

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

CONFERENCE COMMITTEE SUBSTITUTE  
FOR ENGROSSED  
SENATE BILL NO. 553

By: Hobson of the Senate

and

Adair, Kirby, Ferguson,  
Pettigrew, Dank, Pope,  
Stanley, Maddux and  
Smithson of the House

CONFERENCE COMMITTEE SUBSTITUTE

An act relating to amusements and sports; creating the State-Tribal Gaming Act; providing short title; providing conditional authority for the Oklahoma Horse Racing Commission to license certain entities to conduct electronic gaming; clarifying legality of certain conduct; providing conditions and restrictions for electronic gaming; authorizing promulgation of certain rules; limiting number of games for which entities may be licensed; providing for revocation of license; prohibiting adoption of certain ordinances; defining term; providing for distribution of certain revenues; requiring application for race dates to include certain agreements; requiring certain licensees to conduct minimum number of races; providing for modification of required number of races; providing for effective date of certain requirements; authorizing approval of transfer of certain monies; authorizing certain simulcast races; providing for representatives for horsemen; providing for agreements between organization licensees and breed representatives; defining terms; providing technical requirements for the conduct of certain games; describing procedures for operation of certain games; requiring certain data be available to the Oklahoma Horse Racing Commission; requiring certain features on certain games; providing requirements for component parts of certain games; establishing requirements for cashless transaction system; requiring certification of games by independent testing laboratory; providing procedures for certification; providing for a compact with federally recognized Indian tribes; providing procedures for entering into compact; construing certain provisions of law; establishing terms and conditions of model agreement; defining terms; authorizing certain games; providing for rules and regulations; providing procedures for bringing certain tort claims and certain prize claims; providing for enforcement of agreement; providing for monitoring of agreement; providing for licensing of certain personnel; providing for the payment of certain fees; providing for dispute resolution;

providing for construction of agreement; providing for effective date and duration of agreement; amending 37 O.S. 2001, Sections 163.2 and 506, which relate to low-point beer and alcoholic beverages; modifying definitions; requiring promulgation of certain rules; providing for codification; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 211 of Title 3A, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "State-Tribal Gaming Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 212 of Title 3A, unless there is created a duplication in numbering, reads as follows:

A. If at least three Indian tribes enter into the model tribal-state compact set forth in Section 33 of this act, and such agreements are approved by the Secretary of the Interior and notice of such approval is published in the Federal Register, the Oklahoma Horse Racing Commission may license organization licensees as defined in the Oklahoma Horse Racing Act to conduct electronic gaming as that term is defined by this act pursuant to this act utilizing gaming authorized by this act subject to the limitations of subsection D of this section.

Notwithstanding the provisions of Sections 941 through 988 of Title 21 of the Oklahoma Statutes, the conducting of and participation in electronic gaming in accordance with the provisions of this act or a compact is lawful and shall not be subject to any criminal penalties.

B. Electronic gaming may only be conducted by an electronic gaming licensee on days when the licensee is either conducting live racing or is accepting wagers on simulcast races at the licensee's

racetrack facilities. In any week, electronic gaming may be conducted for not more than twelve (12) hours on any single day for not more than five (5) days and not more than sixteen (16) hours on any single day for not more than two (2) days. Electronic gaming may only be conducted by organization licensees at enclosure locations where live racing is conducted. Under no circumstances shall electronic gaming be conducted by an organization licensee at any facility outside the organization licensee's racing enclosure. No person who would not be eligible to be a patron of a pari-mutual system of wagering pursuant to the provisions of subsection B of Section 208.4 of Title 3A of the Oklahoma Statutes shall be admitted into any area of a facility when electronic games are played nor be permitted to operate, or obtain a prize from, or in connection with the operation of any electronic game, directly or indirectly.

C. The Oklahoma Horse Racing Commission shall be authorized to regulate any electronic gaming conducted by an organization licensee that is authorized by this act, which regulation shall include the obligation to promulgate any rules necessary to implement this act; provided, regulation and oversight of electronic gaming operated by an Indian tribe shall be governed solely pursuant to a compact.

D. In order to encourage the growth, sustenance and development of live horse racing in this state and of the state's agriculture and horse industries, the Commission is hereby authorized to issue licenses to conduct electronic gaming to no more than four (4) organization licensees operating racetrack locations at which horse race meetings with pari-mutuel wagering, as authorized by the Commission pursuant to the provisions of Title 3A of the Oklahoma Statutes, occurred in calendar year 2001, as follows:

1. An organization licensee operating a racetrack location at which a fair association is licensed to conduct a race meeting pursuant to the provisions of Section 208.2 of Title 3A of the Oklahoma Statutes may be licensed to operate not more than three

hundred fifty (350) player terminals in the first year, not more than four hundred (400) player terminals in the second year and not more than four hundred fifty (450) player terminals in any subsequent year;

2. An organization licensee operating a racetrack location at which an organization licensee is licensed to conduct a race meeting pursuant to the provisions of Section 205.2 of Title 3A of the Oklahoma Statutes located in a county with a population exceeding six hundred thousand (600,000) persons, according to the most recent federal decennial census, may be licensed to operate not more than five hundred fifty (550) player terminals in the first year, not more than six hundred fifty (650) player terminals in the second year and not more than seven hundred fifty (750) player terminals in any subsequent year;

3. An organization licensee operating a racetrack location at which an organization licensee is licensed to conduct a race meeting pursuant to the provisions of Section 205.2 of Title 3A of the Oklahoma Statutes located in a county with a population not exceeding one hundred thousand (100,000) persons, according to the most recent federal decennial census, and which was granted at least fifty (50) racing days by the Commission pursuant to the provisions of subsection C of Section 205.2 of Title 3A of the Oklahoma Statutes for calendar year 2003, may be licensed to operate not more than two hundred fifty (250) player terminals in any year; and

4. An organization licensee operating a racetrack location at which an organization licensee is licensed to conduct a race meeting pursuant to the provisions of Section 205.2 of Title 3A of the Oklahoma Statutes located in a county with a population not exceeding one hundred thousand (100,000) persons, according to the most recent federal decennial census, may be licensed to operate not more than two hundred (200) player terminals in any year.

An organization licensee may utilize electronic instant ticket games and electronic amusement games as defined in this act and any type of gaming machine or device which an Indian tribe in this state is authorized to utilize pursuant to an agreement entered into between the state and the tribe in accordance with the provisions of the Indian Gaming Regulatory Act. The use of such machines or devices shall be subject to the regulatory control and supervision of the Commission; provided, oversight and regulation of electronic gaming conducted by a tribe shall be solely subject to a compact. The Commission shall promulgate rules to regulate the operation and use of electronic gaming by organization licensees. In promulgating such rules, the Commission shall consider the provisions of any compact which authorizes such gaming by a tribe. For the purpose of paragraph 1 through 4 of this subsection, the number of player terminals in an electronic game that permits multiple players shall be determined by the maximum number of players that can participate in that game at any given time. Each organization licensee shall keep a record of, and shall report at least quarterly to the Oklahoma Horse Racing Commission, the number of games authorized by this section in the licensee's facility, by the name or type of each and its identifying number.

E. No zoning or other local ordinance may be adopted or amended by a political subdivision where an organization licensee conducts live horse racing with the intent to restrict or prohibit an organization licensee's right to conduct electronic gaming at such location.

F. For purposes of this act, "adjusted gross revenues" means the total receipts received by an organization licensee from the play of all electronic gaming minus all monetary prizes and payoffs.

G. Any organization license which is licensed to conduct electronic games pursuant to this act shall have such license revoked if the licensee operates or attempts to operate more

electronic games than are authorized by this act and the terms of the license.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 213 of Title 3A, unless there is created a duplication in numbering, reads as follows:

A. Each organization licensee described in paragraph 1, 3 or 4 of subsection D of Section 2 of this act shall distribute from the first Ten Million Dollars (\$10,000,000.00) of adjusted gross revenues generated by any gaming conducted pursuant to this act as follows:

1. Ten percent (10%) shall be remitted to the Oklahoma Tax Commission on the fifteenth day following the end of the month in which it was retained. One hundred percent (100%) of the revenue derived pursuant to this paragraph shall be apportioned monthly to the General Revenue Fund of the state for the support of state government, to be paid out only pursuant to appropriation by the Legislature;

2. Twenty-five percent (25%) shall be retained by the organization licensee to be distributed according to subsection H of this section; and

3. Sixty-five percent (65%) shall be retained by the organization licensee.

B. Each organization licensee described in paragraph 2 of subsection D of Section 2 of this act shall distribute from the first Ten Million Dollars (\$10,000,000.00) of adjusted gross revenues generated by any gaming conducted pursuant to this act as follows:

1. Ten percent (10%) shall be remitted to the Oklahoma Tax Commission on the fifteenth day following the end of the month in which it was retained. One hundred percent (100%) of the revenue derived pursuant to this paragraph shall be apportioned monthly to the General Revenue Fund of the state for the support of state

government, to be paid out only pursuant to appropriation by the Legislature;

2. Thirty percent (30%) shall be retained by the organization licensee to be distributed according to subsection H of this section; and

3. Sixty percent (60%) shall be retained by the organization licensee.

C. Each organization licensee shall distribute from retained adjusted gross revenues in excess of Ten Million Dollars (\$10,000,000.00) per calendar year but not to exceed Thirty Million Dollars (\$30,000,000.00) per calendar year generated from any gaming conducted pursuant to this act as follows:

1. Ten percent (10%) shall be remitted to the Oklahoma Tax Commission on the fifteenth day following the end of the month in which it was retained. One hundred percent (100%) of the revenue derived pursuant to this paragraph shall be apportioned monthly to the General Revenue Fund of the state for the support of state government, to be paid out only pursuant to appropriation by the Legislature;

2. Thirty percent (30%) shall be retained by the organization licensee to be distributed according to subsection H of this section; and

3. Sixty percent (60%) shall be retained by the organization licensee.

D. Each organization licensee shall distribute from retained adjusted gross revenues in excess of Thirty Million Dollars (\$30,000,000.00) per calendar year but not to exceed Forty Million Dollars (\$40,000,000.00) per calendar year generated by any gaming conducted pursuant to this act as follows:

1. Fifteen percent (15%) shall be remitted to the Oklahoma Tax Commission on the fifteenth day following the end of the month in which it was retained. One hundred percent (100%) of the revenue

derived pursuant to this paragraph shall be apportioned monthly to the General Revenue Fund of the state for the support of state government, to be paid out only pursuant to appropriation by the Legislature;

2. Thirty percent (30%) shall be retained by the organization licensee to be distributed according to subsection H of this section; and

3. Fifty-five percent (55%) shall be retained by the organization licensee.

E. Each organization licensee shall distribute from retained adjusted gross revenues in excess of Forty Million Dollars (\$40,000,000.00) per calendar year but not to exceed Fifty Million Dollars (\$50,000,000.00) per calendar year generated from any gaming conducted pursuant to this act as follows:

1. Twenty percent (20%) shall be remitted to the Oklahoma Tax Commission on the fifteenth day following the end of the month in which it was retained. One hundred percent (100%) of the revenue derived pursuant to this paragraph shall be apportioned monthly to the General Revenue Fund of the state for the support of state government, to be paid out only pursuant to appropriation by the Legislature;

2. Twenty-five percent (25%) shall be retained by the organization licensee to be distributed according to subsection H of this section; and

3. Fifty-five percent (55%) shall be retained by the organization licensee.

F. Each organization licensee shall distribute from retained adjusted gross revenues in excess of Fifty Million Dollars (\$50,000,000.00) per calendar year but not to exceed Seventy Million Dollars (\$70,000,000.00) per calendar year generated from any gaming conducted pursuant to this act as follows:



1. Twenty-five percent (25%) shall be remitted to the Oklahoma Tax Commission on the fifteenth day following the end of the month in which it was retained. One hundred percent (100%) of the revenue derived pursuant to this paragraph shall be apportioned monthly to the General Revenue Fund of the state for the support of state government, to be paid out only pursuant to appropriation by the Legislature;

2. Twenty-two and one-half percent (22 1/2%) shall be retained by the organization licensee to be distributed according to subsection H of this section; and

3. Fifty-two and one-half percent (52 1/2%) shall be retained by the organization licensee.

G. Each organization licensee shall distribute from retained adjusted gross revenues in excess of Seventy Million Dollars (\$70,000,000.00) per calendar year generated from any gaming conducted pursuant to this act as follows:

1. Thirty percent (30%) shall be remitted to the Oklahoma Tax Commission on the fifteenth day following the end of the month in which it was retained. One hundred percent (100%) of the revenue derived pursuant to this paragraph shall be apportioned monthly to the General Revenue Fund of the state for the support of state government, to be paid out only pursuant to appropriation by the Legislature;

2. Twenty percent (20%) shall be retained by the organization licensee to be distributed according to subsection H of this section; and

3. Fifty percent (50%) shall be retained by the organization licensee.

H. Each organization licensee shall remit, on the fifteenth day following the end of the month in which they were retained, an amount equal to nine percent (9%) of the funds generated pursuant to paragraph 2 of subsections A through G of this section to the

Oklahoma Horse Racing Commission for deposit in the Oklahoma Breeding Development Fund Special Account pursuant to Section 208.3 of Title 3A of the Oklahoma Statutes, to be distributed to the participating breeds as provided in paragraphs 1, 2 and 3 of this subsection.

Each organization licensee shall remit to the official horsemen's organization representing participating horsemen during the live race meets, on the fifteenth day following the end of the month in which they were retained, an amount equal to one and five-tenths percent (1.5%) of the funds generated pursuant to paragraph 2 of subsections A through G of this section on a pro rata basis based on the distribution of purse funds available to the breeds of horses participating in the live race meetings with one percent (1%) to be used for administrative expenses and five-tenths of one percent (0.5%) to provide funding for a benevolence program at each racetrack to benefit participating horsemen and their employees.

Each organization licensee shall remit to the breed organizations designated by the official horsemen's representative, on the fifteenth day following the end of the month in which they were retained, an amount equal to one percent (1%) of the funds generated pursuant to paragraph 2 of subsections A through G of this section on a pro rata basis based on the distribution of purse funds available to the breeds of horses participating in the live race meetings for funding to support the breed organizations dedicated to the promotion of breeding and racing horses in Oklahoma.

Subject to the provisions of subsection I of this section, the remainder of the funds generated pursuant to paragraph 2 of subsections A through G of this section shall be distributed by the organization licensee as purses for participating horse as follows:

1. For organization licensees that conduct one or more race meetings dedicated to Thoroughbred racing and one or more race meetings dedicated to Quarter Horse, Paint and Appaloosa horse

racing, fifty percent (50%) to purses for Thoroughbred races, and fifty percent (50%) to purses for Quarter Horse, Paint and Appaloosa races;

2. For each organization licensee licensed pursuant to Section 208.2 of Title 3A of the Oklahoma Statutes, fifty percent (50%) to purses for Thoroughbred races, forty percent (40%) to purses for Quarter Horse races and ten percent (10%) to purses for Paint and Appaloosa horse races; and

3. For all other organization licensees, forty-five percent (45%) to purses for Thoroughbred races, forty-five percent (45%) to purses for Quarter Horse races and ten percent (10%) to purses for Paint and Appaloosa horse races.

I. The percentage of purse money generated by an organization licensee that is designated for deposit to the Oklahoma Breeding Development Fund Special Account pursuant to subsection H of this section may be increased by an additional percentage that shall not exceed thirty-three percent (33%) of the total funds for participating horsemen upon the written application of the official horsemen's representative for each of the breeds of horses participating in a race meeting at the track.

All Oklahoma Breeding Development Fund Special Account monies generated pursuant to this section shall not be subject to a reduction pursuant to paragraph 7 of subsection B of Section 208.3 of Title 3A of the Oklahoma Statutes.

J. An organization licensee's annual application for race dates shall include any existing agreement between the organization licensee and the official horsemen's representative for each breed participating in the live racing meeting at that track which sets forth the thresholds whereby the minimum number of races will increase or decrease during that calendar year.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 214 of Title 3A, unless there is created a duplication in numbering, reads as follows:

A. Each organization licensee that is located in a county with a population of greater than four hundred thousand (400,000) according to the most recent Federal Decennial Census shall, for each year it conducts electronic gaming:

1. Conduct annually a race meeting restricted to Thoroughbred horses that provides no less than six hundred (600) races for Thoroughbred horses; and

2. Conduct annually a race meeting restricted to Quarter Horse, Paint and Appaloosa horses that provides no less than five hundred (500) races for Quarter Horse, Paint and Appaloosa horses within a period of twelve (12) consecutive weeks.

B. Each organization licensee that is located in a county with a population of less than four hundred thousand (400,000) according to the most recent Federal Decennial Census shall be required, for each year it conducts electronic gaming, to conduct annually no less than two hundred seventy (270) races for Thoroughbred horses, no less than two hundred seventy (270) races for Quarter Horses, and no less than sixty (60) races for Paint and Appaloosa horses.

C. Each organization licensee licensed pursuant to Section 208.2 of Title 3A of the Oklahoma Statutes shall, for each year it conducts electronic gaming, conduct annually no less than four hundred (400) total races, which shall include conducting no less than an average of four (4) races per day for Thoroughbred horses.

D. Notwithstanding the provisions of subsection H of Section 3 of this act, the Oklahoma Horse Racing Commission shall approve, upon joint application of the organization licensee and the official horsemen's representative organization that represents the horsemen for a given breed of horses participating in a given race meeting, a reduction or increase in the number of races to be conducted as

prescribed in this section. Any agreed-upon change to the number of races shall include specifying the number of races to be conducted each race day and the calendar days that the races will be conducted. For purposes of any agreements entered into pursuant to this section, a race day shall be not less than seven (7) races nor more than twelve (12) races unless all of the races on a particular day are time trial races.

E. Notwithstanding anything in this section to the contrary, the requirements set forth in this section shall become effective with the first race meeting that commences at each organization licensee following the initial six (6) months that the organization licensee commences electronic gaming as authorized by this act.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 215 of Title 3A, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Horse Racing Commission shall approve the transfer of purse money generated for races for Thoroughbred horses, races for Quarter Horses or races for Paint and Appaloosa horses pursuant to this section, by one organization licensee to another organization licensee, upon joint application of the organization licensee generating the purse money, the organization licensee receiving the transferred purse money and, in the case of a transfer of purse money for Thoroughbred racing, the official horsemen's representative organization that represents participating horsemen at the race meeting in Oklahoma County that is restricted to Thoroughbred horses, and in the case of a transfer of purse money for Quarter Horse, Paint and Appaloosa horse racing, the official horsemen's representative organization that represents participating horsemen at the race meeting in Oklahoma County that is restricted to Quarter Horses, Paint and Appaloosa horses. Purse money transferred to one organization licensee from purse money for a particular breed of horse generated by another organization licensee

shall only be used to supplement purses for that breed of horse. Notwithstanding the forgoing, any agreement for the transfer of purse money may be rescinded by order of the Commission if the Commission is petitioned by not less than two-thirds (2/3) of the licensed owners, owner/trainers and trainers of starters of the breed of horses during the most recently concluded meet for that breed of horses at the tracks affected by the transfer.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 216 of Title 3A, unless there is created a duplication in numbering, reads as follows:

Notwithstanding the provisions of Section 205.7 of Title 3A of the Oklahoma Statutes, an organization licensee may conduct, for any year in which the organization licensee meets the requirements to conduct electronic gaming, an unlimited number of out-of-state full card simulcast races for an unlimited number of days during that calendar year.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 217 of Title 3A, unless there is created a duplication in numbering, reads as follows:

For purposes of this Act, the organization elected by horsemen that is, in 2003, providing representation for participating Thoroughbred horsemen at meets restricted to Thoroughbred horses only shall be the official representative of all Thoroughbreds participating in live race meets conducted by an organization licensee. The organization elected by horsemen that is, in 2003, providing representation for the breeds participating in mixed breed racing shall be the official representative of all non-Thoroughbreds participating in live race meets conducted by an organization licensee.

Organization licensees shall negotiate and covenant with the official representative for each breed participating at any race meeting as to the conditions for each race meeting, the distribution

of commissions and purses not governed by statutory distribution formulae, simulcast transmission and reception, off-track wagering, all matters relating to welfare, benefits and prerogatives of the participants in the meet, and any other matter required as a matter of law or necessity. During race meets at which there is more than one official representative for horsemen, each official representative association will designate an equal number of horsemen to serve on a single committee that will periodically meet with the organization licensee to discuss and facilitate track management operations. Any participating horsemen may with written notice filed with the track's horsemen's bookkeeper elect to opt out of representation by the above-referenced organizations. In the event more than fifty percent (50%) of the total participating horsemen for a single breed opt to be excluded, the Commission may determine that an election be held among all participating horsemen of that breed to designate an alternate representative organization.

The official horsemen's representative organizations, and any breed organizations receiving funding as a result of this act shall provide the Commission annually with a complete financial accounting for the use of all funds received pursuant to this act. The official horsemen's representative organization shall administer the benevolence program for participants in each live race meeting and a complete accounting of those funds along with the guidelines for administration and determination of eligibility for the benevolence program are subject to approval by the Commission.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 220 of Title 3A, unless there is created a duplication in numbering, reads as follows:

As used in Sections 8 through 22 of this act:

1. "Central computer" means a computer which stores and dispenses electronic instant tickets from instant ticket subsets

which have been loaded into it from a manufacturing computer and are maintained in a secure manner;

2. "Electronic accounting system" means a computer system that provides a secure means to receive, store and access data and record critical functions and activities, as set forth in this act;

3. "Electronic amusement game" means a game that is played in an electronic environment in which a player's performance and opportunity for success can be improved by skill;

4. "Electronic gaming" means the electronic amusement game or the electronic instant ticket game described in this act;

5. "Electronic instant ticket" means a predetermined winning or losing outcome in electronic form. Each electronic instant ticket represents a chance from among the finite set of chances that comprise an electronic instant ticket game set;

6. "Electronic instant ticket game" or "game" means an instant ticket game that is played in an electronic environment utilizing hardware and software to manufacture, store, distribute, sell display or dispense electronic instant tickets and prizes awarded thereon;.

7. "Electronic instant ticket game set" or "game set" means a finite set of electronic instant tickets that is based on a template that has been designed in accordance with a specific set of rules, including the basic requirements of this section, governing the structure of an electronic instant ticket game. Based on that template, an electronic instant ticket game set is created in a manufacturing or central computer in a secure and verifiable electronic form prior to the play of an electronic instant ticket game. Each electronic instant ticket game set shall be uniquely identifiable, by serial number or otherwise, so that it can be distinguished from other game sets manufactured from the same template;



8. "Electronic instant ticket game subset" or "subset" means a defined group of electronic instant tickets that has been randomly selected from an electronic instant ticket game set and manufactured and stored on, or transmitted to a central computer in a fixed order for play. Each electronic instant ticket game subset shall be uniquely identifiable from all other subsets selected from the same game set;

9. "Game play credits" means a method of representing value obtained from the exchange of cash or cash equivalents, or earned as a prize, in connection with electronic gaming. Game play credits may be redeemed for cash or a cash equivalent;

10. "Manufacturing computer" means a computer which creates electronic instant ticket game sets, randomly allocates tickets into electronic instant ticket subsets, and delivers them to a central computer. The functions of a manufacturing computer may be combined, physically or electronically, with those of a central computer;

11. "Player terminals" means electronic computer terminals housed in cabinets with input devices and video screens and with which players play electronic instant ticket games and electronic amusement games. Player terminals shall not be capable of playing gambling games as stand-alone devices; and

12. "Electronic instant ticket system" means any electronic instant ticket system operated pursuant to this section.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 218 of Title 3A, unless there is created a duplication in numbering, reads as follows:

Electronic instant ticket games authorized by this act shall only be conducted by a system which utilizes player terminals with video displays and which allow players to purchase electronic instant tickets and obtain game result information. Such system shall also utilize a computer to securely create a finite set of

chances ("electronic instant tickets") used in the games, a computer to store and transmit game information, and an electronic central security and accounting system. In electronic instant ticket games, preexisting electronic instant tickets may be dispensed in an electronic format to players through the player terminals on an on-demand basis. The system and games described and authorized herein shall comply with the technical provisions set forth herein.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 219 of Title 3A, unless there is created a duplication in numbering, reads as follows:

Players commence electronic games on player terminals by inserting coins, currency, credits displayed on the player terminal which were earned as prizes from prior play and not redeemed, or credit obtained through a cashless transaction system. The cashless transaction system may permit a player to play electronic instant ticket games without inserting cash (coins, tokens or paper currency) into, and to win prizes without receiving cash from, the player terminal. The cashless transaction system shall include the following components:

1. The electronic system;
2. One or more of the following:
  - a. plastic, cardboard, magnetic, or "smart" cards,
  - b. paper,
  - c. personal identification ("PIN") numbers,
  - d. game play credits obtained from the exchange of cash or cash equivalents,
  - e. game play credits displayed on the player terminal which were earned as prizes from prior play and not redeemed, or
  - f. other means for effectuating play and awarding prizes without inserting or dispensing cash into or from the terminal;

3. A means of accounting for player deposits of cash or cash equivalents and exchanges for and redemption of game play credits through a player's account, a voucher system, or a "smart" card or similar device for recording individual player data; and

4. A means by which players can redeem unused game play credits for cash or cash equivalents.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 221 of Title 3A, unless there is created a duplication in numbering, reads as follows:

A. The electronic game known as the electronic instant ticket game consists of a finite number of electronic instant tickets, a certain number of which, if drawn, entitle a player to prize awards at various levels. The electronic instant tickets are designed from a template in conformity with this section and are created in game sets on a manufacturing computer from which electronic instant tickets are randomly selected and placed into electronic instant ticket subsets. Each game set has a predetermined number of winners and values. As a game set's tickets are placed into subsets, the pool of tickets available from that game set for placement into subsets diminishes, until each ticket in the game set has been placed into a subset.

B. Electronic instant ticket subsets are transmitted to the central computer, where they are stored until dispensed electronically on demand to player terminals. Electronic instant tickets are electronically dispensed from the central computer in the order within each subset in which the tickets were received. Players compete against each other to draw winning tickets. As subsets are used they are replaced by additional subsets which have been created and delivered to the central computer in the same manner, until the game set has been depleted, ending that particular game. Different games based on different game sets may be offered simultaneously through the central computer.

C. A player initiates participation in an electronic instant ticket game at a player terminal, using cash, currency or game play credits. The use of cash or currency will result in the display on the terminal of game play credits of equivalent value. The monitor displays one or more of the electronic instant ticket games that are offered by the system, as well as other information such as graphics, game play and outcome information, and entertainment effects, subject to the limitations in subsections E and F of this section. The player chooses a particular game by touching the screen, pressing a button, or performing some other form of interaction with the player terminal.

D. Following the player's selection of a game or games, the player uses the game play credits displayed on the player terminal to purchase one or more electronic instant tickets. Wagers are deducted from the game play credits displayed on the player terminal.

E. Prize structures, ticket purchase and selection, and wager information is displayed on the player terminal with respect to any game which is being played through that terminal.

F. After the player purchases an electronic instant ticket it is dispensed to the player terminal, and its outcome is then revealed on the terminal screen. Any prizes won are displayed on the player terminal and may be in the form of game play credits, the right to receive merchandise, cash, or other valuable property.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 222 of Title 3A, unless there is created a duplication in numbering, reads as follows:

Game play credits earned as prizes in any electronic game remain displayed and available for use in further play from that terminal until removed by a player, either in cash or through the cashless transaction system.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 223 of Title 3A, unless there is created a duplication in numbering, reads as follows:

A. Each electronic instant ticket game shall meet the following minimum requirements:

1. Each game set shall be made up of a finite number of electronic instant tickets;

2. All electronic instant tickets in a particular game set shall be of the same purchase price, but a single ticket may offer more than one opportunity to win a prize on the same wager;

3. Each game set shall be assigned a unique serial number; and

4. Each ticket shall have a specific outcome and prize level associated with it.

B. Prior to commencement of play, the game set shall be verified as to the total number of tickets in the set and the number of winners at each prize level, including the amounts of such prizes, and the number of non-winners. The verification standards which the game set must meet are those set forth in Sections 14 and 15 of this act.

C. Following verification of the game set, the manufacturing computer shall create ordered electronic instant ticket subsets on demand from the central computer and transmit the ordered subsets to it.

D. Each electronic instant ticket game subset shall meet the following minimum requirements:

1. Within a given game set, each subset shall be the same size and comprised of no less than five thousand (5,000), and no more than ten thousand (10,000), electronic instant tickets, provided that in order to complete the distribution of all tickets in a game set, the final subset derived from the Set may have less than the number of tickets in any other subset and be less than five thousand (5,000);

2. Each subset shall be individually and uniquely identified by the game set serial number and unique serial number for each subset assigned in the order in which the subsets are created;

3. Electronic instant tickets shall be dispensed from two or more subsets of a given game set which have been securely stored in the central computer and which subsets are rotated on a fixed and sequential, and not random basis;

4. Electronic instant tickets shall be dispensed from a subset in the order in that subset in which they were held in the central computer; and

5. Once an electronic instant ticket has been dispensed to a player terminal from a subset, it cannot be dispensed again.

E. An electronic instant ticket game is deemed to be completed only when all of the electronic instant tickets in a game set have been dispensed or the game set has been taken out of play.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 224 of Title 3A, unless there is created a duplication in numbering, reads as follows:

A. The following data shall be available to the Oklahoma Horse Racing Commission prior to the commencement of an electronic instant ticket game and shall be maintained and be viewable both electronically and if requested, by printed report, upon demand:

1. A unique identifying game set serial number;

2. A description of the game set theme sufficient to categorize the game set relative to other game sets;

3. The number of total electronic instant tickets in the game set;

4. The number of electronic instant ticket subsets to be created from the game set, and the number of tickets in each set;

5. The payout percentage of the entire game set;

6. The payout table for the game set and the number of electronic instant tickets at each level of the payout table;

7. The purchase price per ticket assigned to the game set;

8. The date and time that the game was stored on the manufacturing computer; and

9. Such further information as the Commission may reasonably require to assure the integrity and accuracy of the foregoing information.

B. Following the completion of an electronic instant ticket game, the following data shall be available to the Commission and shall be maintained and viewable both electronically and if requested, by printed report, upon demand:

1. The game set and game subsets serial numbers;

2. The total number of electronic instant tickets unsold, if the game is removed from play;

3. The total number of electronic instant tickets at each prize or other game category level, that were dispensed by the central computer to player terminals, and the total number of tickets in each such category that were sold at each player terminal;

4. The time and date that each subset was transmitted to the central computer;

5. The time and date that the game was completed or removed from play;

6. The final payout percentage of the game; and

7. The sequence in which each ticket was dispensed from each subset.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 225 of Title 3A, unless there is created a duplication in numbering, reads as follows:

A. For auditing and security purposes, an electronic ticket system shall include and have available to the Oklahoma Horse Racing Commission a secure software tool to audit each game set and subset which provides the same data as set forth in Section 19 of this act, provided that such tool shall be used only during authorized audits

of electronic ticket system games and operations, or in cases of player disputes, and shall not be used for any other purpose without the consent of the Commission.

B. In order to provide maximum game integrity, no audit or other determination of the status of any game set or any subset, including but not limited to a determination of the prizes won or prizes remaining to be won, shall be conducted by anyone, including the Commission, while a subset is in play without causing termination of the entire game set from which the subset was derived.

C. The manufacturing computer shall provide a physical and electronic means, by use of a password or other method approved by the Commission, for securing the game set against alteration, tampering, or unauthorized access. The manufacturing computer shall provide means for terminating the game set if unopened ticket information from an operating game set or subset has been accessed except as permitted in this subsection. An Independent testing laboratory approved by the Commission shall certify that such security system, and means for monitoring its use in accordance with this section, is included in the system before it may be authorized for use.

D. The manufacturing computer shall be dedicated primarily to those electronic instant ticket gaming system functions related to the creation of electronic instant ticket game sets and the creation, randomization, and transmittal to the central computer of electronic instant ticket subsets. It shall also be capable of generating the data necessary to provide the reports required in this section. Notwithstanding the foregoing, the manufacturing computer may also be used for other computer functions in the electronic ticket system or electronic accounting system if such use will not affect the integrity or outcome of any game.



E. The manufacturing computer shall have a medium for securely storing electronic instant ticket game sets and subsets on the manufacturing computer which shall be mirrored on line by a backup medium within a secure enclosure. The manufacturing computer shall also provide a means for storing on it duplicates of the subsets already transmitted to the central computer so as to reflect, on an ongoing basis, changes in the transmitted subsets as they occur. In addition, duplicates of the sets and subsets, as created and stored on the manufacturing computer, shall be stored in a secure enclosure in the gaming facility separate from the manufacturing computer, or, if the manufacturing computer or its functions are combined with the central computer or its functions, separate from the enclosure in which those functions or hardware have been combined. All storage shall be through an error checking, nonvolatile physical medium, so that should the primary storage medium fail, the functions of the manufacturing computer and the process of auditing those functions can continue with no critical data loss.

F. The manufacturing computer shall utilize randomizing procedures in the creation of the subsets. The randomizing procedures shall be in accordance with subsection B of Section 17 of this act.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 226 of Title 3A, unless there is created a duplication in numbering, reads as follows:

The following requirements apply to any central computer used in connection with an electronic instant ticket game:

1. The central computer shall dispense, upon request from a player terminal, an electronic instant ticket;

2. The central computer shall maintain electronic instant ticket subsets in the order received from the manufacturing computer, and transmit them in that order to player terminals on demand, provided that not less than two (2) nor more than five (5)

subsets per game set shall be dispensed in accordance with a predetermined order for rotating the subsets. Subsets from more than one game set may be stored on the central computer and made available for play at the same time;

3. The central computer shall have a medium for storing electronic instant ticket game subsets and reflecting their current status of play, which shall be mirrored on line by a backup medium within the same cabinet or enclosure, and on another medium in a separate cabinet or enclosure. All storage shall be through an error checking, nonvolatile physical medium, so that should the primary storage medium fail, the functions of the central computer can continue with no critical data loss; and

4. The central computer shall have no randomization capability associated with its use in an electronic instant ticket game.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 227 of Title 3A, unless there is created a duplication in numbering, reads as follows:

A. Player terminals used in connection with electronic games shall conform to the following requirements:

1. No player terminal shall be capable of being used as a stand-alone unit for the purposes of engaging in any gambling game;

2. One or more of the following: a video monitor, electro-mechanical display, printer, graphics and signage;

3. One or more of the following: electronic buttons, touch screen capability, and a mechanical, electro-mechanical or electronic means of activating the game and providing player input, including a means for making player selections and choices in games;

4. A non-volatile backup memory or its equivalent, which shall be maintained in a secure compartment on each player terminal for the purpose of storing and preserving a redundant set of critical data which has been error checked in accordance with this act, and

which data shall include, at a minimum, the following player terminal information:

- a. electronic meters required by paragraph 7 of this subsection,
- b. recall of all wagers and other information associated with the last ten (10) plays, and
- c. error conditions that may have occurred on the player terminal;

5. An on/off switch that controls the electrical current that supplies power to the player terminal, which must be located in a secure place that is readily accessible within the interior of the player terminal;

6. The operation of each player terminal must not be adversely compromised or affected by static discharge, liquid spills, or electromagnetic interference;

7. A player terminal must have electronic accounting meters which have tally totals to a minimum of eight (8) digits and be capable of rolling over when the maximum value of at least 99,999,999 is reached. The player terminal must provide a means for on-demand display of the electronic meters via a key switch or other secure method on the exterior of the machine. Electronic meters on each player terminal for each of the following data categories for electronic instant ticket games are required:

- a. credits, or equivalent monetary units, deposited on a cumulative basis on that terminal,
- b. if a player terminal offers more than one electronic instant ticket game or electronic amusement game for play, then for each game, the meter shall record the number of credits, or equivalent monetary units, wagered and won for each game,
- c. hand-paid and progressive jackpots paid for that terminal, which must include the cumulative amounts

paid by an attendant for any such jackpot not otherwise metered pursuant to division b of this paragraph,

- d. the number of electronic instant tickets purchased on the terminal,
- e. if a player terminal offers more than one electronic instant ticket game for play, the meter shall record the number of electronic instant tickets purchased for each game, and
- f. the number of times the cabinet door is opened or accessed;

8. Under no circumstances shall the player terminal electronic accounting meters be capable of being automatically reset or cleared, whether due to an error in any aspect of its or a game's operation or otherwise. All meter readings must be recorded and dated both before and after an electronic accounting meter is cleared;

9. At a minimum, each player terminal shall have the following game information available for display on the video screen and/or displayed on the player terminal itself, in a location conspicuous to the player:

- a. the rules of the game being played,
- b. the maximum and minimum cost of a wager, purchase or play activation and the amount of credits, or cash equivalents, which may be won for each game offered through that terminal,
- c. the player's credit balance,
- d. the outcome of the game then being played, and
- e. any prize won on the game then being played.

10. The video screen or other means for displaying game rules, outcomes and other game information shall be kept under a glass or other transparent substance which places a barrier between the

player and the actual surface of the display. At no time may stickers or other removable media be placed on the player terminal's face for purposes of displaying rules or payouts;

11. No hardware switches may be installed on a player terminal or any associated equipment which may affect the outcome or pay out of any game for which the player terminal is used. Switches may be installed to control the ergonomics of the player terminal;

12. Where the electronic game system or components are linked with one another in a local network for progressive jackpot, function sharing, aggregate prizes or other purposes, communication protocols must be used which ensure that erroneous data or signals will not adversely affect the operations of any such system or components;

13. Player terminals shall not have software or hardware that determines the outcome of any electronic game. Nothing herein is intended to prohibit the player terminal from creating the appropriate graphics and animation to correspond to, display or represent, in an entertaining manner, the outcome;

14. In addition, with respect to electronic instant ticket games, player terminals shall not have any software that:

- a. determines which electronic instant ticket outcome from within the electronic instant ticket subset is transmitted to the player terminal, or
- b. alters the amount of the payout of the electronic instant ticket as received from the central computer.

B. Any random number generation used in connection with the electronic instant ticket system must be by use of a microprocessor and random number generation program that meets the following random selection tests:

1. Each card, symbol, number, or stop position which is wholly or partially determinative of the outcome of the game satisfies the

ninety-nine percent (99%) confidence limit using the standard chi-square analysis; and

2. Each card, symbol, number, or stop position does not as a significant statistic produce predictable patterns of game elements or occurrences. Each card symbol, number, or stop position will be considered random if it meets the ninety-nine percent (99%) confidence level with regard to the "runs test" or any generally accepted pattern testing statistic;

3. Each card, symbol, number, or stop position is independently chosen without regard to any other card, symbol, number or stop position, drawn within that game play. Each card, symbol, number, or stop position is considered random if it meets the ninety-nine percent (99%) confidence level using standard correlation analysis; and

4. Each card, symbol, number, or stop position is independently chosen without reference to the same card, number, or stop position in the previous game. Each card, number, or stop position is considered random if it meets the ninety-nine percent (99%) confidence level using standard serial correlation analysis.

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 228 of Title 3A, unless there is created a duplication in numbering, reads as follows:

One or more electronic accounting systems shall be required to perform reporting and other functions in support of the electronic game activities described in this act. These systems may communicate with the other computers, player terminals and other game components described in this act utilizing the protocol standards set forth in this act. The electronic accounting system shall not interfere with the outcome of any electronic game functions.

SECTION 19. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 229 of Title 3A, unless there is created a duplication in numbering, reads as follows:

A. The following requirements shall be met in connection with any cashless transaction system:

1. All player account information must be stored on at least two (2) separate non-volatile media;

2. An audit file must be kept of all financial transactions against the account. This file must be stored in at least two separate non-volatile media, and be accessible for purposes of audit and disputes resolution to authorized individuals. This file must be available on-line for a minimum of thirty (30) days, after which it must be available off-line for a minimum of one hundred eighty (180) days;

3. Access controls must be in place to guarantee that unauthorized individuals will not have access to account information or history;

4. Passwords or personal identification numbers (PINs), if used, must be protected from unauthorized access;

5. All means for communicating information within the system shall conform to the protocol standards set forth in this act;

6. Player accounts shall follow accounting procedures which are designed to verify and protect the accurate recording of all player transactions;

7. Any card or other tangible instrument issued to a player for the purpose of using the cashless transaction system shall bear on its face a control or inventory number unique to that instrument;

8. Encoded bearer instruments printed or magnetic may include coupons and other items distributed or sold for game play, promotional, advertising or other purposes, but may not include cash. Such instruments must be in electronically readable form in addition to having unique identification information printed on the

instrument face. The daily and monthly reporting must include with respect to such instruments:

- a. cash converted to game play credits,
- b. outstanding unredeemed balance,
- c. game play credits converted to cash,
- d. game play credits used, and
- e. game play credits won; and

9. All customer accounts or instruments must have a redemption period of at least fourteen (14) days.

B. Any "smart card" system which the licensee intends to implement as part of the cashless transaction system shall be tested by an independent testing laboratory approved by the Commission to ensure the integrity of player funds, following the standards applicable to system accounts set forth in subsection BB of this section. Any smart card must store on the card or on the system using the card an audit trail of the last ten (10) transactions involving the use of the card. Each transaction record must include, at a minimum, the type of transaction, the amount of the transaction, the date of the transaction, the time of the transaction, and the identification of the player terminal or cashier terminal or other points of cash exchange where the transaction occurred. The minimum daily and monthly reporting for smart card activity must include:

1. Total of cash transferred to smart cards;
2. Total of smart card amounts transferred to cash;
3. Total of smart card amounts transferred to game play credits;
4. Total of game play credits transferred to smart card amounts; and
5. Total unredeemed smart card balance.

C. Systems shall be permissible that allow player tracking, maintenance tracking, and other gaming management or marketing



functions. These systems shall not interfere with, or in any way affect, the outcome of any electronic instant ticket game being played. Systems shall be permissible that allow progressive prize management with the certification of the independent testing laboratory and approval of the Commission.

SECTION 20. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 230 of Title 3A, unless there is created a duplication in numbering, reads as follows:

The following requirements apply to all components of the electronic instant ticket system, including the manufacturing computer, the central computer, the electronic accounting system and player terminals:

1. The manufacturing computer, central computer (or a combination of the two) and player terminals in each electronic instant ticket system shall be physically and operationally independent from one another except as specified otherwise in this section, such as for communications, storage and security monitoring, including the routing of communications among system components, provided such routing does not affect the integrity of the communications or the outcome of any game;

2. The manufacturing computer and central computer must be in a locked, secure enclosure with both camera coverage and key controls in place;

3. Connections between all components of the electronic instant ticket system shall only be through the use of secure communication protocols which are designed to prevent unauthorized access or tampering, employing Data Encryption Standards (DES) or equivalent encryption with changeable seeds or algorithms;

4. Each component of the electronic instant ticket system shall at all times be connected to a device which provides surge protection on any line that feeds it and, with the exception of player terminals, shall be connected to a temporary power source,

such as a UPS, to provide means for an orderly shutdown of the computer in the event of a main power system failure;

5. A non-removable plate shall be affixed to the exterior of each manufacturing computer, central computer and player terminal which shall have written upon it the computer or Terminal's serial number, model number, name of the manufacturer and a unique location or inventory number;

6. The Manufacturing and central computers shall at a minimum be enclosed in a locked and monitored cabinet if combined, or in separate cabinets if not. Access shall be through the use of keys secured as provided in this subsection. The player terminal shall have at a minimum the following separately locked areas, which shall be the only means of accessing any non-public part of the terminal:

- a. a locked and monitored cabinet door, and
- b. a locked microprocessor compartment.

7. Keys which provide access to any locked compartment, component or area of an electronic instant ticket system shall be maintained and used in accordance with the key control standards promulgated by the Commission;

8. For all entries into the locked areas of the manufacturing computer, central computer, or any player terminal, a written record must be made on a machine entry authorization log (MEAL) indicating at least the following: the time, date and purpose of entering said locked area(s), and the name and employee number (or other personal identification specific to such person) of the person doing so;

9. In addition to maintenance of MEAL cards, the manufacturing and central computers and player terminals shall record and generate a report on any access including date, time of access, person (by employee number) accessing the computer, and the reason for access;

10. Any manufacturing computer and storage related thereto, central computer and storage related thereto, and any player

terminal, shall be monitored by camera and a recording maintained thereof for a period of not less than fifteen (15) days; and

11. In addition to its functions in operating a connection with the electronic instant ticket game, the central computer may be used to record the data used to verify game play and to configure and perform security checks on player terminals, provided such functions do not affect the security, integrity or outcome of such games.

SECTION 21. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 231 of Title 3A, unless there is created a duplication in numbering, reads as follows:

A. No electronic game may be offered for play unless it has been certified by an independent testing laboratory approved by the Oklahoma Horse Racing Commission as conforming to the requirements set forth in this section.

B. A prototype of any electronic game which a licensee intends to offer for play shall be tested and certified by an independent testing laboratory approved by the Commission as meeting the requirements specified by this section.

C. A licensee shall provide, or require that the manufacturer or vendor provide to the independent testing laboratory a written request as to each electronic game for which certification is sought, any fees required to be deposited by the independent testing laboratory, and, on a confidential basis: two (2) copies of the game illustrations, schematics, block diagrams, circuit analyses, technical and enterprise manuals, program object and source codes, hexadecimal dumps (the compiled computer program represented in base 16 format), and any other information requested by the independent testing laboratory. The licensee shall send copies of the requests for certification to the Commission when made, and shall make all materials submitted to the independent testing laboratory available to the Commission upon request.

D. If requested by the independent testing laboratory, the licensee shall require the manufacturer or vendor to transport not more than two (2) working models of the electronic game for which certification is sought to a location designated by the laboratory for testing, examination or analysis. Neither the State nor the independent testing laboratory shall be liable for any costs associated with the transportation, testing, examination, or analysis, including any damage to the components of the electronic game. If requested by the independent testing laboratory, the licensee shall require the manufacturer or vendor to provide specialized equipment or the services of an independent technical expert to assist with the testing, examination and analysis. At the conclusion of each test, the independent testing laboratory shall provide to the Commission a report that contains findings, conclusions and a certification that the electronic game conforms or fails to conform to the requirements contained in this act. If the independent testing laboratory determines that the device fails to conform to such requirements or technical standards, and if modifications can be made which would bring the electronic game into compliance, the report may contain recommendations for such modifications. The independent testing laboratory shall retest for compliance following such modifications. The independent testing laboratory shall report all findings and conclusions to the licensee, the manufacturer/vendor and the Commission, provided that at any time prior to issuance of a final report by the laboratory the licensee may instruct it to terminate the process, in which case no report shall be made.

E. The Commission shall review and approve a proposed electronic game, or component thereof, based solely on the technical criteria contained in this section and the report and certification received from the independent testing laboratory. The Commission shall approve any proposed electronic game that meets the technical

criteria specified in this section. The Commission's review shall be completed within twenty (20) days of receipt of the certification from the independent testing laboratory as to any new electronic game or component thereof, and within ten (10) days of the receipt of the certification as to any modification to an electronic game which has already been approved by the Commission. The certification shall be deemed approved if the Commission does not disapprove the proposed electronic game as not meeting the technical criteria specified in this section within the twenty- or ten-day period, as may be applicable. If within the twenty- or ten-day periods described in this section for approval by the Commission of an electronic game or modification thereof, the Commission gives notice to the licensee that it has disapproved a proposed electronic game, such electronic game shall not be placed in any facility or, if already there, shall be removed or taken offline for play, to allow time for an appeal to be made in accordance with the applicable appeal process if necessary. The sole issue in the appeal process shall be whether the electronic game, or a component thereof, which is the subject of the appeal meets the technical criteria contained in this act. The Commission shall have the authority to discuss the independent testing laboratory's report with representatives of the independent testing laboratory without any cost to the Commission and to physically review any electronic game as part of its appeal process.

F. No modification to any electronic game may be made after it is tested, certified and approved, without certification of the modification by the independent testing laboratory and approval thereof by the Commission. In situations where immediate modifications are necessary to preserve the integrity of an electronic game which has been operating pursuant to an approval obtained under this section, the independent testing laboratory may issue an emergency certification of the modification and a

certification that is based on information provided to it by the licensee or obtained independently, emergency certification must be issued immediately to preserve the integrity of the electronic game, and that certification would likely be issued under ordinary circumstances. Such emergency certifications shall be deemed to be temporarily approved by the Commission and remain in effect until final action on the certification is taken under this section.

SECTION 22. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 232 of Title 3A, unless there is created a duplication in numbering, reads as follows:

A. Before any component of an electronic game may be placed into operation, the licensee shall first have obtained and submitted to the Oklahoma Horse Racing Commission a written Certification from the manufacturer that upon installation, each such component:

1. Conforms to the specifications of electronic games specified in this act as certified by the independent testing laboratory;

2. Can be used with components manufactured by others in accordance with open architectural and communication standards, platform and protocols to be approved by the Commission that promotes competition among manufacturers and vendors of equipment and components for such games; and

3. Operates and plays in accordance with the requirements of this act. Any certification of an electronic game which was obtained from the Commission by another licensee may be relied upon as providing certification compliance under this section.

B. The licensee shall be responsible for the payment of all independent testing laboratory fees and costs in connection with the duties described herein. In order to assure independence of the independent testing laboratory, any independent testing laboratory payment delinquency may be grounds by the Commission for rejecting such laboratory's reports or certification.

C. The licensee shall allow the Commission to inspect any components of electronic games for the purposes of confirming that such component is operating in accordance with the requirements of this act and that such component is identical to that tested by an independent testing laboratory.

SECTION 23. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 233 of Title 3A, unless there is created a duplication in numbering, reads as follows:

A. Electronic amusement games shall be played through the employment of computer and video player terminals which, following the payment of a fee, present games in which the player can win prizes in a format in which a player's performance can be improved by skill.

B. A player may purchase an opportunity to play an electronic amusement game at a player terminal, either through the insertion of coins or currency, or through the use of a cashless transaction system. The available games are displayed on the player terminal's video screen. The rules of the game are also displayed on a help screen, and include sufficient information to alert novice players on the concept of the game so that a novice player can understand how to improve his or her performance. Depending on the game selected, the player must physically interact with the screen (through touch screen technology) or by depressing or activating buttons or other input devices, to cause an intended result.

C. Following play on a player terminal, the result shall be displayed and prizes awarded. Prizes may be dispensed in the form of merchandise, cash or coin, or through a cashless transaction system.

D. Every play of the game shall be recorded, monitored and regulated to ensure full accountability and integrity of play, in accordance with the provisions of this act.

SECTION 24. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 235 of Title 3A, unless there is created a duplication in numbering, reads as follows:

A. Electronic amusement games are games where a player's performance can be improved by skill. Consistent with this intent, each player terminal employed in an electronic amusement game shall only offer games that meet the following minimum requirements:

1. Each electronic amusement game must require decisions or actions by players that could substantially affect the result of the game. This means that in games in which the player is testing his or her ability against the player terminal (as opposed to games in which players test their abilities against each other), the game must be capable of establishing that the ratio of optimum play to "blind" play is at least 3 to 1. "Blind" means the removal of all sensory feedback from game play, i.e., visual, sound or tactile output. "Optimum" means that a player, when presented with two or more possible options during a game, always chooses the option or otherwise acts in a manner that has the potential to maximize the player's winnings. The ratio will be determined by comparing the average number of games that can be played starting with X credits using optimum play with the average number of games starting with X credits that can be played using blind play. To meet this standard, a player using optimum play must be able to play, on average, at least three times the number of games that can be played using blind play.

2. No auto-hold, "smart-hold," or similar feature shall be employed which permits the player terminal to automatically determine optimum play or make decisions for players;

3. Each player terminal must prominently display on a help screen:

- a. the rules of the game and instructions and other information regarding the concept of the game so that



a novice player can understand how to improve his or her performance, and

- b. possible winning combinations based on the amounts paid to play the game and the other information required in this section. Such information may not be incomplete, confusing or misleading.

4. Any game awarding a bonus prize for a succession of winning plays shall inform the player of the number of plays remaining before the bonus is to be awarded;

5. In electronic amusement games in which players are competing against others, the players shall be informed about whether and how winning prizes will be shared; and

6. No electronic amusement game shall base its outcome on the number or ratio of prior wins to prior losses or any other factor relating to the profit or revenues retained by the operator from prior plays of the game.

B. Following any play on a player terminal, data shall be maintained and viewable both electronically and if requested, by printed report, providing basic information regarding the amount paid in, the game played, the result, and the prize awarded, if any.

SECTION 25. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 236 of Title 3A, unless there is created a duplication in numbering, reads as follows:

For auditing and security purposes, any electronic amusement game shall include and have available for the Oklahoma Horse Racing Commission a secure software tool to audit the software of each electronic amusement game. Such tool shall be used only during authorized audits of electronic amusement games, or in cases of player disputes.

SECTION 26. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 236 of Title 3A, unless there is created a duplication in numbering, reads as follows:

In the event of a dispute by a player that cannot be resolved by ordinary means by licensee personnel as to the outcome, prize, fee paid or any other aspect of the player's participation in an electronic game being played ("prize claim"), all relevant data shall be immediately collected, including but not limited to all meter readings, memory records, surveillance tapes, and any other reports or information regarding the disputed play on the player terminal for the play in dispute. Following the collection of all relevant data, the Oklahoma Horse Racing Commission shall be notified and requested to make an evaluation of whether or not the dispute involves the integrity of the hardware or software being used and to try and resolve the dispute. A report of all prize claims shall be maintained by the licensee.

SECTION 27. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 242 of Title 3A, unless there is created a duplication in numbering, reads as follows:

The State of Oklahoma through the concurrence of the Governor after considering the executive prerogatives of that office and the power to negotiate the terms of and agreement between the state and a tribe, and by means of the execution of this act, and with the concurrence of the state legislature through the enactment of this act, hereby makes the following offer of a model tribal-state agreement regarding gaming to all federally recognized Indian tribes as identified in the Federal Register within this state that own or are the beneficial owners of Indian Lands as defined by IGRA which, if accepted, will constitute a gaming compact between this state and the accepting tribe for purposes of the Indian Gaming Regulatory Act. Acceptance of the offer contained in this section shall be through the signature of the chief executive officer of the tribal government whose authority to enter into the compact shall be set forth in an accompanying law or ordinance or resolution by the governing body of the tribe, a copy of which shall be provided by

the tribe to the Governor. No further action by the Governor or the State is required before the compact can take effect. A tribe accepting this model tribal gaming agreement is responsible for submitting a copy of the agreement executed by the tribe to the Secretary of the Interior for approval and publication in the Federal Register. The tribe shall provide a copy of the executed compact to the Governor. No tribe shall be required to agree to terms different than the terms set forth in the model tribal gaming agreement, which is set forth in Section 28 of this act.

Notwithstanding the provisions of Sections 941 through 988 of Title 21 of the Oklahoma Statutes, the conducting of and participation in any game authorized by the model agreement set forth in Section 28 of this act is lawful when played pursuant to a compact which has become effective.

SECTION 28. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 243 of Title 3A, unless there is created a duplication in numbering, reads as follows:

This section sets forth the provisions of the Model Tribal Gaming Agreement.

MODEL TRIBAL GAMING AGREEMENT

Between the [Name of Tribe]

and the STATE OF OKLAHOMA

This Agreement is made and entered into by and between the [Name of Tribe], a federally recognized Indian Tribe ("Tribe"), and the State of Oklahoma ("State"), with respect to the operation of Tribal covered games (as defined herein) on the Tribe's Indian lands as defined by IGRA.

Part 1. TITLE

This document shall be referred to as "The [Name of Tribe] and State of Oklahoma Gaming Agreement."

Part 2. RECITALS

1. The Tribe is a federally recognized tribal government possessing sovereign powers and rights of self-government.

2. The State of Oklahoma is a state of the United States of America possessing the sovereign powers and rights of a state.

3. The State and the Tribe maintain a government-to-government relationship, and this Agreement will help to foster mutual respect and understanding among Indians and non-Indians.

4. The United States Supreme Court has long recognized the right of an Indian Tribe to regulate activity on lands within its jurisdiction.

5. The Tribe desires to offer the play of covered games, as hereinafter defined in paragraphs 3, 5 and 9 of Part 3 of this Agreement, as a means of generating revenues for purposes authorized by the Indian Gaming Regulatory Act (IGRA), including without limitation the support of tribal governmental programs, such as health care, housing, sewer and water projects, police, corrections, fire, judicial services, highway and bridge construction, general assistance for tribal elders, day care for the children, economic development, educational opportunities and other typical and valuable governmental services and programs for tribal members.

6. The State recognizes that the positive effects of this Agreement will extend beyond the Tribe's lands to the Tribe's neighbors and surrounding communities and will generally benefit all of Oklahoma. These positive effects and benefits may include not only those described in paragraph 5 of this part, but also may include increased tourism and related economic development activities.

7. The Tribe and the State jointly wish to protect their citizens from any criminal involvement in the gaming operations regulated under this Agreement.

#### Part 3. DEFINITIONS

As used in this Agreement:

1. "Adjusted Gross Revenues" means the total receipts received from the play of all covered games minus all payouts and the cost of other prizes awarded in connection with the play of these games;

2 "Agreement" means this Tribal Gaming Agreement;

3. "Electronic amusement game" means a game that is played in an electronic environment in which a player's performance and opportunity for success can be improved by skill;

4. "Annual Oversight Assessment" means the assessment described in subsection B of Part 10 of this Agreement;

5. "Covered game" means an electronic instant ticket game conducted in accordance with the specifications set forth in Sections 8 through 26 of the State-Tribal Gaming Act, an electronic amusement game conducted in accordance with the specifications set forth in Sections 8 through 26 of the State-Tribal Gaming Act and non-house-banked card games;

6. "Covered game Employee" 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. The enterprise may, at its discretion, include other persons employed at or in connection with the enterprise within the definition of covered game employee;

7. "Documents" means books, records, electronic, magnetic and computer media documents and other writings and materials, copies thereof, and information contained therein;

8. "Effective Date" means the date on which the last of the conditions set forth in subsection A of Part 14 of this Agreement have been met;

9. "Electronic instant ticket game" means any electronic, mechanical, or electronic-mechanical device or machine which is approved by the independent testing laboratory as meeting the specific requirements set forth for an electronic instant ticket game in Sections 8 through 26 of the State-Tribal Gaming Act;

10. "Enterprise" means the Tribe or the Tribal agency that conducts covered games, the Tribal business enterprise that conducts covered games, or a person, corporation or other entity that has entered into a management contract with the Tribe to conduct covered games, in accordance with IGRA. The names, addresses and identifying information of any covered game employees shall be forwarded to the Office of State Finance at least annually. In any event, the Tribe shall have the ultimate responsibility for ensuring that the Tribe or enterprise fulfills the responsibilities under this Agreement. For purposes of enforcement, the Tribe is deemed to have made all promises for the enterprise;

11. "Facility" means any building of the Tribe in which the covered games authorized by this Agreement 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 Agreement as required herein;

12. "Goods or services" means the providing of any goods or services to an enterprise in connection with the conduct of covered games, or the storage, maintenance or transportation of any covered game at or in connection with a facility or enterprise, including providing equipment, maintenance or security services with respect thereto, but excluding accounting or legal services;

13. "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 Agreement and to otherwise perform the functions assigned to it in this Agreement. An independent testing laboratory shall not be owned or controlled by the Tribe, the enterprise, the State, or any manufacturer, supplier or operator of gaming devices. The selection of an independent testing laboratory for any purposes under this Agreement shall be made from a list of one or more laboratories mutually agreed upon by the parties. Gaming Laboratories International, Inc. is hereby approved as an independent testing laboratory and is placed on the list;

14. "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.* and 18 U.S.C. §§ 1166 to 1168;

15. "Non-house banked card games" 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, all bets are placed in a common pool or pot from which all player winnings and prizes are paid, the Tribe has no financial interest of any kind in the pool or pot or whether a hand, round or game is won or lost, and which pool or pot, if not disbursed within ninety (90) days, may be donated by the Tribe to any charitable purpose recognized as such under Oklahoma law.

16. "Principal" means, with respect to any entity, its sole proprietor or any partner, trustee, beneficiary or shareholder holding five percent (5%) or more of its beneficial or controlling ownership, either directly or indirectly, or any officer, director, principal management employee, or key employee thereof;

17. "Rules and regulations" means the technical standards and rules of operation and play of covered games as set forth in this Agreement or adopted pursuant hereto. Any Rules or Regulations promulgated at a later date pursuant to this Agreement shall be

consistent with the policies and intent of the parties reflected in this Agreement;

18. "State" means the State of Oklahoma;

19. "State Compliance Agency" ("SCA") means the State agency that has the authority to carry out the State's oversight responsibilities under this Agreement, which shall be the Office of State Finance or its successor agency. Nothing herein shall supplant the role or duties of the Oklahoma State Bureau of Investigation under state law. The Oklahoma Horse Racing Commission shall have no role in regulating or oversight of gaming conducted by a Tribe pursuant to this compact;

20. "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 Agreement. Unless and until otherwise designated by Tribe, the TCA shall be the [Name of Tribe] 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 Agreement. 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 subsection B of Part 6 of this Agreement. 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;

21. "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;

22. "Tribe" means the [Name of Nation]; and



23. "Tribal-State Gaming Act" means the legislation in which this model compact is set forth and, at the Tribe's option, amendments or successor statutes thereto.

Part 4. AUTHORIZATION OF COVERED GAMES

A. The Tribe and State agree that the Tribe is authorized to operate covered games only in accordance with this Agreement.

B. A Tribe shall not operate an electronic instant ticket game or an electronic amusement game pursuant to this agreement until such game has been certified by an independent testing laboratory and the TCA as meeting the specifications set out in the State-Tribal Gaming Act for electronic instant ticket games or electronic amusement games, as applicable. Provided, the Tribe may rely on any certification of an electronic instant ticket game or an electronic amusement game by the Oklahoma Horse Racing Commission which was obtained by an organization licensee pursuant to the State-Tribal Gaming Act to establish certification compliance under this agreement. The Tribe may also rely on any certification of an electronic instant ticket game or an amusement game by the TCA obtained by another Tribe which has entered into the model compact to establish certification compliance under this agreement.

Part 5. RULES AND REGULATIONS

A. At all times during the Term of this Agreement, the Tribe shall be responsible for all duties which are assigned to it, the enterprise, the facility, and the TCA under this Agreement.

B. 1. All enterprises and facilities shall comply with, and all covered games approved under the procedures set forth herein shall be operated in accordance with, the Rules and Regulations set forth in this Agreement, including but not limited to those set forth in subsections C and D of this Part. In addition, all enterprises and facilities will comply with tribal internal control standards that provide a level of control that equals or exceeds

those set forth in the National Indian Gaming Commission's Minimum Internal Control Standards (25 C.F.R. Part 542).

2. The TCA may amend its Rules and Regulations; provided, any such amendment shall be in conformity with this Agreement.

3. The SCA may propose additional Rules and Regulations to the TCA at any time, and the TCA shall give good faith consideration to such suggestions and shall notify the SCA of its response or action with respect thereto.

C. In addition to other records required to be maintained herein, the enterprise shall maintain the following records in permanent form and as written or entered, whether manually or by computer, and which shall be maintained by the enterprise and made available for inspection by the Office of State Finance for no less than three (3) years from the date generated:

1. A log recording all surveillance activities in the monitoring room of the facility, including but not limited to video surveillance tapes kept in the normal course of enterprise operations and in accordance with industry standards; provided, notwithstanding anything to the contrary herein, surveillance tapes may, at the discretion of the enterprise, be destroyed if no incident has been reported within fifteen (15) days following the date such tape was made;

2. Pay-out from the conduct of all covered games;

3. Maintenance logs for all gaming equipment used by the enterprise;

4. Security logs as kept in the normal 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 non-standard 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 indelible ink in a bound notebook from which pages cannot be removed and in which each side of each page shall be sequentially numbered:

- 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 Inspector making the report and any other persons contributing to its preparation;

5. Books and records on all financial activities of the enterprise, which shall be maintained in accordance with generally accepted accounting principles (GAAP); and

6. All documents generated in accordance with this Agreement.

D. Net revenues that the Tribe receives from covered games are to be used for any one or more of those purposes permitted under the IGRA:

1. To fund tribal government operations or programs;
2. To provide for the general welfare of the Tribe and its

members;

3. To promote tribal economic development;
4. To donate to charitable organizations; or
5. To help fund operations of local government agencies.

E. 1. The Tribe shall adopt Rules and Regulations that require the enterprise at a minimum to bar persons based on their prior conduct at the facility or who, because of their criminal history or association with criminal offenders, pose a threat to the integrity of the conduct of covered games.

2. The TCA shall establish a list of the persons barred from the facility.

3. The enterprise shall employ its best efforts to exclude persons on such list from entry into its facility; provided, neither persons who are barred but gain access to the facility, nor any other person, shall have any claim against the State, the Tribe or the enterprise or any other person for failing to enforce such bar.

4. Patrons who believe they may be playing covered games on a compulsive basis may request that their names be placed on the list. All covered game employees shall receive training on identifying players who have a problem with compulsive playing and shall be instructed to ask them to leave. Signs and other materials shall be readily available to direct such compulsive players to agencies where they may receive counseling.

F. 1. Consistent with 25 C.F.R. § 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 Agreement is secured. The audit shall, at a minimum, 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 Gross Revenues and the basis of the payments made to the State pursuant to Part 10 of this Agreement.

2. 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.

3. The audit shall be concluded within five (5) months following the close of each fiscal 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.

4. 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.

5. The audit shall conform to generally accepted auditing standards. 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 Agreement.

6. The enterprise shall assume all costs in connection with the audit.

7. The audit report for the conduct of covered games shall be submitted to the Office of State Finance within thirty (30) days of completion. The auditors' work papers shall be made available to the SCA upon request.

8. Representatives of the Office of State Finance may, upon request, meet with the auditors to discuss the work papers, the audit or any matters in connection therewith.

G. Summaries of the rules for playing covered games and winning prizes shall be visibly displayed in the facility. Complete sets of rules shall be available in pamphlet form in the facility.

H. The enterprise shall provide the TCA and Office of State Finance with a chart of the supervisory lines of authority with respect to the conduct of covered games, and shall promptly notify those agencies of any material changes thereto.

I. The sale and service of alcoholic beverages in a facility shall be in compliance with state, federal and tribal law in regard to the licensing and sale of such beverages.

J. No person who would not be eligible to be a patron of a pari-mutual system of wagering pursuant to the provisions of subsection B of Section 208.4 of Title 3A of the Oklahoma Statutes shall be admitted into 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 of, any covered game, directly or indirectly.

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

2. Material that might be utilized in connection with a Prize Claim, including but not limited to incident reports, surveillance tapes, statements, and the like, shall be maintained at least one hundred eighty (180) days beyond the time which a claim can be made under subsection M of this Part of this Agreement or, if a Prize Claim is made, beyond the final disposition of such claim.

3. Notwithstanding anything herein to the contrary, 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 for retention of financial books and records under Oklahoma and federal law, or three (3) years, whichever is longer.

L. The enterprise shall ensure that patrons of a facility are afforded due process in seeking and receiving just and reasonable compensation for personal injury or property damage claims against the enterprise arising out of incidents occurring at a facility ("Tort Claim"), as follows:

1. During the term of this Agreement, the enterprise shall maintain public liability insurance for the express purposes of covering and satisfying Tort Claims. The insurance shall have limits of not less than Two Hundred Fifty Thousand Dollars (\$250,000.00) for any one person and Two Million Dollars (\$2,000,000.00) for any one occurrence for personal injury, and One Million Dollars (\$1,000,000.00) for any one occurrence for property damage (hereinafter the Limit of Liability) or the corresponding limits under the Governmental Tort Claims Act, whichever is greater. No Tort Claim shall be honored or the subject of any award in excess of the Limit of Liability, nor shall any Tort Claim award include consequential, punitive or other damages, or attorneys fees or costs;

2. The Tribe consents to suit on a limited basis with respect to Tort Claims subject to the limitations set forth in this subsection and subsection N of this Part of this Agreement. No other consents with respect to Tort Claims, or as to any other claims against the Tribe unless elsewhere expressly granted, shall be deemed to have been made under this Agreement;

3. The enterprise's 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 if the claim complies with the limited waiver provisions of subsection N of this Part of this Agreement. Copies of all such insurance policies shall be forwarded to the SCA;

4. Any patron having a Tort Claim shall present the claim to the enterprise or the TCA within one (1) year of the date of the event which allegedly caused the claimed loss, and failure to present any such Tort Claim during such period of time shall forever bar such Tort Claim; provided that a Tort Claim filed with the enterprise or the TCA more than ninety (90) days, but within one (1)

year, after the event will be deemed to be timely filed, but any judgment thereon shall be reduced by ten (10) percent;

5. The enterprise shall forward a copy of each Tort Claim it receives to the SCA within forty-eight (48) hours of receipt;

6. All tort claims shall be in writing and filed with the enterprise or the TCA within the time limits of this subsection. The date filed with the enterprise or the TCA shall be deemed the official date of filing the Tort Claim.

7. The written claim notice shall state the date, time, place and circumstances of the incident upon which the Tort Claim is based, the identity of any persons known to have information regarding the incident, including employees or others involved in or who witnessed the incident, the amount of compensation or other relief demanded and the basis therefor, the name, address and telephone number of the claimant, and the name, address and telephone number of any representative authorized to act or settle the claim on behalf of the claimant;

8. All notices of Tort claims shall be signed by the claimant. The enterprise may require that the claim be signed under oath and require as a condition of prosecuting the claim that the claimant agrees to be interviewed at least once under reasonable circumstances, including the presence of claimant's legal counsel if requested, prior to filing any action herein;

9. Tort Claims shall be promptly reviewed and investigated and a determination made thereon by the enterprise. Any portion of a Tort Claim which is unresolved shall be deemed denied if the enterprise fails to notify the claimant in writing of its approval within ninety (90) days of receipt, unless the parties agree in writing to extend the date by which a denial shall be deemed issued if no other action is taken. Each extension shall be for no more than ninety (90) days, but there shall be no limit on the number of extensions to which the parties may mutually agree, provided that no



extension shall be valid unless signed by the claimant and an authorized representative of the TCA. The claimant and the enterprise may continue attempts to settle a claim beyond an extended date; provided, settlement negotiations shall not extend the date of denial in the absence of a written agreement as aforesaid;

10. A person may not initiate suit against the enterprise based on a Tort Claim except as to a claim that has been denied by the enterprise;

11. No action for any cause arising from a Tort Claim shall be maintained unless valid notice has been given and the action commenced in accordance with this subsection;

12. An action based on the denial of a Tort Claim shall be commenced no later than the one hundred eightieth day after denial of the claim by the enterprise. Neither the claimant nor the enterprise may agree to extend the time to commence an action; and

13. Notices explaining the procedure and time limitations with respect to making a Tort Claim shall be prominently posted in the facility. Such notices shall explain the method and places for making claims, that this procedure is the exclusive method of making a Tort Claim, and that claims that do not follow this process will be forever barred. Pamphlets containing the information required in this subsection shall also be made readily available to all patrons of the facility and shall be provided to a claimant within five (5) days after the TCA receives the claim.

M. Any patron disputing, in connection with his or her play of any covered game, 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 (hereafter "Prize Claim"), shall be afforded due process in the making of such claims and seeking receipt of just compensation therefor, as follows:

1. The Tribe consents to suit on a limited basis with respect to Prize Claims against the enterprise only as set forth in subsection N of this Part of this Agreement;

2. The maximum amount of any Prize Claim shall be the amount of the Prize which the claimant establishes he or she was entitled to be awarded (hereafter "Prize Limit"). No claim for an award of compensatory, consequential, punitive or other damages, or attorneys fee or costs, shall be made or considered;

3. Any patron having a Prize Claim shall present the claim to the enterprise or the TCA within ten (10) days of the event which is the basis of the claim. The enterprise or the TCA shall forward a copy of the Prize Claim to the Office of State Finance within forty-eight (48) hours of its receipt;

4. Any Prize Claim shall be forever barred unless notice of the claim is filed as provided herein. All claims shall be in writing and filed with the enterprise or with the TCA within the time limits of this Section. The date filed with either the enterprise or the TCA shall be deemed the official date of filing the Prize Claim;

5. The written claim notice shall state the date, time, place and circumstances of the incident upon which the claim is based, the identity of any persons known to have information regarding the incident, including employees or others involved in or who witnessed the incident, the amount demanded and the basis therefor, the name, address and telephone number of the claimant, and the name, address and telephone number of any representative authorized to act or settle the claim on behalf of the claimant. All notices of Prize Claims shall be signed by the claimant;

6. All Prize Claims shall be reviewed and promptly investigated and a determination made thereon by the enterprise. Claimants shall cooperate in providing information, including personal sworn statements and agreeing to be interviewed, as the enterprise shall reasonably request. The claimant is permitted to have counsel

present during any such interview. If the Prize Claim is not resolved within seventy-two (72) hours from the time of filing the claim in accordance with paragraph 5 of this subsection, the TCA shall immediately notify the Office of State Finance in writing that the claim has not been resolved;

7. In the event the claim is resolved, the TCA shall not be obligated to report that fact to the Office of State Finance, but shall make TCA reports available for review;

8. Any portion of a Prize Claim which is unresolved shall be deemed denied if the enterprise fails to notify the claimant in writing of its approval within thirty (30) days of receipt, unless the parties agree in writing to extend the date. Each extension shall be for no more than thirty (30) days, but there shall be no limit on the number of extensions to which the parties may mutually agree, provided such extensions are in writing and executed by the claimant and an authorized representative of the TCA. The claimant and the enterprise may continue attempts to settle a claim beyond an extended date; provided, settlement negotiations absent a written extension agreement shall not extend the date of denial;

9. A person may not initiate suit against the enterprise based on a Prize Claim unless the claim has been denied in whole or in part by the enterprise;

10. No action for any cause arising from a Prize Claim shall be maintained unless valid notice has been given and the action is commenced in accordance with subsection N of this Part of this Agreement, within one hundred eighty (180) days after denial of the claim by the enterprise. Neither the claimant nor the enterprise may extend the time to commence an action by continuing to attempt settlement of the claim; and

11. Notices explaining the procedure and time limitations with respect to making a Prize Claim shall be prominently posted in the facility. Such notices shall explain the method and places for

making claims, that this procedure is the exclusive method of making a Prize Claim, and that claims that do not follow this process will be forever barred. Pamphlets containing the information required in this subsection shall also be made readily available to all patrons of the facility. A pamphlet shall also be sent to a claimant by the TCA within five (5) days of receipt of a claim.

N. The Tribe consents to suit against the enterprise in a court of competent jurisdiction with respect to a Tort Claim or Prize Claim if such Tort Claim or Prize Claim was commenced as set forth in this section and the claimant has received a denial of such claim, and provided the consent shall be subject to the following additional conditions and limitations:

1. For Tort Claims, consent to suit is granted only to the extent such claim or any award or judgment rendered thereon does not exceed the Limit of Liability and only insofar as either the enterprise's insurance policy covers such claim as provided in paragraph 1 of subsection L of this Part of this Agreement or, if there is not sufficient insurance, then to the extent of the cash, bond or other security posted in connection with subsection O of this Part of this Agreement. Under no circumstances shall any consent to suit be effective as to any award which exceeds such applicable amounts, is based on any consequential or punitive damages, or is for attorneys fees or costs of suit. This consent shall only extend to the patron actually claiming to have been injured and shall not be assignable except as provided in subsection O of this Part of this Agreement. In the event any assignment of the Tort Claim is made in violation of this Agreement, or any person other than the patron claiming the injury becomes a party to any action hereunder, this consent shall be deemed revoked for all purposes. Notwithstanding the foregoing, in an action on a Tort Claim by the claimant or claimants estate's court appointed representative, an indispensable party, or a health provider or

other party subrogated to the claimant's rights by virtue of any insurance policy, all of which inclusions are referred to as "Other Party", shall not cause a revocation of the consent to suit granted herein; provided, nothing herein is intended to, or shall, constitute a consent to suit against the enterprise as to such Other Party except to the extent such Other 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
- b. the claim of such Other Party would have been subject to a consent to suit hereunder if it had been made by the claimant directly; and

2. For Prize Claims, consent is granted only to the extent such a claim does not exceed the Prize Limit. Under no circumstances shall any award exceed the Prize Limit or be based on any actual, compensatory (except as an award of money up to the Prize Limit might be so construed), consequential or punitive damages, or be for attorneys fees or costs of suit. This consent shall only extend to the patron actually claiming to have engaged in the play of a covered game on which the claim is based and shall not be assignable. In the event any assignment of the Prize Claim is made, or any person other than the claimant entitled to make the claim becomes a party to any action hereunder, this consent shall be deemed revoked for all purposes. Notwithstanding the foregoing, the inclusion of an Other Party as a party to the action shall not cause a revocation of this consent, provided that nothing herein is intended to, or shall, waive the sovereign immunity of the State or the enterprise as to such Other Party except to the extent such Other 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 a consent to suit hereunder if it had been made by the claimant directly.

O. Remedies in The Event of No or Inadequate Insurance for Tort Claim. In the event a Tort Claim is made and there is no, or inadequate, insurance in effect as required under this Agreement, the enterprise shall be deemed to be in default hereunder unless, within ten (10) days of a demand by the Office of State Finance 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 paragraph 1 of subsection L of this Part of this Agreement, 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 the claimant is successful on the claim; and
4. The notice and hearing opportunities in accordance with the Tribe's Tort Law, if any, otherwise in accordance with principles of due process, which will be afforded to the claimant so that the intent of this Agreement to provide claimants with a meaningful opportunity to seek a just remedy under fair conditions will be fulfilled.

P. The Tribe may establish and operate enterprises and Facilities that operate covered games only on its Indian lands as defined by the IGRA.

Q. The TCA shall keep a record of, and shall report at least quarterly to the Office of State Finance, the number of covered games in each facility, by the name or type of each and its identifying number.

Part 6. ENFORCEMENT OF AGREEMENT PROVISIONS

A. The TCA shall be responsible for regulating activities pursuant to this Agreement. As part of its responsibilities, the TCA shall require the enterprise do the following:

1. Operate the conduct of covered games in compliance with this Agreement, including but not limited to the Rules and Regulations;

2. Take reasonable measures to assure the physical safety of enterprise patrons and personnel, prevent illegal activity at the facility, and protect patrons' rights under the Indian Civil Rights Act, 25 U.S.C. Sec. 1302-1303;

3. Detain persons who may be involved in illegal acts pending assistance from appropriate law enforcement authorities and in accordance with law;

4. Assure that the construction and maintenance of the facility meets or exceeds Federal and Tribal standards for comparable buildings; and

5. Provide adequate emergency accessibility and service to ensure the health and safety of all covered game patrons. Upon the finalization of emergency access plans, the enterprise shall forward copies of such plans to the Office of State Finance.

B. All members and employees of the TCA shall be licensed according to the same standards and terms applicable to facility employees. The TCA shall employ qualified compliance officers under the authority of the TCA. The compliance officers shall be independent of the enterprise, and shall be supervised and

accountable only to the TCA. A TCA compliance officer shall be available to the facility during all hours of operation, and shall have immediate access to any and all areas of the facility for the purpose of ensuring compliance with the provisions of this Agreement and Tribal Laws or Ordinances, and of applicable Rules and Regulations. The TCA shall investigate any suspected or reported violation of the Rules and Regulations and shall require the enterprise to correct such violations. The TCA shall officially enter into its files timely written reports of investigations and any action taken thereon, and shall forward copies of such reports to the SCA within fifteen (15) days of such filing. Any violation of the provisions of this Agreement or the Rules and Regulations shall be reported immediately to the TCA, and the TCA shall immediately forward the same to the Office of State Finance. In addition, the TCA shall promptly report to the Office of State Finance any violations of this Agreement or of the Rules and Regulations which it independently discovers.

C. In order to develop and foster a positive and effective relationship in the enforcement of the provisions of this Agreement, representatives of the TCA and the Office of State Finance shall meet, not less than on an annual basis, to review past practices and examine methods to improve the regulatory scheme created by this Agreement. The meetings shall take place at a location selected by the TCA. The Office of State Finance, prior to or during such meetings, shall disclose to the TCA any concerns, suspected activities, or pending matters reasonably believed to possibly constitute violations of this Agreement by any person, organization or entity, if such disclosure will not compromise the interest sought to be protected.

#### Part 7. STATE MONITORING OF AGREEMENT

A. The Office of State Finance shall, pursuant to the provisions of this Agreement, 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 Agreement. In order to properly monitor the conduct of covered games, agents of the Office of State Finance shall have reasonable access to all areas of the facility related to the conduct of covered games as provided herein:

1. Access to the facility by the Office of State Finance 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, Office of State Finance agents may inspect the facility without giving prior notice to the enterprise;

2. Any suspected or claimed violations of this Agreement or of law shall be directed in writing to the TCA; Office of State Finance agents shall not interfere with the functioning of the enterprise; and

3. Before Office of State Finance agents enter any nonpublic area of the facility, they shall provide proper photographic identification to the TCA. Office of State Finance agents shall be accompanied in nonpublic areas by a TCA agent. In order to ensure that a qualified Tribal representative is available at all times under this Part of this Agreement, the TCA shall notify the Office of State Finance of management level enterprise employees who may accompany such Office of State Finance agents in the event a TCA agent is unavailable within thirty (30) minutes of an Office of State Finance request for inspection herein.

B. Subject to the provisions herein, agents of the Office of State Finance shall have the right to review and, upon written request identifying the Documents to be copied, 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, and if requested by the Office of State Finance, or hours otherwise

at Tribe's discretion, shall be in a room provided by the Tribe to the Office of State Finance in each of the Tribe's Facilities for such purpose and is private and secure. However, the Office of State Finance 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 customer lists, business plans, advertising programs, marketing studies, customer demographics or profiles and the like. No Documents of the enterprise related to its conduct of covered games or copies thereof shall be released to the public by the State under any circumstances. All such Documents shall be deemed confidential Documents owned by the Tribe and shall not be subject to public release by the State.

C. At the completion of any SCA inspection or investigation, the Office of State Finance 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 Agreement, unless providing such information to the TCA will compromise the interests sought to be protected. If the Office of State Finance determines that providing the information to the TCA will compromise the interests sought to be protected, then the Office of State Finance shall provide such information to the Attorney General of the Tribe. The Attorney General of the Tribe shall not share such information with the TCA until the investigation is completed.

D. Nothing in this Agreement 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. Provided, however, the SCA and the Tribe, upon request of the Tribe, shall jointly employ, at

the Tribe's expense, an independent firm to perform on behalf of the SCA the duties set forth in subsections A and B of this Part. The SCA and the Tribe shall mutually agree on any credit the Tribe shall receive as to the annual oversight assessment.

Part 8. CRIMINAL JURISDICTION

This agreement shall not alter tribal, federal or state criminal jurisdiction.

Part 9. LICENSING

A. 1. No covered game employee shall be employed at a facility or by an enterprise unless such person is licensed in accordance with this Agreement. In addition to the provisions of this Part of this Agreement 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 Key Employees) and 25 C.F.R. Part 558 (Gaming Licenses for Key Employees and Primary Management Officials), apply to Key Employees and Primary Management Officials of the facility and enterprise.

2. 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 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 Office of State Finance contends that any such extension is unreasonable, it may seek resolution of that issue pursuant to Part 11 of this Agreement.

3. 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 of this Agreement and the

Rules and Regulations. The TCA shall obtain information about a prospective Covered Employee that includes:

- a. full name, including any aliases by which applicant has ever known,
- b. social security number,
- c. date and place of birth,
- d. residential addresses for the past five (5) years,
- e. employment history for the past five (5) years,
- f. driver license number,
- g. all licenses issued and disciplinary charges filed, whether or not discipline was imposed, by any state or tribal regulatory authority,
- h. all criminal arrests and proceedings, except for minor traffic offenses, to which the applicant has been a party,
- i. a set of fingerprints,
- j. a current photograph,
- k. military service history, and
- l. any other information the TCA determines is necessary to conduct a thorough background investigation.

4. Upon obtaining the required initial information from a prospective covered game employee, the TCA shall forward a copy of such information to the Office of State Finance, along with any determinations made with respect to the issuance or denial of a temporary or permanent license. The Office of State Finance may conduct its own background investigation of the applicant, 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.

5. 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 of this Agreement, 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.

6. The Tribe shall not employ and shall terminate, and the TCA shall not license and shall revoke a license previously issued to, any covered game employee who:

- a. has been convicted of any felony or an offense related to any covered games or other gaming activity,
- b. has knowingly and willfully provided false material, statements or information on his or her employment application, or
- c. 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.

7. The Office of State Finance may object to the employment of any individual by the enterprise based upon the criteria set forth above. Such objection shall be in writing setting forth the basis of the objection. The enterprise shall have discretion to employ an individual over the objection of the Office of State Finance.

8. 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.

9. 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.

B. 1. Any person or entity who, directly or indirectly, provides or is likely to provide at least Twenty-five Thousand Dollars (\$25,000.00) in goods or services to the enterprise in any twelve-month period, or who has received at least Twenty-five Thousand Dollars (\$25,000.00) for goods or services provided to the enterprise in any consecutive 12-month period within the immediately preceding twenty-four-month period, or any person or entity who provides through sale, lease, rental or otherwise covered games, or parts, maintenance or service in connection therewith to the Tribe or the enterprise at any time and in any amount, shall be licensed by the TCA prior to the provision thereof. Provided, that attorneys

or certified public accountants and their firms shall be exempt from the licensing requirement herein to the extent that they are providing services covered by their professional licenses.

2. Background investigations and licensing shall follow the same process and apply the same criteria as for covered game employees set forth in paragraph 6 of subsection A of this Part of this Agreement.

3. In the case of a license application of any entity, all Principals thereof shall be subjected to the same background investigation required for the licensing of a covered game employee, but no license as such need be issued; provided, no license shall be issued to the entity if the TCA determines that one or more of its principals will be persons who would not be qualified to receive a license if they applied as covered game employees.

4. Nothing herein shall prohibit the TCA from processing and issuing a license to a Principal in his or her own name.

5. Licenses issued under this subsection 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 paragraph 6 of subsection A of this Part of this Agreement. In connection with such a review, the TCA shall require the person or entity to update all information provided in the previous application.

6. 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 of this Agreement 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.

7. Pursuant to 25 C.F.R. Part 533, all management contracts must be approved by the Chair of the National Indian Gaming

Commission. The Office of State Finance shall be notified promptly after any such approval.

8. In addition to any licensing criteria set forth above, if any person or entity seeking licensing under this subsection is to receive any fee or other payment based on the revenues or profits of the enterprise, the TCA may take into account whether or not such fee or other payment is fair in light of market conditions and practices.

C. 1. Subject to the exceptions set forth in paragraph 4 of this subsection, 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 and standards set forth in subsection A of this Part of this Agreement. 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 paragraph 6 of subsection A of this Part of this Agreement. In connection with such a review, the TCA shall require the person or entity to update all information provided in the previous application.

2. The Office of State Finance 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-month period, and shall be entitled to review copies of all agreements and documents in connection therewith.

3. A supplier of goods or services who provides financing exclusively in connection with the sale or lease of covered games equipment or supplies shall be licensed solely in accordance with



licensing procedures applicable, if at all, to such suppliers herein.

4. 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 backgrounding requirements in subsection B or subsection C of this Part.

D. In the event the Office of State Finance objects to a lender, vendor or any other person or entity within subsection B or C of this Part of this Agreement seeking to do business with the enterprise, or to the continued holding of a license by such person or entity, it may notify the TCA of its objection. The notice shall set forth the basis of the objection with sufficient particularity to enable the TCA to investigate the basis of the objection. Within a reasonable time after such notification the TCA shall report to the Office of State Finance on the outcome of its investigation and of any action taken or decision not to take action.

#### Part 10. EXCLUSIVITY AND FEES

A. The parties acknowledge and recognize that this Agreement provides tribes with substantial exclusivity and, consistent with the goals of IGRA special opportunities for tribal economic opportunity through gaming in the Oklahoma market served with

respect to the covered games. In consideration thereof, and so long as no one other than a Tribe or an organization licensee as described in Section 2 of this act is actually operating within Oklahoma the specific electronic games identified in this Agreement, and the State does not change its laws after the Effective Date of this Agreement: 1. to permit the operation of any additional form of gaming by any such organization licensee, or 2. change its laws to permit any additional electronic or machine gaming within Oklahoma, the Tribe agrees to pay the following fees:

1. The Tribe covenants and agrees to pay to the State a fee derived from Covered Game Revenues calculated as set forth in paragraph 2 of this subsection. Such fee shall be paid no later than the twentieth day of the month for revenues received by the Tribe in the preceding month.

2. The fee shall be:

- a. four percent (4%) of the first Ten Million Dollars (\$10,000,000.00) of Adjusted Gross Revenues received by a Tribe in a calendar year from the play of covered games,
- b. five percent (5%) of the next Ten Million Dollars (\$10,000,000.00) of Adjusted Gross Revenues received by a Tribe in a calendar year from the play of covered games, and
- c. six percent (6%) of all subsequent Adjusted Gross Revenues received by a Tribe in a calendar year from the play of covered games.

Payments of such fees shall be made to the Treasurer of the State of Oklahoma. 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.

B. Annual Oversight Assessment. In addition to the fee provided for in subsection A of this Part, the State shall be entitled to reimbursement of its actual and reasonable out of pocket costs in connection with the oversight of covered games to the extent provided herein ("Annual Oversight Assessment"). The Annual Oversight Assessment shall be determined and paid in advance on a fiscal year basis for each twelve (12) months ending on June 30 of each year, and shall be shared by the Tribe and all other Oklahoma tribes that have similar covered game Agreements with the State ("Participating Tribes"). The Assessment shall be shared pro rata according to the average number of covered game machines operated by the Tribe in the preceding fiscal year. Provided, for the first year of operation, the anticipated number of machines to be operated shall be used in making the pro rata calculation. Notwithstanding the above, for the first year of this Agreement the Annual Oversight Assessment shall be determined and paid within ninety (90) days of the Effective Date. The Tribe will make an advance deposit towards its Annual Oversight Assessment of Fifty Thousand Dollars (\$50,000.00) within ten (10) days of the Effective Date.

The Annual Oversight Assessment in total for all Participating Tribes shall be determined after an annual negotiation with the Office of State Finance representing the State on the one hand and the Participating Tribes on the other hand to set an annual budget of anticipated State out-of-pocket costs. The process shall be commenced by the State and scheduled for one or more meetings if necessary to conclude the process if possible at least thirty (30) days before the expiration of the preceding fiscal year.

Until a new budget and pro rata allocations are agreed upon, the existing budget and allocation rates shall be used, except in the first year, as provided herein; provided, any Participating Tribe, or the State, may seek resolution of any disputes in connection with such process through the procedures in Part 11 of this Agreement.

Among the issues which may be determined shall be the necessity, reasonableness or fairness of any budget amount or pro rata allocation proposed by any party to such negotiations.

C. Upon the Effective Date the Tribe shall deposit with the SCA the sum of One Hundred Fifty Thousand Dollars (\$150,000.00) ("Start-Up Assessment"), or its pro rata share based on the total number of Participating Tribes in existence at or about the same time. The purpose of the Start-Up Assessment shall be to assist the State in initiating its administrative and oversight responsibilities under this and similar Agreements, and shall be a one-time payment to the State for such purposes. Any Tribes which become Participating Tribes at a later date shall bear their proportion of the Start-up Assessment retroactively, pro rata with other Participating Tribes. The Tribe shall receive a cash rebate from the State of any pro rata adjustments to and receipts from Participating Tribes, to the extent not already calculated within Tribes payment under this Section, within sixty (60) days of the Effective Date. Thereafter, future adjustments to Tribe's pro rata share of the Start up Assessment shall be refunded in the form of credits to the fees due under subsection A of this Part of this Agreement.

D. Nothing in this Agreement shall be deemed to authorize the State to impose any tax, fee, charge or assessment upon the Tribe or enterprise except as expressly authorized pursuant to this Agreement, provided that to the extent that the Tribe is required under law to withhold state or federal income tax from prizes awarded to non-tribal patrons, the Tribe agrees to withhold such tax in accordance with applicable law. To the extent that the Tribe is required under federal law to withhold federal individual income tax from prizes awarded to non-tribal patrons, the Tribe agrees to withhold comparable state individual income tax, if applicable, from such prizes. The Tribe shall monthly remit amounts withheld hereunder together with a copy of any statement from the recipient,

as required by law, to the Oklahoma Tax Commission. In addition, to the extent that the tribal operation is responsible for filling out Internal Revenue Service forms to report such prizes, a copy of the forms shall also be provided to the Oklahoma Tax Commission.

E. In consideration for the covenants and agreements contained herein the State agrees that it will not, during the term of this agreement, authorize the non-tribal operation of any machines or devices to play covered games in excess of the number and locations authorized by the legislative measure which sets out this agreement. The State recognizes the importance of this provision to the Tribe and agrees, in the event of a breach of this provision by the State to require any non-tribal entity which operates any such devices or machines in excess of such number to remit to the state no less than fifty percent (50%) of any increase in adjusted gross revenues following the addition of such excess machines. The state further agrees to remit to eligible tribes, as liquidated damages, a sum equal to fifty percent (50%) of any increase in adjusted gross revenues following the addition of such excess machines. For purposes of this part "eligible Tribes" shall mean those tribes which have entered into this agreement and are operating gaming pursuant to this agreement within thirty-five (35) miles of an entity which is operating covered game machines in excess of the amount authorized by the legislative measure which sets out this agreement. Such liquidated damages shall be allocated pro rata to eligible tribes based on the number of covered game machines operated by each eligible tribe in the time period when such adjusted gross revenues were generated.

#### Part 11. DISPUTE RESOLUTION

In the event that either party to this Agreement believes that the other party has failed to comply with any requirement of this Agreement, or in the event of any disagreement or dispute hereunder, including but not limited to a dispute over the proper

interpretation of the terms and conditions of this Agreement, the following procedures may be invoked:

1. The goal of the parties shall be to resolve all disputes amicably and voluntarily whenever possible. A party asserting noncompliance or seeking an interpretation of this Agreement first shall serve written notice on the other party. The notice shall identify the specific Agreement provision alleged to have been violated or in dispute and shall specify in detail the asserting party's contention and any factual basis for the claim.

Representatives of the Tribe and State shall meet within thirty (30) days of receipt of notice in an effort to resolve the dispute;

2. Subject to the limitation set forth in Section 3 below, either party may refer a dispute arising under this Agreement to arbitration under the rules of the American Arbitration Association (AAA), subject to enforcement or pursuant to review as provided by paragraph 3 of this Part by a federal district court or if such court lacks jurisdiction, in any court of competent jurisdiction. The remedies available through arbitration are limited to enforcement of the provisions of this agreement. The parties consent to the jurisdiction of such arbitration forum and court for such limited purposes and no other, and each waives immunity with respect thereto. One arbitrator shall be chosen by the parties from a list of qualified arbitrators to be provided by the AAA. If the parties cannot agree on an arbitrator, then the arbitrator will be named by the AAA. The expenses of arbitration shall be borne equally by the parties.

A party asserting noncompliance or seeking an interpretation of this Agreement under this Section shall be deemed to have certified that to the best of the party's knowledge, information, and belief formed after reasonable inquiry, the claim of noncompliance or the request for interpretation of this Agreement is warranted and made in good faith and not for any improper purpose, such as to harass or

to cause unnecessary delay or the needless incurring of the cost of resolving the dispute. If the dispute is found to have been initiated in violation of this Part of this Agreement, the Arbitrator, upon request or upon his or her own initiative, shall impose upon the violating party an appropriate sanction, which may include an award to the other party of its reasonable expenses incurred in having to participate in the arbitration; and

3. Notwithstanding any provision of law, either party to the Agreement may bring an action against the other in a federal district court for the de novo review for the confirmation of any arbitration award under paragraph 2 of this Part of this Agreement. The decision of the court shall be subject to appeal. Each of the parties hereto waives immunity and consents to suit therein for such limited purposes, and agrees not to raise the Eleventh Amendment to the United States Constitution or comparable defense to the validity of such waiver.

Nothing herein shall be construed to authorize a money judgment other than for damages for failure to comply with an arbitration decision requiring the payment of monies.

Part 12. CONSTRUCTION OF AGREEMENT; FEDERAL APPROVAL

A. Each provision, section, and subsection of this Agreement shall stand separate and independent of every other provision, section, or subsection. In the event that a federal district court shall find any provision, section, or subsection of this Agreement to be invalid, the remaining provisions, sections, and subsections of this Agreement shall remain in full force and effect, unless revising the invalid provision would require a material alternation of either party's intent in entering into this Agreement.

B. Each party hereto agrees to defend the validity of this Agreement and the legislation in which it is embodied. This compact shall constitute a binding agreement between the parties and shall survive any repeal or amendment of the State-Tribal Gaming Act.

C. The parties shall cooperate in seeking approval of this Agreement from an appropriate federal agency as a tribal-state compact under the Indian Gaming Regulatory Act.

D. The specifications for electronic instant tickets games and amusement games established in the State-Tribal Gaming Act as enacted in 2003 are hereby incorporated in this agreement and shall survive any repeal of the State-Tribal Gaming Act, or any games authorized thereunder. In the event that said specifications are changed by amendment of the State-Tribal Gaming Act, the Tribe shall have the option to incorporate said changes into this agreement by delivery of written notice of said changes to the Governor and the SCA.

Part 13. NOTICES

All notices required under this Agreement shall be given by certified mail, return receipt requested, commercial overnight courier service, or personal delivery, to the following persons:

Governor

Chair, State-Tribal Relations Committee

Attorney General

[Principal Chief or Governor]

[Name of Tribe]

[Address]

With copies to:

\_\_\_\_\_

\_\_\_\_\_

Part 14. DURATION AND NEGOTIATION

A. This Agreement shall become effective upon the last date of the satisfaction of the following requirements:

1. Due execution on behalf of the Tribe, including obtaining all tribal resolutions and completing other tribal procedures as may be necessary to render Tribes execution effective;



2. Approval of this Agreement by the Secretary of the Interior as a tribal-state compact within the meaning of IGRA and publication in the Federal Register;

3. Payment of the start up assessment provided for in subsection C of Part 10 of this agreement; and

4. Issuance by the Governor of an executive order that the requirements in paragraphs 1, 2 and 3 of this subsection have been satisfied.

B. This Agreement shall have a term which will expire fifteen (15) years from the date the offer by the State to enter into this compact became effective.

C. This Agreement shall remain in full force and effect until the sooner of expiration of the term or until the Agreement is terminated by mutual consent of the parties.

Part 15. AUTHORITY TO EXECUTE

This Agreement, as an enactment of the Oklahoma Legislature, is deemed approved by the State of Oklahoma. No further action by the State or any State official is necessary for this Agreement to take effect upon approval by the Secretary of the Interior and publication in the Federal Register. The undersigned tribal official(s) represents that he or she is duly authorized and has the authority to execute this agreement on behalf of the Tribe for whom he or she is signing.

APPROVED:

[Name of Tribe]

\_\_\_\_\_ Date \_\_\_\_\_

[CHIEF EXECUTIVE OFFICER]

SECTION 29. AMENDATORY 37 O.S. 2001, Section 163.2, is amended to read as follows:

Section 163.2 In the administration of Section 163.1 et seq. of this title, the following words and phrases are given the meanings respectively indicated:

1. "Low-point beer" means and includes beverages containing more than one-half of one percent (1/2 of 1%) alcohol by volume, and not more than three and two-tenths percent (3.2%) alcohol by weight, including but not limited to beer or cereal malt beverages obtained by the alcoholic fermentation of an infusion of barley or other grain, malt or similar products;

2. "Person" means and includes an individual, a trust or estate, a partnership, an association, an Indian tribe or a corporation;

3. "Manufacturer" means and includes any person who prepares for human consumption by the use of raw materials or other ingredients any low-point beer, as defined herein, upon which a license fee and a tax are imposed by any law of this state;

4. "Wholesaler" means and includes any person who sells any low-point beer, as defined herein, to a licensed retail dealer, as hereinafter defined, for resale;

5. "Retail dealer" means and includes any person who sells any low-point beer, as defined herein, at retail for consumption or use, and such definitions include state and county fair associations, and special licenses may be issued for the sale of low-point beer, as herein defined, by such associations, and to other persons for the sale of such low-point beer at rodeos, picnics, or other organized temporary assemblages of people. The term "retail dealer" also includes railways for the sale of such beverages, and licenses may be issued for each dining car or railway train, which railways and dining cars shall pay the same license fees as regular retail dealers;

6. "Sale" or "sales", for the purpose of the collection of the taxes imposed by any law of the state upon low-point beer, as defined herein, is hereby defined to mean and include all sales by all wholesalers within this state, for money or any other valuable consideration, to retail dealers for resale; and, also, the term

"sale" or "sales" taxable under Section 163.1 et seq. of this title means and includes all sales from manufacturers or wholesalers from outside this state, to retail dealers for resale to consumers or otherwise. The term "sale" or "sales" shall also include sales from manufacturers without the state to wholesalers located within the state;

7. "Meals" means foods commonly ordered at lunch or dinner and at least part of which is cooked on the licensed premises and requires the use of dining implements for consumption. Provided, that the service of only food such as appetizers, sandwiches, salads or desserts shall not be considered "meals"; and

8. "Motion picture theater" means a place where motion pictures are exhibited and to which the general public is admitted, but does not include a place where meals, as defined by this section, are served, if only persons twenty-one (21) years of age or older are admitted.

SECTION 30. AMENDATORY 37 O.S. 2001, Section 506, is amended to read as follows:

Section 506. When used in the Oklahoma Alcoholic Beverage Control Act, the following words and phrases shall have the following meaning:

1. "ABLE Commission" means the Alcoholic Beverage Laws Enforcement Commission;

2. "Alcohol" means and includes hydrated oxide of ethyl, ethyl alcohol, ethanol, or spirits of wine, from whatever source or by whatever process produced. It does not include wood alcohol or alcohol which has been denatured or produced as denatured in accordance with Acts of Congress and regulations promulgated thereunder;

3. "Alcoholic beverage" means alcohol, spirits, beer, and wine as those terms are defined herein and also includes every liquid or solid, patented or not, containing alcohol, spirits, wine or beer

and capable of being consumed as a beverage by human beings, but does not include low-point beer as that term is defined in Section 163.2 of this title;

4. "Applicant" means any ~~individual~~ person, legal or commercial business entity, or any individual involved in any legal or commercial business entity allowed to hold any license issued in accordance with the Oklahoma Alcoholic Beverage Control Act;

5. "Beer" means any beverage containing more than three and two-tenths percent (3.2%) of alcohol by weight and obtained by the alcoholic fermentation of an infusion or decoction of barley, or other grain, malt or similar products. "Beer" may or may not contain hops or other vegetable products. "Beer" includes, among other things, beer, ale, stout, lager beer, porter and other malt or brewed liquors, but does not include sake, known as Japanese rice wine;

6. "Bottle club" means any establishment in a county which has not authorized the retail sale of alcoholic beverages by the individual drink, which is required to be licensed to keep, mix, and serve alcoholic beverages belonging to club members on club premises;

7. "Brewer" means any person who produces beer in this state;

8. "Class B wholesaler" means and includes any person doing any such acts or carrying on any such business that would require such person to obtain a Class B wholesaler license hereunder;

9. "Convicted" and "conviction" mean and include a finding of guilt resulting from a plea of guilty or nolo contendere, the decision of a court or magistrate or the verdict of a jury, irrespective of the pronouncement of judgment or the suspension thereof;

10. "Director" means the Director of the Alcoholic Beverage Laws Enforcement Commission under the supervision of said Commission;

11. "Distiller" means any person who produces spirits from any source or substance, or any person who brews or makes mash, wort, or wash, fit for distillation or for the production of spirits (except a person making or using such material in the authorized production of wine or beer, or the production of vinegar by fermentation), or any person who by any process separates alcoholic spirits from any fermented substance, or any person who, making or keeping mash, wort, or wash, has also in his or her possession or use a still;

12. "Hotel" or "motel" shall mean an establishment which is licensed to sell alcoholic beverages by the individual drink and which contains guestroom accommodations with respect to which the predominant relationship existing between the occupants thereof and the owner or operator of the establishment is that of innkeeper and guest. For purposes of this section, the existence of other legal relationships as between some occupants and the owner or operator thereof shall be immaterial;

13. "Legal newspaper" means a newspaper meeting the requisites of a newspaper for publication of legal notices as prescribed in Sections 101 through 114 of Title 25 of the Oklahoma Statutes;

14. "Licensee" means any person holding a license under the Oklahoma Alcoholic Beverage Control Act, and any agent, servant, or employee of such licensee while in the performance of any act or duty in connection with the licensed business or on the licensed premises;

15. "Light beer" means a low-point beer controlled under this title;

16. "Light wine" means any wine containing not more than fourteen percent (14%) alcohol measured by volume at sixty (60) degrees Fahrenheit;

17. "Manufacturer's agent" means a salaried or commissioned salesman who sells to a wholesaler or Class B wholesaler only;

18. "Manufacturer" means a brewer, distiller, winemaker, rectifier, or bottler of any alcoholic beverage;

19. "Meals" means foods commonly ordered at lunch or dinner and at least part of which is cooked on the licensed premises and requires the use of dining implements for consumption. Provided, that the service of only food such as appetizers, sandwiches, salads or desserts shall not be considered "meals";

20. "Mini-bar" means a closed container, either refrigerated, in whole or in part, or nonrefrigerated, and access to the interior of which is (1) restricted by means of a locking device which requires the use of a key, magnetic card, or similar device, or (2) controlled at all times by the licensee;

21. "Mixed beverage cooler" means any beverage, by whatever name designated, consisting of an alcoholic beverage and fruit or vegetable juice, fruit or vegetable flavorings, dairy products or carbonated water containing more than one-half of one percent (1/2 of 1%) of alcohol measured by volume but not more than seven percent (7%) alcohol by volume at sixty (60) degrees Fahrenheit and which is packaged in a container not larger than three hundred seventy-five (375) milliliters. Such term shall include, but not be limited to, the beverage popularly known as a "wine cooler";

22. "Mixed beverages" means one or more servings of a beverage composed in whole or part of an alcoholic beverage in a sealed or unsealed container of any legal size for consumption on the premises where served or sold by the holder of a mixed beverage, beer and wine, caterer, or special event license;

23. "Motion picture theater" means a place where motion pictures are exhibited and to which the general public is admitted, but does not include a place where meals, as defined by this section, are served, if only persons over twenty-one (21) years of age are admitted;

24. "Retail salesperson" means a salesperson soliciting orders from and calling upon retail alcoholic beverage stores with regard to his or her product;

25. "Occupation" as used in connection with "occupation tax" means the sites occupied as the places of business of the manufacturers, wholesalers, Class B wholesalers, retailers, mixed beverage licensees, beer and wine licensees, bottle clubs, caterers, and special event licensees;

26. "Original package" means any container of alcoholic beverage filled and stamped or sealed by the manufacturer;

27. "Patron" means any person, customer, or visitor who is not employed by a licensee or who is not a licensee;

28. "Person" means an individual, an Indian tribe, any type of partnership, corporation, association, limited liability company or any individual involved in the legal structure of any such business entity;

29. "Premises" means the grounds and all buildings and appurtenances pertaining to the grounds including any adjacent premises if under the direct or indirect control of the licensee and the rooms and equipment under the control of the licensee and used in connection with or in furtherance of the business covered by a license. Provided that the ABLE Commission shall have the authority to designate areas to be excluded from the licensed premises solely for the purpose of:

- a. allowing the presence and consumption of alcoholic beverages by private parties which are closed to the general public, or
- b. allowing the services of a caterer serving alcoholic beverages provided by a private party.

This exception shall in no way limit the licensee's concurrent responsibility for any violations of the Oklahoma Alcoholic Beverage Control Act occurring on the licensed premises;

30. "Rectifier" means any person who rectifies, purifies, or refines spirits or wines by any process (other than by original and continuous distillation, or original and continuous processing, from mash, wort, wash, or other substance, through continuous closed vessels and pipes, until the production thereof is complete), and any person who, without rectifying, purifying, or refining spirits, shall by mixing (except for immediate consumption on the premises where mixed) such spirits, wine, or other liquor with any material, manufactures any spurious, imitation, or compound liquors for sale, under the name of whiskey, brandy, rum, gin, wine, spirits, cordials, or any other name;

31. "Regulation" or "rule" means a formal rule of general application promulgated by the ABLE Commission as herein required;

32. "Restaurant" means an establishment that is licensed to sell alcoholic beverages by the individual drink for on-premises consumption and where food is prepared and sold for immediate consumption on the premises;

33. "Retail container for spirits and wines" means an original package of a capacity not less than one-twentieth (1/20) gallon specified by the ABLE Commission in its regulations for the alcoholic beverage concerned, or an original package with a capacity of less than one-twentieth (1/20) gallon, referred to as miniatures;

34. "Retailer" means the holder of a Package Store License;

35. "Sale" means any transfer, exchange or barter in any manner or by any means whatsoever, and includes and means all sales made by any person, whether as principal, proprietor or as an agent, servant or employee. The term "sale" is also declared to be and include the use or consumption in this state of any alcoholic beverage obtained within or imported from without this state, upon which the excise tax levied by the Oklahoma Alcoholic Beverage Control Act has not been paid or exempted;



36. "Short order food" means food other than full meals including but not limited to sandwiches, soups, and salads. Provided that popcorn, chips, and other similar snack food shall not be considered "short order food";

37. "Sparkling wine" means champagne or any artificially carbonated wine;

38. "Spirits" means any beverage other than wine, beer or light beer, which contains more than one-half of one percent (1/2 of 1%) alcohol measured by volume and obtained by distillation, whether or not mixed with other substances in solution and includes those products known as whiskey, brandy, rum, gin, vodka, liqueurs, cordials and fortified wines and similar compounds; but shall not include any alcohol liquid completely denatured in accordance with the Acts of Congress and regulations pursuant thereto;

39. "Wholesaler" means and includes any person doing any such acts or carrying on any such business or businesses that would require such person to obtain a wholesaler's license or licenses hereunder;

40. "Wine" means and includes any beverage containing more than one-half of one percent (1/2 of 1%) alcohol by volume and not more than twenty-four percent (24%) alcohol by volume at sixty (60) degrees Fahrenheit obtained by the fermentation of the natural contents of fruits, vegetables, honey, milk or other products containing sugar, whether or not other ingredients are added, and includes vermouth and sake, known as Japanese rice wine;

41. "Winemaker" means any person who produces wine; and

42. "Oklahoma winemaker" means a business premises in Oklahoma licensed pursuant to the Oklahoma Alcoholic Beverage Control Act wherein wine is produced by the licensee who must be a resident of the state. The wine product fermented in said licensed premises shall be of grapes, berries and other fruits and vegetables imported

into this state and processed herein or shall be of grapes, berries and other fruits and vegetables grown in Oklahoma.

Words in the plural include the singular, and vice versa, and words imparting the masculine gender include the feminine, as well as persons and licensees as defined in this section.

SECTION 31. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section \_\_\_\_ of Title 3A, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Horse Racing Commission shall promulgate rules authorizing advance deposit wagering at racing enclosure locations.

SECTION 32. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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