its Class III Gaming activities; provided, however, that all records to which SGA provides access to SGO pursuant to this Paragraph 6(f) shall be subject to the provisions of Paragraph 15 (Confidentiality).
- (g) Investigations. The SGO shall have the authority to investigate any alleged violations of this Compact. The SGA and the Nation Gaming Operation shall cooperate with the SGO in such investigations.
- (h) Quarterly meetings. Representatives of SGA, the Nation Gaming Operation and SGO shall meet on a quarterly basis, unless otherwise agreed, to review past practices and examine methods to improve the regulatory and enforcement programs established pursuant to this Compact.
- (i) Restriction on SGO. SGO, and Immediate Family Members of such SGO, shall have no financial interest in Class III Gaming undertaken by the Nation pursuant to this Compact, other than an interest that accrues under State law solely by virtue of being a citizen of the State, or such interest that accrues under Nation law solely by virtue of Nation citizenship. SGO, and any Immediate Family Members of such SGO, shall not be employed by a person or entity required to be licensed pursuant to this Compact. This provision shall be in addition to, and not in derogation of, any applicable State law regarding conflicts of interest.

- (j) Cultural Exchange. The State agrees and understands that the Nation possesses its own unique social customs, traditions, laws, and history. In order to make SGO and State personnel working at, or in conjunction with, a Gaming Facility more aware of the Nation's culture, traditions, laws and history and for purposes of fostering an environment that is consistent therewith, the Nation may conduct periodic cultural seminars in a manner of its choosing for all such personnel. It shall be the policy of the Nation and the State that such employees attend such seminars.
- (k) Office space, parking. The SGA shall provide reasonable on-site office space at each Gaming Facility for use by SGO and for State personnel working at a Gaming Facility pursuant to this Compact. SGO and State personnel on official business may park at the nearest available parking space at the Nation's Gaming Facilities. The Nation Gaming Operation shall reserve at each Gaming Facility two parking spaces immediately adjacent to an entrance (other than the front entrance) to the Gaming Facility for use by State personnel in undertaking their duties under this Compact.

7. **LAW ENFORCEMENT MATTERS.**

- (a) Jurisdiction. Nothing in this Compact shall affect the law enforcement jurisdiction of the Nation or the State over the Nation's lands as provided by applicable law.

- (b) Nation Gaming Operation security personnel. The Nation Gaming Operation shall provide security personnel to protect each Gaming Facility, its employees, patrons and their property.

8. ACCOUNTING STANDARDS AND AUDITING REQUIREMENTS.

- (a) Books and records. The Nation Gaming Operation shall make and keep books and records that accurately and fairly reflect each day's transactions, including but not limited to receipt of funds, expenses, prize claims, prize disbursements or prizes liable to be paid, and other financial transactions of or related to the Nation's Gaming Facilities, so as to permit preparation of monthly and annual financial statements in conformity with Generally Accepted Accounting Principles as applied to the gaming industry and to maintain daily accountability. The Nation Gaming Operation's books and records shall be susceptible of an annual audit in accordance with this Compact, in accordance with Generally Accepted Accounting Principles. A chart of accounts, consistent with Appendix F shall be adopted.
- (b) Additional reports and records related to financial transactions. Upon SGA's request, the Nation Gaming Operation shall contemporaneously submit to SGO copies of all reports, letters, and other documents relating to its Class III Gaming activities filed with the National Indian Gaming Commission pursuant to 25 C.F.R. § 571.13. SGO shall maintain as strictly confidential all such reports, letters and documents in accordance with Paragraph 16.
- (c) Class III Gaming accounting and auditing procedures.
- (1) The Nation Gaming Operation shall, at its own expense, cause the annual financial statements of

the Gaming Facilities to be audited in accordance with Generally Accepted Auditing Standards as applied to audits for the gaming industry by a certified public accountant. Such audit may be conducted in conjunction with any other independent audit of the Nation, provided that the requirements of this Paragraph are met, and provided further that, the information in the audit not related to Class III Gaming shall not be requested by the SGO or provided by the SGA.

- (2) A copy of the current audited financial statement as it relates to the Nation's Class III Gaming activities, together with the report thereon of the Nation's independent auditor, shall be submitted on an annual basis to SGA not later than one hundred twenty (120) days following the end of the accounting period under review. Upon request by SGO, SGA shall promptly provide a copy of such current report to SGO.
- (3) Subject to the limitations set forth in Paragraph 8(c)(1) above, the Nation Gaming Operation shall require its independent auditor to render:
 - a. A report on the material weaknesses, if any, in accounting and internal controls.
 - b. A report expressing the opinion of the independent auditor based on his or her examination of the financial statements, on the extent to which the Nation's Class III

Gaming activities have followed in all material respects during the period covered by the examination, the system of accounting and internal controls adopted by the Nation. The independent auditor shall also make recommendations in writing regarding improvements in the system of accounting and internal controls as required by the National Indian Gaming Commission.

- (4) The Nation's independent auditor shall retain a copy of each audit report, together with copies of all engagement letters, management letters, supporting and subsidiary documents, and other work papers in connection therewith, for a period of not less than three (3) years.
- (5) The Nation Gaming Operation shall submit a copy of the reports required by Paragraph 8(c)(3) to SGA not later than one hundred twenty (120) days following the end of the accounting period under review or within thirty (30) days of receipt, whichever is earlier. Upon request by SGO, SGA shall promptly provide a copy of such current report to SGO.
- (6) Nothing herein shall be construed to affect the right of the SGO to request audits from SGA for the purpose of confirming compliance by the Nation Gaming Operation with the provisions of this Compact. All documents, materials, books and records reviewed and/or copied for purpose of such

audits shall be confidential in accordance with Paragraph 15 of this Compact. SGO shall bear the cost of such "additional audits" and such costs shall not be deemed "reimbursable expenses" for purposes of Paragraph 13.

9. PERSONAL INJURY REMEDIES FOR PATRONS; INSURANCE REQUIREMENTS.

- (a) Insurance requirements. During the term of this Compact, the Nation shall require the Nation Gaming Operation to obtain and maintain public liability insurance insuring the Nation Gaming Operation, its agents and employees against claims, demands or liability for bodily injury and property damages by or to a visitor at the Gaming Facilities arising out of or relating to the operation of the Gaming Facilities. Such liability insurance shall provide coverage of no less than five million dollars (\$5,000,000.00) per person and five million dollars (\$5,000,000.00) per occurrence, and shall cover both negligent and intentional torts.
- (b) Claims procedures. The Nation agrees that it will establish procedures applicable to the Gaming Facilities to govern the resolution of claims against the Nation Gaming Operation, its employees and agents that are covered by the insurance required pursuant to Paragraph 9(a). The procedures that the Nation will establish are set forth in Appendix H. It is understood that the Nation's agreement to this provision is not intended to and does not constitute a waiver of its sovereign immunity from suit with respect to any such claim.

10. INTEGRITY OF GAMING DEVICES.

(a) Designation of independent gaming test laboratory. The Nation Gaming Operation shall propose to the State, with supporting documentation, an independent gaming test laboratory that is competent and qualified to conduct scientific tests and evaluations of Gaming Devices and to otherwise perform the functions set out in the Paragraph 10. The selection of the independent gaming test laboratory is subject to this consent of the State, but the State shall not unreasonably withhold its consent if the independent gaming test laboratory holds a license in good standing in New Jersey, Nevada or Mississippi. If, at any time, any of the independent gaming test laboratory's licenses are suspended, terminated or subject to disciplinary action, the independent test laboratory shall discontinue its responsibility under this Paragraph 10 and the Nation Gaming Operation shall propose a new independent gaming test laboratory as provided herein.

(b) Testing and approval of Gaming Devices. The Nation Gaming Operation may not acquire or expose for play any Gaming Device unless:

(1) The manufacturer or distributor that sells, leases or distributes such Gaming Devices has obtained a Class III Gaming Service Enterprise License from the SGA; and

(2) The Gaming Devices, or a prototype thereof, have been tested, approved and certified by the

independent gaming test laboratory as meeting the requirements specified by this Compact, in accordance with the following process.

- (3) The Nation Gaming Operation shall provide, or require that the manufacturer provide, to the independent gaming test laboratory two (2) copies of each Gaming Device's illustrations, schematics, block diagrams, technical and operation manuals, program object and source codes, hexadecimal dumps (the compiled computer program represented in base 16 format), if any, and any other information requested by the independent gaming test laboratory. Upon consent of the manufacturer, the SGA shall also make all such materials available to the SGO, upon request, subject to Paragraph 15.
- (4) If requested by the independent gaming test laboratory, the Nation Gaming Operation shall require the manufacturer to transport not more than two (2) working models of a Gaming Device to a location designated by the laboratory for testing, examination or analysis. The independent gaming test laboratory shall provide to the Nation Gaming Operation and to the SGO a report that contains findings, conclusions and a certification that the Gaming Devices conform or fail to conform to the requirements specified by this Compact. If the independent gaming test laboratory determines that such Gaming Device fails to conform to such requirements, and if modifications can be made that would bring the Gaming Device into compliance, the

report may contain recommendations for such modifications.

- (5) The manufacturer or distributor shall assemble and install all Gaming Devices in a manner approved by the independent gaming test laboratory.

(c) Modifications of Gaming Devices.

- (1) No modification to the assembly or operations of any Gaming Device may be made after testing and certification unless the independent gaming test laboratory certifies to the SGA that the Gaming Device as modified conforms to the requirements specified by this Compact. All such proposed modifications shall be described in a written request made to SGA and the independent gaming test laboratory and promptly disclosed to the SGO. The request shall contain information describing the modification and the reason(s) therefor, and shall provide all documentation required by the independent gaming test laboratory. In emergency situations in which modifications are necessary to preserve the integrity of a Gaming Device, the independent gaming test laboratory is authorized to grant temporary certification of the modifications of up to thirty (30) days pending compliance with this Paragraph 10.
- (2) With respect to any modifications proposed to a Gaming Device, the Nation Gaming Operation shall

advise the SGO in writing of any such modification no less than ten (10) days prior to implementing the modification, and the SGO shall have the right to request that the SGA seek prompt testing and certification of the modification. However, the Nation Gaming Operation shall not be precluded from implementing such modification prior to any such request. The modification shall be withdrawn if the independent gaming test laboratory concludes that the modified Gaming Device fails to conform to the requirements specified by this Compact.

- (d) Conformity to technical standards. Before exposing a Gaming Device for play, the Nation Gaming Operation must first obtain and submit to the SGA a written certification from the manufacturer or distributor that upon installation each such Gaming Device placed at the Nation's Gaming Facilities: conforms precisely to the exact specification of the Gaming Device tested and approved by the independent gaming test laboratory; and operates and plays in accordance with the requirements specified in this Compact. SGA shall promptly provide a copy of such certification to SGO.

- (e) Ex parte communication. Neither Party shall communicate with the independent gaming test laboratory, whether in writing, or by telephone or otherwise, concerning the approval of the Gaming Devices without providing the other Party with a reasonable opportunity to participate in or respond to such communication, provided that disclosures of information under Paragraph 10(b)(3) above may not be made to SGO without the prior consent of the

manufacturer. The Nation Gaming Operation, SGA and the SGO, except as provided by Paragraph 10(b)(3) above, shall ensure that copies of all written communications sent to or received from the independent gaming test laboratory are provided immediately to the other Party.

- (f) Payment of independent gaming test laboratory fees. The Nation Gaming Operation shall be responsible for the payment of all original independent gaming test laboratory fees and costs, and fees for modifications made at SGA's request, in connection with the duties described in this Paragraph. SGO shall bear the cost of any duplicate or "random" testing initiated at the request of SGO. SGA shall provide to the SGO copies of all independent gaming test laboratory invoices and payments by the Nation Gaming Operation, which shall have the right to audit such fees.

- (g) Independent gaming test laboratory duty of loyalty. The Nation Gaming Operation shall inform the independent gaming test laboratory in writing that, irrespective of the source of its fees, the independent gaming test laboratory's duty of loyalty and reporting requirements run equally to the Nation Gaming Operation, SGA and to the SGO.

11. SITES FOR GAMING FACILITIES.

- (a) Subject to the provisions of this Paragraph 11, the Nation may establish Gaming Facilities:
- (1) in Niagara County, at the location in the City of Niagara Falls indicated on the map of downtown Niagara Falls attached as Appendix I, or at such other site as may be determined by the Nation in the event the foregoing site is unavailable to the Nation for any reason; and
 - (2) in Erie County, at a location in the City of Buffalo to be determined by the Nation, or at such other site as may be determined by the Nation in the event a site in the City of Buffalo is rejected by the Nation for any reason; and
 - (3) on current Nation reservation territory, at such time and at such location as may be determined by the Nation.
- (b) With respect to the sites referenced in subparagraphs 11(a)(1) and 11(a)(2):
- (1) The sites shall be utilized for gaming and commercial activities traditionally associated with the operation or conduct of a casino facility;
 - (2) The State agrees to assist the Nation in acquiring the site set forth in Appendix I within the limits of the Seneca Settlement Act funds that the Nation

has committed to the acquisition of such site;

- a. No later than thirty (30) days after the execution of this Compact by both Parties, the State, through the Empire State Development Corporation ("ESDC") or otherwise, shall transfer fee title to the Niagara Falls Convention Center and such other property as the State may own within the boundaries of the parcel identified in Appendix I in fee simple to the Nation in consideration of a payment from the Nation of one dollar (\$1.00) in funds appropriated by the Seneca Settlement Act;
- b. The Nation shall lease back to the State the Niagara Falls Convention Center building for a period of twenty-one (21) years for an annual lease payment of one dollar (\$1.00);
- c. The State, in turn, shall lease to the Nation the Niagara Falls Convention Center building for a period of twenty one (21) years for an annual lease payment of one dollar (\$1.00) until such time as the Nation constructs and begins operation of a permanent Gaming Facility in the Niagara Falls, at which time the Nation shall pay to the State the balance, as of July 1, 2002, of the general obligation bonds pledged in connection with the Niagara Falls Convention Center; and,

- d. The State shall assist the Nation in whatever manner appropriate, including the exercise of the power of eminent domain, to obtain the remaining lands described in Appendix I on the best economic terms possible. In the event the State does obtain all or part of the lands described in Appendix I through exercise of the power of eminent domain, it shall promptly convey such lands to the Nation at a price equal to the cost of acquisition.
- (3) The State shall support the Nation in its use of the procedure set forth in the Seneca Settlement Act, 25 U.S.C. §1774f(c), to acquire restricted fee status for the site described in Appendix I and any other site chosen by the Nation pursuant to Paragraphs 11(a)(1) and 11(a)(2), to which the State has agreed, such agreement not to be unreasonably withheld. For purposes of such support from the State, the State shall assist the Nation directly with the Department of the Interior, either in writing or in person, as the Parties deem appropriate and necessary to obtain expeditious action on the Nation's notifications under section 1774f(c) of the Seneca Settlement Act and on any other application made by the Nation to obtain requisite approvals.
- (4) The Nation agrees that it will use all but five million dollars (\$5,000,000.00) of the funds remaining from amounts appropriated by the Seneca Settlement Act to acquire the parcels in the City

of Niagara Falls and the City of Buffalo.

- (c) The Nation agrees that it will dedicate Seneca Settlement Act funds remaining after the acquisition of the sites referenced in Paragraph 11(a)(1) and 11(a)(2) to the acquisition of parcels to meet the housing needs of the Nation's members. Unless otherwise agreed by the Parties, such housing parcels shall be physically and immediately contiguous and adjacent to either: (i) an existing reservation of the Nation, or (ii) the sites referenced in Paragraph 11(a)(1) and 11(a)(2) if actually acquired. The State shall support the Nation in development of such housing projects and shall support any notification made by the Nation under section 1774f of the Seneca Settlement Act for a housing development for Nation members.
- (d) The Parties agree that host municipalities should be compensated to be able to adjust to the economic development expected to result from the Gaming Facilities authorized under this Compact. Consistent with this goal, the State shall reach financial agreements with the host municipal governments, and any payments made pursuant to such agreements shall be made by the State.

12. EXCLUSIVITY AND STATE CONTRIBUTION.

(a) Exclusivity.

- (1) Subject to subparagraphs 12(a)(2) and 12(a)(3), the Nation shall have total exclusivity with respect to the installation and operation of, and no person or entity other than the Nation shall be permitted to install or operate, Gaming Devices, including slot machines, within the geographic area defined by:
 - (i) to the east, State Route 14 from Sodus Point to the Pennsylvania border with New York;
 - (ii) to the north, the border between New York and Canada;
 - (iii) to the south, the Pennsylvania border with New York;
 - and (iv) to the west, the border between New York and Canada and the border between Pennsylvania and New York.

- (2) In the event the Tuscarora Indian Nation or the Tonawanda Band of Seneca Indians initiate negotiations with the State to establish a Class III Gaming compact, the State may agree to include Gaming Devices in any such compact that permits gaming facilities within the geographical area of exclusivity set forth in Paragraph 12(a)(1) without causing a breach of this Paragraph 12; (i) provided, however, that in no event shall the State permit another Indian nation to establish a Class III Gaming facility within a twenty five (25) mile radius of any Gaming Facility site authorized under this Compact unless such facility is to be established on federally recognized Indian lands

existing as of the Effective Date of this Compact.

- (3) The exclusivity granted under Paragraph 12(a)(1) shall cease to apply with respect to any one of the sites authorized under this Compact: (i) if the Nation fails to commence construction on such site with thirty six (36) months of the Effective Date; or (ii) if the Nation fails to commence Class III Gaming operations on such site within sixty (60) months of the Effective Date.
- (4) With the exception of a violation of the proviso set forth in Paragraph 12(a)(2)(i), the Nation's obligation to pay and the State's right to receive the State Contribution from the operation and conduct of a particular category of Gaming Device as defined in Paragraph 1(m) shall cease immediately in the event of a breach by the State of the exclusivity provisions set forth in this Paragraph 12(a) only as to that particular category of Gaming Device for which exclusivity no longer exists.
- (5) With respect to a violation of the proviso set forth in Paragraph 12(a)(2)(i), the Nation's obligation to pay and the State's right to receive the State Contribution shall cease immediately as to all categories of Gaming Devices.

(b) State Contribution.

- (1) In consideration of the exclusivity granted by the State pursuant to Paragraph 12(a), the Nation agrees to contribute to the State a portion of the proceeds from the operation and conduct of each category of Gaming Device for which exclusivity exists, based on the net drop of such machines (money dropped into machines, after payout but before expense) and totaled on a cumulative quarterly basis to be adjusted annually at the end of the relevant fiscal year, in accordance with the sliding scale set forth below ("State Contribution"):

Years 1-4

18%, with "Year 1" commencing on the date on which the first Gaming Facility established pursuant to this Compact begins operation, and with Payments during this initial period are to be made on an annual basis.

Years 5-7

22%, with payments during this period to be made on a semi-annual basis.

Years 8-14

25%, with payments during this period to be made on a quarterly basis.

- (2) In the event the States reaches a compact with

another Indian tribe regarding Gaming Devices of a like kind that has State contribution provisions that are more favorable to the Indian tribe than those set forth herein, the terms of such other compact shall be automatically applicable to this Compact at the Nation's option.

- (3) Any dispute regarding a payment by the Nation of the State Contribution must be raised within one (1) year of the receipt by the State of the audited financial statements required pursuant to Paragraph 8(c)(2).

13. REIMBURSEMENT FOR STATE COSTS OF OVERSIGHT.

Pursuant to Section 2710(d)(3)(c)(iii) of the IGRA, the Nation shall reimburse the State for certain costs associated with the oversight of this Compact, as set forth in Appendix G.

14. PARTY DISPUTE RESOLUTION.

- (a) Purpose. The Nation and the State intend to resolve disputes in a manner that will foster a spirit of cooperation and efficiency in the administration of and compliance by each Party with the provisions of this Compact.
- (b) Negotiation. In the event of any dispute, claim, question, or disagreement arising from or relating to this Compact or the breach hereof, the Parties shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, either Party may provide written notice of a claim to the other. Upon receipt of such written notice, the Parties shall then meet within fourteen (14) days, shall negotiate in good faith and shall attempt to reach a just and equitable solution satisfactory to both Parties.
- (c) Method of dispute resolution. If the Parties do not reach such solution within a period of thirty (30) days after such meeting, or if the Parties fail to meet and thirty (30) days pass after the written notice of a claim is received, then, upon notice by either Party to the other, either Party may submit the dispute, claim, question, or disagreement to binding arbitration.
- (d) Arbitration notice. The notice for arbitration shall specify with particularity the nature of the dispute, the particular provision of the Compact at issue and the proposed relief sought by the Party demanding arbitration; provided, however, that neither Party may

seek monetary damages for any alleged dispute, claim, question or disagreement.

- (e) Selection of arbitrators. Each Party shall select one arbitrator and the two arbitrators shall select the third.
- (f) Procedures for arbitration. Arbitration under this Paragraph shall be conducted in accordance with the rules of the American Arbitration Association or such other rules as the Parties may mutually agree.
- (g) Arbitration costs. The cost of the arbitration shall be shared equally by the Parties, but the Parties shall bear their own costs and attorneys' fees associated with their participation in the arbitration.
- (h) Remedies. The arbitrators shall exempt the Nation from the payment of the State Contribution for any breach of the State's commitments to exclusivity as set forth in Paragraph 12(a). For Material Breaches, the arbitrators may impose as a remedy only specific performance or termination of the Compact. For all other breaches other than Material Breaches, the arbitrators may impose as a remedy only specific performance. In no event shall monetary damages, other than specific performance, be available as a remedy to either Party for any alleged breaches of this Compact, including Material Breaches. An arbitration award against the Nation for specific performance that entails the payment of money to the State shall be satisfied solely and exclusively from the revenues of the Nation's Class III Gaming Facilities

operated pursuant to this compact. Either Party may apply to the arbitrators seeking injunctive relief for an alleged violation of this Compact, and with respect to the relevant site, until the arbitration award is rendered or the controversy is otherwise resolved.

- (i) Arbitration decision. The decision of the arbitrators shall be final, binding and non-appealable. Failure to comply with the arbitration award within the time specified therein for compliance, or should a time not be specified, then forty-five (45) days from the date on which the arbitration award is rendered, shall be deemed a breach of the Compact. The prevailing party in an arbitration proceeding may bring an action solely and exclusively in the U.S. District Court for the Western District of New York to enforce the arbitration award and the Parties agree to waive their sovereign immunity solely and exclusively for the strictly limited purpose of such an enforcement action in such court and for no other purpose.

15. CONFIDENTIALITY.

- (a) Purpose. The confidentiality provisions of this Paragraph 15 are necessary to ensure ongoing and candid disclosure of information by the Parties to each other as required by this Compact.

- (b) Nation disclosure. The Nation agrees that the Nation Gaming Operation will provide promptly records and information relating to its Class III Gaming operations to the SGO solely for oversight of the State Contribution on the condition that the State agrees that the access to and use of such documents and information is strictly limited to this purpose. The State shall maintain all such documents and information strictly confidential. The State shall promptly provide to the SGA any records or information relevant to SGA's responsibilities under this Compact.

- (c) Nation records. All records of the Nation Gaming Operation that are provided to the State under this Compact, and all information contained in such records, are confidential and proprietary information of the Nation. All such records, and copies of such records, shall remain the property of the Nation, irrespective of their location. All Nation records used by the State shall be returned to the Nation after the State's use of said records has ended.

- (d) State records. All records of the State that are provided to the Nation under this Compact, and all information contained in such records, are confidential and

proprietary information of the State. All such records, and copies of such records, shall remain the property of the State, irrespective of their location. All State records used by the Nation shall be returned to the State after the Nation's use of said records has ended.

- (e) Non-disclosure. The Nation and the State agree that all records of the Nation received by the State are exempt from disclosure under the New York Freedom of Information Law (Public Officers Law, sec. 84 *et seq.*). This Compact, as provided for under IGRA, establishes the federal legal standards for matters pertaining to Class III Gaming by the Nation and therefore preempts any State records law, including the New York Freedom of Information Law, with respect to records and information provided in accordance with this Compact. The State shall legally defend against disclosure under any applicable law of information provided by the Nation pursuant to this Compact.

- (f) Limited exceptions to policy of non-disclosure. The State may not disclose any records or documents provided by the Nation's Gaming Operation or SGA under this Compact; provided, however, that disclosure to a Nation, federal or state criminal agency pursuant to a duly authorized warrant of the U.S. District Court in the context of an ongoing criminal investigation may be made without the prior written consent of the Nation.

- (g) Notice to Nation. Notwithstanding Paragraph 15(e) above, the State shall provide prompt notice to the Nation's Gaming Operation of any other request or proposed form of

order relating to the disclosure of records provided by the Nation under this Compact. Except where ordered by a duly authorized U.S. District Court warrant, the State shall not disclose any such records, to a court or otherwise, without first providing the Nation with an opportunity to challenge the request for the records and to seek judicial relief to prevent disclosure.

16. AMENDMENT AND MODIFICATION.

- (a) Amendment and modification. The provisions of this Paragraph 16 shall govern the amendment and modification of this Compact. The Compact and its Appendices may be amended or modified by written agreement of the Nation and the State.
- (b) Compact revisions. A request to amend or modify the Compact by either Party shall be in writing, specifying the manner in which the Party requests the Compact to be amended or modified, the reason(s) therefor, and the proposed language. Representatives of the Parties shall meet within thirty (30) days of the request and shall expeditiously and in good faith negotiate whether and on what terms and conditions the Compact will be amended or modified. A request by the Nation to amend or modify any provision of the Compact shall be deemed a request to enter into negotiations for the purpose of entering into a Nation-State Compact subject to the provisions of 25 U.S.C. §2710(d); provided, however, that neither such request nor such negotiations shall be deemed to amend or modify the terms or effectiveness of this Compact unless, and then only to the extent that, modifications or amendments are agreed in writing by the Parties; provided, further, that any impasse in such negotiations shall not operate to terminate or invalidate this Compact.
- (c) Appendices provisions.
- (1) Automatic amendments. If the State (i) makes

lawful a Class III Gaming game not authorized to be conducted for any purpose by any person, organization or entity on the Effective Date of this Compact and the SGO adopts specifications for such game, or (ii) enters into a compact with any Indian tribe or nation governing the conduct of Class III Gaming game not authorized to be conducted by the Nation Gaming Operations under this Compact, and setting forth specifications for such game, then the State shall give the Nation Gaming Operation written notice of such action within thirty (30) days, identifying the game and its specifications. If the Nation Gaming Operation accepts such game and its specifications, it shall notify the State in writing and a corresponding amendment shall be made to the appropriate appendices hereunder to authorize the Nation Gaming Operation to conduct such games. If the Nation Gaming Operation submits its own specifications for such game, the State shall within thirty (30) days notify the Nation Gaming Operation that it has accepted or rejected the Nation Gaming Operation's proposed specifications. Failure to act within thirty (30) days shall be deemed a rejection of the proposed amendment. If the State accepts the Nation Gaming Operation's proposed specifications, amendments and modifications shall be made to the appropriate Appendices. If the State rejects the Nation Gaming Operation's proposed specifications, the Nation may commence arbitration as specified in this Compact solely on the issue of the State's good faith in its consideration of the Nation

Gaming Operation's proposed specifications.

- (2) Other amendments. The Nation Gaming Operation may make a request to amend or modify specifications for a currently approved game by submitting proposed amended or modified specifications in writing to the State. The State shall within thirty (30) days notify the Nation Gaming Operation that it has accepted or rejected the Nation Gaming Operation's proposed specifications. Failure to act within thirty (30) days shall be deemed a rejection of the proposed amendment. If the State accepts the Nation Gaming Operation's proposed specifications, the appropriate amendments and modifications shall be made to Appendices. If the State rejects the Nation Gaming Operation's proposed specifications, the Nation may commence arbitration as specified in this Compact on the issue of the State's good faith in its consideration of the Nation Gaming Operation's proposed specifications.
- (3) Except as provided in Paragraphs 16(c)(1) and 16(c)(2) above, if a Party seeks to amend or modify a provision of any of the Appendices to this Compact, it shall notify the other Party in writing. The Party receiving such notice shall within thirty (30) days notify the Party requesting the amendment or modification that it accepts or rejects the proposed amendment or modification. If the proposed amendment or modification is accepted, it shall be effective upon the written acceptance

of the other Party. If the proposed amendment or modification is rejected, the Party proposing it may commence arbitration as specified in this Compact on the issue of the State's good faith in considering the Nation's proposed amendment or modification.

17. MISCELLANEOUS.

(a) Calculation of time. In computing any period of time prescribed by this Compact or any laws, rules or regulations of the Nation, the day of the event from which the designated period of time begins to run shall not be included. A calendar day includes the time from midnight to eleven fifty-nine and fifty-nine seconds past meridian. Periods of less than ten (10) days shall be construed as business days. Periods of eleven (11) days or more shall be construed as calendar days.

(b) Severability.

(1) Except for Paragraph 3, if any Paragraph or provision of this Compact is held invalid by a federal court, or its application to a particular activity is held invalid, it is the intent of the Parties that the remaining Paragraphs and provisions, and the remaining applications of such Paragraphs and provisions, shall remain in full force and effect.

(2) Application of the provisions of Paragraph 12(a)(4), terminating the State Contribution in the event of the State's breach of its exclusivity obligation under Paragraph 12(a), shall not affect the validity of any other provision of this Compact.

(c) Official notices and communications.

All notices and communications required or authorized to be served in accordance with this Compact shall be served by Certified Mail at each of the following addresses:

Seneca Nation of Indians

Nation President
Seneca Nation of Indians
P.O. Box 231
Salamanca, New York 14779

Nation President
Seneca Nation of Indians
Route 438
Irving, New York 14081

Seneca Gaming Agency

State of New York

Governor
State of New York
The Capitol
Albany, New York 12224

State Gaming Officials

New York State Wagering Board
1 Watervliet Avenue Extension, Suite 2
Albany, New York 12206

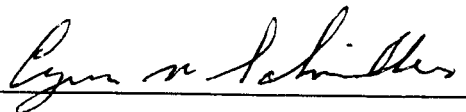
or to such other address or addresses as either the

Nation or the State may from time to time designate in writing.

- (d) Further assurances. The Parties shall execute and deliver all further instruments and documents and take any further action that may be reasonably necessary to implement the intent and the terms and conditions of this Compact. Without limitation of the foregoing, consistent with the MOU, the Parties will jointly seek, in a timely manner, any further ratification of this Compact that may be required.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date indicated below.

DATE: 8-18-02



PRESIDENT
SENECA NATION OF INDIANS

DATE: Aug 18, 2002



GOVERNOR
STATE OF NEW YORK

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