# United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

JUL 30 1993

Honorable Sylvester Listo
Chairman
Tohono O'odham Nation
P.O. Box 837
Sells, Arizona 85634

Dear Chairman Listo:

On June 29, 1993, we received the compact between the Tohono O'odham Nation (Nation) and the State of Arizona (State), dated June 24, 1993.

This compact has a unique history. In Yavapai-Prescott v. Arizona, No. 91-1696 (D. Az.), several Arizona tribes sued the State of Arizona for failing to negotiate, in good faith, Class III tribal-state gaming compacts. Thereafter, four tribes negotiated compacts with the State. Three tribes, the Tohono O'odham, White Mountain Apache and Pascua Yaqui, were unable to reach agreement with the State. As a result, the three tribes and the State were required to submit their last, best compact offers to a court-appointed mediator under 25 U.S.C. § 2710(d)(7) of the Indian Gaming Regulatory Act (IGRA). The mediator was required to choose the compacts which best comported with the terms of the IGRA. In all three instances, the mediator chose the tribes' compacts. The State, however, declined to consent to the proposed compacts.

Upon the expiration of the time period in which the State could accept the compacts, the mediator submitted the compacts to the Secretary to prescribe gaming procedures. Although the compacts chosen by the mediator were submitted to the Secretary, the three tribes and the Governor had agreed to continue their compact negotiations to resolve differences and to settle the pending lawsuit. The parties were able to reach agreements which resulted in negotiated compacts. The compacts were then submitted to the Department for approval in lieu of Secretarial procedures. We find nothing in the IGRA which precludes the State and Nation from concluding a compact and substituting it for the development of procedures.

We have completed our review of your Compact and conclude that it does not violate the IGRA, Federal law or our trust responsibility. Therefore, pursuant to my delegated authority and Section 11 of the IGRA, we approve the Compact. The Compact shall take effect when the notice of our approval, pursuant to Section 11 (d)(3)(b) of IGRA, 25 U.S.C. § 2710(d)(8)(D) is published in the FEDERAL REGISTER.

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NIGC

Notwithstanding our approval of the Compact, be advised that Section 11(d)(1) of the IGRA, 25 U.S.C. § 2710(b)(1)(B) requires that gaming cannot be conducted without a tribal gaming ordinance approved by the Chairman of the National Indian Gaming Commission (NIGC). On July 8, 1992, the NIGC published in the FEDERAL REGISTER proposed regulations to govern the approval of Class II and Class III gaming ordinances. The final regulations were published in the FEDERAL REGISTER on January 22, 1993 (58 Fed. Reg. 5802), and became effective on February 22, 1993. Pursuant to the IGRA and the regulations, even previously existing gaming ordinances must be submitted to the NIGC for approval when requested by the Chairman.

In addition, if the Nation intends to enter into a management contract for the operation and management of the Nation's gaming facility, the contract must likewise be submitted to, and approved by the Chairman of the NIGC pursuant to Section 11(d)(9) of the IGRA, 25 U.S.C. § 2710(d)(9) and the NIGC's regulations governing management contracts. The Nation may want to contact the NIGC at (202) 632-7003 for further information on submitting the ordinance and the management contract for approval by the NIGC.

We wish the Nation and the State success in their economic venture.

Sincerely,

Ada E. Deer

Assistant Secretary - Indian Affairs

Enclosures

Identical Letter Sent to: Honorable Fife Symington
Governor of Arizona
State Capitol
Phoenix, Arizona 85007

cc: Phoenix Area Director w/copy of approved Compact
Supt. Papago Agency w/copy of approved Compact
[redacted] Commission w/ copy of approved Compact
Phoenix Area Field Solicitor w/ copy of approved Compact
Phoenix United States Attorney with copy of approved Compact

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Indian Gaming

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of approved Tribal-State Compact.

**SUMMARY:** Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved Tohono O'odham Nation and State of Arizona Gaming Compact of 1993, which was enacted on June 24, 1993.

**DATES:** This action is effective August 18, 1993.

**FOR FURTHER INFORMATION CONTACT:** Hilda Manuel, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: July 30, 1993.

**Ada E. Deer,**

*Assistant Secretary—Indian Affairs.*

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# TOHONO O'ODHAM NATION

# AND

# STATE OF ARIZONA

# GAMING COMPACT

# 1993

# TOHONO O'ODHAM NATION-STATE OF ARIZONA GAMING COMPACT


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# THE TOHONO O'ODHAM NATION-STATE OF ARIZONA GAMING COMPACT

This Compact is entered into by and between the Tohono O'odham Nation ("Nation") and the State of Arizona ("State"), in accordance with the Indian Gaming Regulatory Act of 1988 for the purposes of governing Class III Gaming Activities conducted within the territorial jurisdiction of the Nation.

## DECLARATION OF POLICY AND PURPOSE

WHEREAS, the Nation and the State are separate sovereigns, and each recognizes and respects the laws and authority of the other sovereign; and

WHEREAS, the Congress of the United States has enacted into law the Indian Gaming Regulatory Act, Public Law 100-497, 25 U.S.C. §§ 2701-2721 and 18 U.S.C. §§ 1166-1168 (the "Act") which requires a Tribal-State Compact negotiated between a tribe and a state in order to conduct Class III Gaming Activities on the Indian Lands of an Indian tribe; and

WHEREAS, the purpose of the Act is to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments; and

WHEREAS, the Nation is a federally recognized Indian tribe and exercises governmental power over Indian Lands which are located within the exterior boundaries of the State, and within which the Gaming Activities regulated hereunder shall take place; and

WHEREAS, the Nation and the State have negotiated the terms and conditions of this Compact to provide a regulatory framework for the operation of certain Class III Gaming which is intended to (a) ensure the fair and honest operation of such Gaming Activities; (b) maintain the integrity of all activities conducted in regard to such Gaming Activities; and (c) protect the public health, welfare and safety.

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

## SECTION 1. TITLE

This document shall be referred to as "The Tohono O'odham Nation - State of Arizona Gaming Compact."

## SECTION 2. DEFINITIONS

For purposes of this Compact:

(a) "Act" means the Indian Gaming Regulatory Act, Public Law 100-497, 25 U.S.C. §§ 2701-2721 and 18 U.S.C. §§ 1166-1168.

(b) "Applicant" means any person who has applied for a license or certification under the provisions of this Compact, or employment with a Gaming Facility Operator, or approval of any act or transaction for which approval is required or permitted under the provisions of this Compact.

(c) "Application" means a request for the issuance of a license or certification or for employment by a Gaming Facility Operator, or for approval of any act or transaction for which approval is required or permitted under the provisions of this Compact.

(d) "Class I Gaming" means all forms of gaming defined as Class I in section 4(6) of the Act, 25 U.S.C. § 2703(6).

(e) "Class II Gaming" means all forms of gaming defined as Class II in section 4(7) of the Act, 25 U.S.C. §2703(7).

(f) "Class III Gaming" means all forms of gaming as defined in section 4(8) of the Act, 25 U.S.C. § 2703(8).

(g) "Commission" means the National Indian Gaming Commission established pursuant to 25 U.S.C. § 2704.

(h) "Compact" means this Tohono O'odham Nation--State of Arizona Gaming Compact.

(i) "Distributor" means a person who distributes Class III Gaming Devices and/or component parts thereof.

(j) "Enrolled Tribal Member" means a person who has been enrolled in the Nation and whose name appears in the tribal membership roll and who meets the written criteria for membership.

(k) "Gaming Activity" means all forms of Class III Gaming owned and operated by the Nation and conducted within the Indian Lands of the Nation.

(l) "Gaming Device" or "Electronic Game of Chance" means a microprocessor-controlled electronic device which allows a player to play games of chance, some of which are affected by skill, which device is activated by the insertion of a coin, currency, tokens or by the use of a credit, and which awards game credits, cash, tokens, replays or a receipt that can be redeemed by the player for any of the foregoing. Game play may be displayed by:

(1) Video facsimile; or

(2) Mechanical rotating reels whereby the software of the device

predetermines the stop positions and the presence, or lack thereof, of a winning combination and pay out, if any.

(m) "Gaming Employee" means any person employed as a Primary Management Official or Key Employee of a Gaming Operation of the Nation and any person employed in the operation or management of a Gaming Operation, including, but not limited to, any person whose employment duties require or authorize access to restricted areas of a Gaming Facility not otherwise open to the public.

(n) "Gaming Facility" means the buildings or structures in which Class III Gaming, as authorized by this Compact, is conducted.

(o) "Gaming Facility Operator" means the Nation, an enterprise owned by the Nation, or such other entity of the Nation as the Nation may from time to time designate by written notice to the State as the wholly-owned tribal entity having full authority and responsibility for the operation and management of Class III Gaming Activities.

(p) "Gaming Operation" means any Gaming Activity conducted within any Gaming Facilities.

(q) "Gaming Ordinance" means any duly enacted ordinance of the Nation which governs the conduct of Gaming Activities within the Nation, all amendments thereto, and all regulations promulgated thereunder.

(r) "Gaming Services" means the providing of any goods or services, except for legal services, to the Nation in connection with the operation of Class III Gaming in a Gaming Facility, including but not limited to equipment, transportation, food, linens, janitorial supplies, maintenance, or security services for the Gaming Facility, in an amount in excess of $10,000 in any single month.

(s) "Indian Lands" means land as defined in 25 U.S.C. § 2703(4)(A) and (B), subject to the provisions of 25 U.S.C. § 2719.

(t) "Interactive Terminal" or "Video Lottery Terminal" means an on-line computer or data-processing terminal capable of providing a source of both input and a video display output for the computer system to which it is connected, in which a player is playing against the algorithm of the terminal so that the player is playing directly against the terminal for immediate payment and is immediately rewarded or penalized based on the outcome, and which dispenses a paper receipt which can be redeemed by the player for the player's winnings.

(u) "Keno" means a house banking game in which a player selects from

one to twenty numbers on a card that contains the numbers one through eighty; the house randomly draws twenty numbers; players win if the numbers they select correspond to the numbers drawn by the house, and the house pays all winners, if any, and collects from all losers.

(v) "Key Employee" means a Gaming Employee who performs one or more of the following functions:

(1) Counting room supervisor;

(2) Chief of security;

(3) Custodian of gaming supplies or cash;

(4) Floor manager; or

(5) Custodian of Gaming Devices including persons with access to cash and accounting records within such devices; or,

if not otherwise included, any other person whose total cash compensation is in excess of $50,000 per year; or, if not otherwise included, the four most highly compensated persons in the Gaming Operation.

(w) "License" means an approval issued by the Tohono O'odham Gaming Office to any natural person or entity to be involved in the Gaming Operation or in the providing of Gaming Services to the Nation.

(x) "Licensee" means any natural person or entity who has been licensed by the Tohono O'odham Gaming Office to be involved in the Gaming Operation or in the providing of Gaming Services to the Nation.

(y) "Lotto" is the generic name for a type of on-line lottery game operated by the State of Arizona in which a player selects a group of numbers from a larger field of numbers and wins by matching specific numbers subsequently drawn.

(z) "Management Contract" means a contract within the meaning of 25 U.S.C. §§ 2710(d)(9) and 2711.

(aa) "Management Contractor" means a natural person or entity that has entered into a Management Contract with the Nation or a Gaming Facility Operator which has been approved pursuant to 25 U.S.C. §§ 2710(d)(9) and 2711.

(bb) "Manufacturer" means a natural person or entity that manufactures Gaming Devices and/or component parts thereof as defined by this Compact for use or play in the Gaming Facilities.

(cc) "Person" includes a corporation, company, partnership, firm, association or society, as well as a natural person. When "person" is used to designate the

violator or offender of any law, it includes a corporation, partnership or any association of persons.

(dd) "Player Activated Lottery Terminal" means an on-line computer system that is player-activated, but does not provide the player with interactive gaming, and utilizes the terminal for dispensing purposes only in which (i) the terminal algorithm is used for the random generation of numbers, (ii) the tickets dispensed by the terminal do not allow the player the means to play directly against the terminal, (iii) the player uses the dispensed ticket to participate in an off-site random drawing, and (iv) the player's ability to play against the terminal for immediate payment or reward is eliminated.

(ee) "Principal" means with respect to any Person:

(1) Each of its officers and directors;

(2) Each of its principal management employees, including any chief executive officer, chief financial officer, chief operating officer or general manager;

(3) Each of its owners or partners, if an unincorporated business;

(4) Each of its shareholders who own more than ten (10) percent of the shares of the corporation, if a corporation;

(5) Each person other than a banking institution who has provided financing for the entity constituting more than ten (10) percent of the total financing of the entity; and

(6) Each of the beneficiaries, or trustees of a trust.

(ff) "Primary Management Official" means the person having management responsibilities under a Management Contract; or any person who has authority to hire and fire employees or to set up working policy for a Gaming Operation; or the chief financial officer or other person who has financial management responsibility for a Gaming Operation.

(gg) "State" means the State of Arizona, its authorized officials, agents and representatives.

(hh) "State Certification" means the process utilized by the State Gaming Agency to ensure that all persons required to be certified are qualified to hold such certification in accordance with the provisions of this Compact.

(ii) "State Gaming Agency" means the agency of the State which the Governor may from time to time designate by written notice to the Nation as the single state agency which shall act on behalf of the State under this Compact.

(jj) "Tohono O'odham Gaming Office" means the department, agency or commission designated by action of the Nation's Legislative Council as the Tribal entity which shall exercise the civil regulatory authority of the Nation over Class III Gaming Activities within the Nation.

(kk) "Tohono O'odham Police Department" means the police force of the Nation established and maintained or contracted for by the Nation pursuant to the Nation's powers of self-government to carry out law enforcement within the Nation.

(ll) "Nation" means the Tohono O'odham Nation, and its authorized officials, agents and representatives.

SECTION 3. NATURE, SIZE AND CONDUCT OF CLASS III GAMING

(a) **Authorized Class III Gaming Activities**. Subject to the terms and conditions of this Compact, the Nation is authorized to operate the following

Gaming Activities: (1) Gaming Devices, (2) Keno, (3) lottery, (4) off-track pari-mutuel wagering , (5) pari-mutuel wagering on horse racing, and (6) pari-mutuel wagering on dog racing.

(b) **Appendices Governing Gaming.**

(1) The State and the Nation agree that the Nation shall only offer for play by the public at the Gaming Facilities Gaming Devices which comply with the technical standards as set forth in Appendix A.

(2) The State and the Nation agree that the Nation shall comply with the security and surveillance requirements set forth in Appendix C to this Compact. Provided, however, that the provisions of Appendix C shall only be required with respect to Gaming Devices operated as part of a network pursuant to Section 3 (q) of this Compact.

(3) The State and the Nation further agree that prior to the Nation conducting any Gaming Activities authorized in this Compact or any amendments thereto, other than Gaming Devices, the parties shall append to this Compact a mutually agreed-upon appendix setting forth the operational standards, specifications

and regulations governing such gaming. In addition, any disputes regarding the contents of such appendices shall be resolved in the manner set forth in Section 15 of this Compact. A change in or the addition of an appendix shall not be considered an amendment to the Compact.

(4) The Tohono O'odham Gaming Office shall require each licensed and certified Manufacturer and Distributor to verify under oath, on forms provided by the Tohono O'odham Gaming Office, that the Gaming Devices manufactured or distributed by them for use or play at the Gaming Facilities meet the requirements of this Section.

(5) The Tohono O'odham Gaming Office and the State Gaming Agency by mutual agreement may require the testing of any Gaming Device to ensure compliance with the requirements of this Section. Any such testing shall be conducted according to the technical standards contained in Appendix A and shall be at the expense of the licensed Manufacturer.

(c) **Number of Gaming Devices and Gaming Facility Locations.** Subject to the terms and conditions of this Compact, the Nation is authorized to operate the

following number of Gaming Devices and Gaming Facility locations, not to exceed 500 Gaming Devices per Gaming Facility location, based upon its Enrolled Tribal Member population:

(1)

| Number of Enrolled Tribal Members | Number of authorized Gaming Devices | Number of Authorized Gaming Facility Locations |
|---|---|---|
| 1 - 4,000 | 475 | 2 |
| 4,001 - 8,000 | 700 | 3 |
| 8,001 - 16,000 | 900 | 3 |
| Above 16,000 | 1,400 | 4 |

(2) For purposes of determining the number of Gaming Devices for the Nation, enrollment shall be based upon the Nation's official tribal enrollment figures submitted to the Bureau of Indian Affairs.

(3) If during the term of this Compact any tribe in the State of Arizona is authorized to operate Gaming Devices in excess of the number of Gaming Devices provided for in Section 3 (c) (1) or is authorized to operate more than 500 Gaming Devices per Gaming Facility location for any reason other than the allowance of additional Gaming Devices pursuant to Section 3(e)(2)(B) then the Nation, regardless of the number of Enrolled

Tribal Members, shall be entitled to operate Gaming Devices without regard to the limitations on the number of Gaming Devices or the number of Gaming Devices per location without the need to amend this Compact.

(d) **Number of Keno Games**. Subject to the terms and conditions of this Compact, the Nation is authorized to operate no more than two (2) Keno games per reservation.

(e) **Additional Games**.

(1) If during the term of this Compact, State law changes to permit types of Class III Gaming not authorized under this Compact, or if any other tribe is authorized to engage in types of Class III Gaming not authorized under this Compact, then the Nation, upon the effective date of such law or authorization, shall be authorized to operate such Class III Gaming, without the need to amend this Compact, subject to the provisions of Section 3(b).

(2) If during the term of this Compact, State law changes to permit non-tribal entities or the State to operate (i) Class III Gaming Devices or Electronic Games of Chance, (ii) Keno, or

(iii) Video Lottery Terminals that allow the play, or simulate the play, or are electronic facsimiles of any game other than the game of Lotto, then the Nation, upon the effective date of such law, shall be authorized to either:

(A) Operate a maximum of twelve (12) table games per Gaming Facility location, without the need to amend this Compact, subject to the provisions of Section 3(b), or

(B) As an alternative to paragraph (A) above, the Nation may notify the State of its intent to negotiate for Gaming Devices in excess of the number of devices set forth in this Section as is appropriate to the change in State laws. If the State and the Nation fail to agree within one hundred eighty (180) days of the receipt of such notice, the dispute shall be resolved pursuant to Section 15(d).

The Nation shall select either paragraph (A) or paragraph (B) above, but not both.

(3) The provisions of Section 3 (e) (1) and Section 3 (e) (2) shall not apply to the use of Player Activated Terminals, casino nights operated by non-profit or charitable organizations pursuant to and qualified under A.R.S. § 13-3302(B), or to Video Lottery Terminals or Interactive Terminals used by the State of

Arizona for playing the game of Lotto.

(4) The table games authorized in Section 3 (e) (2) shall be limited to twelve (12) blackjack or twelve (12) dice games or any combination of the two types of games per Gaming Facility location.

(f) **Authorized Gaming Facility Locations**. The Nation is authorized to operate four (4) Gaming Facility locations. All Gaming Facility locations shall be located not less than one and one-half miles apart and shall be located on the Indian Lands of the Nation. The Nation shall notify the State Gaming Agency of the physical location of any Gaming Facility a minimum of thirty (30) days prior to commencing gaming authorized pursuant to this Compact at such location. Gaming on lands acquired after the enactment of the Act on October 17, 1988 shall be authorized only in accordance with 25 U.S.C. § 2719.

(g) **Forms of Payment**. All payment for wagers made on authorized forms of Class III Gaming conducted by the Nation on its Indian Lands, including the purchase of tokens for use in wagering, shall be made by cash, cash equivalent, credit card or personal check. Personal checks shall not be honored in excess of two hundred and fifty dollars ($250) per person per day. Automatic Teller Machines (ATMs) may be installed at the Gaming Facilities. Personal checks guaranteed by a

third party check guarantee company shall be considered ATM transactions.

(h) **Wagering Limitations**. The maximum wager authorized for any single play of a Gaming Device is eight dollars ($8.00).

(i) **Hours of Operation**. The Nation may establish by ordinance or regulation the permissible hours and days of operation of Gaming Activities; provided, however, that with respect to the sale of liquor the Nation shall comply with all applicable State liquor laws at all Gaming Facilities.

(j) **Ownership of Gaming Facilities and Gaming Activities**. The Nation shall have the sole proprietary interest in the Gaming Facilities and Gaming Activities. This provision shall not be construed to prevent the Nation from granting security interests or other financial accommodations to secured parties, lenders or others, or to prevent the Nation from entering into true leases or financing lease arrangements.

(k) **Prohibited Activities**. Any Class III Gaming not specifically authorized in this Section is prohibited. Except as provided herein, nothing in this Compact is intended to prohibit otherwise lawful and authorized Class II gaming upon the Nation's Indian Lands or within the Gaming Facilities.

(l) **Restriction on Minors**. No person under 18 years of age shall be permitted to place any wager, directly or indirectly, in any Gaming Activity. No person under 18 years of age shall be employed by a Gaming Facility Operator or by the Tohono O'odham Gaming Office. No person under 21 years of age shall be employed in the service of alcoholic beverages at any Gaming Facility, unless otherwise permitted under State law.

(m) **Prohibition on Firearms**. The possession of firearms by any person within a Gaming Facility shall be strictly prohibited. This prohibition shall not apply to certified law enforcement officers authorized to be on the premises as well as any private security service retained to provide security at a Gaming Facility, or armored car services.

(n) **Financing**. Any third-party financing extended or guaranteed for the Gaming Operation and Gaming Facilities shall be disclosed to the State Gaming Agency and persons or entities extending such financing shall be required to be licensed by the Nation and annually certified by the State Gaming Agency, unless said person or entity is an agency of the United States or a lending institution licensed and regulated by the State or the United States.

(o) **Record-Keeping**. The Gaming Facility Operator shall maintain the following logs as written or computerized records which shall be available for

inspection by the State Gaming Agency in accordance with Section 7(b) of this Compact: a surveillance log recording all material surveillance activities in the monitoring room of the Gaming Facilities; and a security log recording all unusual occurrences investigated by the Tohono O'odham Gaming Office. Videotape recordings, made in accordance with Appendix C, shall be retained by the Gaming Facility Operator for at least seven (7) days from the date of original recording.

(p) **Persons Excluded.** The Tohono O'odham Gaming Office shall establish a list of persons barred from the Gaming Facilities because their criminal history or association with career offenders or career offender organizations poses a threat to the integrity of the Gaming Activities of the Nation. The Tohono O'odham Gaming Office shall employ its best efforts to exclude persons on such list from entry into its Gaming Facilities. The Tohono O'odham Gaming Office shall send a copy of its list on a monthly basis to the State Gaming Agency.

(q) **Operation as Part of a Network.** Gaming Devices authorized pursuant to this Compact may be operated to offer an aggregate prize or prizes as part of a network including a network with the Gaming Devices of other Indian tribes located within the State of Arizona which have entered into Class III Gaming Compacts with the State of Arizona. Gaming Devices operated as part of a network shall conform to the Technical Standards set forth in Appendix A of this Compact, and, if operated as part of a network with other Indian tribes, shall comply with the

security and surveillance requirements set forth in Appendix C of this Compact.

## SECTION 4. TRIBAL-STATE LICENSING AND CERTIFICATION REQUIREMENTS

(a) **Gaming Facility Operator and Gaming Facility.** The Gaming Facility Operator, and all Gaming Facilities authorized by this Compact, shall be licensed by the Tohono O'odham Gaming Office in conformance with the requirements of this Compact prior to commencement of operation, and annually thereafter. The licensing of the Gaming Facility Operator shall include the licensing of each Principal, Primary Management Official and Key Employee. Prior to the initial commencement of the operation, the State Gaming Agency and Tohono O'odham Gaming Office shall verify compliance with this requirement through a joint pre-operation inspection and letter of compliance. The State Gaming Agency shall send a compliance letter within seven (7) working days after the completion of the inspection if the inspection reveals that the Gaming Facility Operator and Gaming Facilities comport with the terms of this Compact. If the State Gaming Agency determines that the Gaming Facility Operator and Gaming Facility do not comport with the terms of this Compact a non-compliance letter shall be sent within seven (7) working days of the inspection that shall set forth the matters of non-compliance upon which the State Gaming Agency bases its decision. If a dispute arises during the inspection, it shall be resolved pursuant to Section 15 of this Compact.

(b) **Gaming Employees.** Every Gaming Employee shall be licensed by the Tohono O'odham Gaming Office and every employee of the Tohono O'odham Gaming Office shall be licensed by the Nation. Any Gaming Employee or Tohono O'odham Gaming Office employee that is a non-member of the Nation shall also be certified by the State Gaming Agency prior to commencement of employment, and annually thereafter, subject to the temporary certification provided in Section 5(n). Enrolled members of the Nation are not required to be certified by the State as a condition of employment.

(c) **Management Contractors.** Any Management Contractor, including its Principals, engaged by the Nation to assist in the management or operation of the Gaming Facilities or Gaming Activities shall be subject to the licensing requirements of the Tohono O'odham Gaming Office, and shall be required to obtain State Certification prior to providing management services for Class III Gaming authorized by this Compact. The certification shall be renewed annually thereafter.

(d) **Manufacturers and Suppliers of Gaming Devices and Gaming Services.** Each Manufacturer and supplier of Gaming Devices, and each person providing Gaming Services, within or without the Gaming Facility, shall be licensed by the Tohono O'odham Gaming Office and shall be certified by the State Gaming Agency

prior to the sale or lease of any Gaming Devices or gaming services. The Nation shall provide to the State Gaming Agency a list of the names and addresses of all vendors providing Gaming Services on a periodic basis at the time of the meetings required pursuant to Section 6(h) of this Compact.

## SECTION 5. PROCEDURES FOR TRIBAL LICENSING AND STATE CERTIFICATION

(a) **Procedures for Tribal License Applications and State Certification.** Every Applicant for a Tribal gaming license and every Applicant for State Certification shall submit the completed Application, along with any required information, to both the Tohono O'odham Gaming Office and to the State Gaming Agency. Each Application for State Certification and for a Tribal license shall be accompanied, as required, by the applicant's fingerprint card(s), current photograph, and the fee required by the State Gaming Agency or the Tohono O'odham Gaming Office.

(b) **Background Investigation of Applicants.**

(1) Upon receipt of a completed Application and required fee for Tribal licensing, the Tohono O'odham Gaming Office shall conduct the necessary background investigation to ensure the Applicant is qualified for Tribal licensing. Upon completion of

the necessary background investigation, the Tohono O'odham Gaming Office shall either issue a Tribal license, or deny the Application. If the Application for licensing is denied, a statement setting forth the grounds for denial shall be forwarded to the State Gaming Agency together with all other documents relied upon by the Tohono O'odham Gaming Office to the extent allowed by law.

(2) Upon receipt of a completed Application and required fee for State Certification, the State Gaming Agency shall conduct the necessary background investigation to ensure the Applicant is qualified for State Certification. The State Gaming Agency shall expedite State Certification Applications. Upon completion of the necessary background investigation, the State Gaming Agency shall either issue a State certification, or deny the Application. If the Application for certification is denied, a statement setting forth the grounds for denial shall be forwarded to the Tohono O'odham Gaming Office together with all other documentation relied upon by the State Gaming Agency to the extent allowed by State law. The State shall also conduct background investigations of all Applicants for tribal licenses and, consistent with Section 5(q), shall provide the

Tohono O'odham Gaming Office with a written recommendation as to whether the Applicant should be licensed by the Tohono O'odham Gaming Office.

(3) The Tohono O'odham Gaming Office and the State Gaming Agency shall retain the right to conduct additional background investigations of any person required to be licensed or certified at any time, while the license or certification remains valid.

(c) **Notification to Applicant**. The Applicant for State certification shall be notified by the Tohono O'odham Gaming Office of the status of the Application within ten (10) days after the Tohono O'odham Gaming Office receives the State Gaming Agency's recommendation for certification or denial.

(d) **Tribal Employment Standards**. Neither the issuance of a license by the Tohono O'odham Gaming Office nor the issuance of certification by the State Gaming Agency creates or implies a right of employment or continued employment. The Gaming Facility Operator shall not employ, and if already employed, shall terminate, a Gaming Employee if it is determined by the Tohono O'odham Gaming Office, that the Applicant:

(1) has been convicted of any felony or gaming offense;

(2) has knowingly and willfully provided materially important false statements or information or omitted materially important information on his or her employment Application for employment at the Gaming Facility or background questionnaire; or

(3) is determined to be a person whose prior activities, criminal record if any, or reputation, habits, and associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, and methods, and activities in the conduct of gaming or the carrying on of the business and financial arrangements incidental thereto.

(e) Notification of Change of Principals. After an entity is licensed by the Tohono O'odham Gaming Office, or certified by the State Gaming Agency it shall file a report of each change of its Principals with the Tohono O'odham Gaming Office and the State Gaming Agency. Each new Principal shall file a complete Application within (30) days after appointment or election. The Tohono O'odham Gaming Office shall forward a copy of the Application to the State Gaming Agency. The entity's license shall remain valid unless the Tohono O'odham Gaming Office disapproves the change or denies the Application. The entity's certification shall

remain valid unless the State Gaming Agency disapproves the change or denies the Application.

(f) **Grounds for Revocation, Suspension or Denial of State Certification.** The State Gaming Agency may revoke, suspend or deny a State Certification when an Applicant or holder of certification:

(1) Has violated, failed or refused to comply with the provisions, requirements, conditions, limitations or duties imposed by any provision of this Compact or any provision of any State Gaming Agency rule, or when any such violation has occurred upon any premises occupied or operated by any such person or over which he or she has substantial control;

(2) Knowingly causes, aids, abets, or conspires with another to cause any person or entity to violate any of the laws of this State or the rules of the State or Tohono O'odham Gaming Office, or the provisions of this Compact;

(3) Has obtained a State Certification or Tribal License by fraud, misrepresentation, concealment or through inadvertence or mistake;

(4) Has been convicted of, or forfeited bond upon a charge of, or pleaded guilty to, forgery, larceny, extortion, conspiracy to defraud, willful failure to make required payment or reports to any tribal, state or United States governmental agency at any level, or filing false reports therewith, or of any similar offense or offenses, or of bribing or otherwise unlawfully influencing a public official or employee of a tribe, any state of the United States, or of any crime, whether a felony or misdemeanor, involving any gaming activity or physical harm to individuals or moral turpitude;

(5) Makes a misrepresentation of, or fails to disclose a material fact to the State Gaming Agency or the Tohono O'odham Gaming Office;

(6) Fails to prove, by clear and convincing evidence, that he, she or it is qualified in accordance with the provisions of this Section;

(7) Is subject to current prosecution or pending charges, or a conviction which is under appeal, for any of the offenses included under subsection (4) of this Section; provided, that at the request of an Applicant for an original certification, the

State Gaming Agency may defer decision upon the Application during the pendency of such prosecution or appeal;

(8) Has had a gaming license issued by any state or tribe in the United States revoked or denied;

(9) Has demonstrated a willful disregard for compliance with gaming regulatory authority in any jurisdiction, including suspension, revocation, denial of Application or forfeiture of license;

(10) Has pursued or is pursuing economic gain in an occupational manner or context which is in violation of the criminal laws of any state if such pursuit creates probable cause to believe that the participation of such person in gaming or related activities would be detrimental to the proper operation of an authorized gaming or related activity in this State. For the purposes of this paragraph, occupational manner or context shall be defined as the systematic planning, administration, management or execution of an activity for financial gain;

(11) Is a career offender or a member of a career offender

organization or an associate of a career offender or career offender organization in such a manner which creates probable cause to believe that the association is of such a nature as to be detrimental to the proper operation of the authorized gaming or related activities in this State. For the purposes of this paragraph, career offender shall be defined as any person whose behavior is pursued in an occupational manner or context for the purposes of economic gain utilizing such methods as are deemed criminal violations of tribal law, federal law or the laws and the public policy of this State. A career offender organization shall be defined as any group of persons who operate together as career offenders;

(12) Is a person whose prior activities, criminal record, if any, reputation, habits and associations pose a threat to the public interest of the Nation or the State or to the effective regulation and control of Class III Gaming, or creates or enhances the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of Class III Gaming, or the carrying on of the business and financial arrangements incidental thereto; or

(13) Fails to provide any information requested by the State Gaming Agency within 14 days of the request for the information.

(g) **Right to Hearing for Revocation, Suspension or Denial of State Certification.** Any Applicant for State Certification, or holder of a State Certification shall be entitled to a full hearing on any action by the State Gaming Agency which may result in the revocation, suspension, or denial of State Certification. The hearing shall be conducted in accordance with the procedures contained in the applicable provisions of the Arizona Administrative Procedures Act, Title 41, Chapter 6, Arizona Revised Statutes or the State Gaming Agency administrative rules; provided, the State, after consultation with the Tohono O'odham Gaming Office, may defer such actions to the Tohono O'odham Gaming Office. Nothing herein shall prevent the Tohono O'odham Gaming Office from invoking its disciplinary procedures.

(h) **Issuance, Revocation, Suspension or Denial of License Issued by Tohono O'odham Gaming Office.** The issuance, revocation, suspension or denial of any Tribal gaming license by the Nation or the Tohono O'odham Gaming Office, including the terms and conditions thereof, shall be in accordance with the Nation's ordinances and regulations governing such procedures and the grounds for such actions shall not be less stringent than those of this Section. The Tohono O'odham Gaming Office shall not be required to grant an Application for a license even if the

State Gaming Agency issues a State Certification.

(i) **Duration and Renewal of Tribal Licenses and State Certifications**. Any Tribal License or State Certification shall be effective for one (1) year from the date of issuance; provided, that a licensed or certified employee or person that has applied for renewal may continue to be employed or engaged under the expired license or State Certification until action is taken on the renewal Application by the Tohono O'odham Gaming Office or the State Gaming Agency. Applicants for renewal of a license or certification shall provide updated material as requested, on the appropriate renewal forms, but shall not be required to resubmit historical data already available to the Tohono O'odham Gaming Office or the State Gaming Agency. Additional background investigations shall not be required of Applicants for renewal unless new information concerning the Applicant's continuing eligibility for a license or a State Certification is discovered by either the Tohono O'odham Gaming Office or the State Gaming Agency.

(j) **Identification Cards**. The Gaming Facility Operator shall require all Gaming Employees to wear in plain view identification cards issued by the Tohono O'odham Gaming Office which include photograph, first and last name and an identification number unique to the individual Nation's license and which shall include the Nation's seal or signature, and a date of expiration.

(k) **Exchange of Tribal Licensing and State Certification Information.** In an effort to ensure a qualified work force in the Class III Gaming authorized by this Compact, upon completion of any administrative action against a holder of the Nation's license or State Certification, the final disposition shall be forwarded to either the Tohono O'odham Gaming Office or the State Gaming Agency, as appropriate, and maintained as part of both agencies' permanent records and which may be shared with other federal, state, and tribal agencies.

(l) **Fees for State Certification.** The fees for State Certification shall be the following:

| | | |
|---|---|---|
| (1) | Gaming Employee and provider of Gaming Services | |
| | Initial Certification | $ 150 |
| | Renewal | $ 75 |
| (2) | Management Contractors and/or Financiers | |
| | Initial Certification | $1500 |
| | Renewal | $ 500 |
| (3) | Manufacturers and Suppliers of Gaming Devices | |
| | Initial Certification | $1500 |
| | Renewal | $ 500 |

A State certification shall be valid for any Gaming Operation in Arizona and no

additional fee shall be required. In the event actual costs incurred by the State Gaming Agency to investigate the background of an Applicant exceed the above fees, those costs shall be assessed to the Applicant during the investigation process. Payment in full to the State Gaming Agency shall be required prior to the issuance of State Certification. The State may require Manufacturers, suppliers, Management Contractors and financiers applying for State Certification to post a bond sufficient to cover the actual costs that the State Gaming Agency anticipates will be incurred in conducting a background investigation of the Manufacturer, supplier, Management Contractor or financier. Notwithstanding any other provision of this Compact, the State Gaming Agency may modify any of the above fees by giving the Nation sixty (60) days notice of intent to modify fees. Should a dispute arise under this section, it shall be resolved pursuant to Section 15 of this Compact.

(m) **Fees for Tribal License.** The fees for the Nation's licenses shall be set by the Nation.

(n) **Temporary Certification.** Within twenty (20) days of the receipt of a completed Application for State Certification, and upon request of the Tohono O'odham Gaming Office the State Gaming Agency shall issue a temporary certification to the Applicant unless the background investigation undertaken by the State Gaming Agency discloses that the Applicant has a criminal history, or unless other grounds sufficient to disqualify the Applicant pursuant to subsection (f) of this

Section are apparent on the face of the Application. The temporary certification shall become void and be of no effect upon either the issuance of a State Certification or upon the issuance of notice of denial, in accordance with the provisions of this Compact.

(o) **Summary Suspension of Tribal License or State Certification**. The Tohono O'odham Gaming Office, pursuant to the laws and regulations of the Nation, and the State Gaming Agency, pursuant to the laws and regulations of the State, may summarily suspend any respective license of the Nation or State Certification if the continued licensing or certification of a person or entity constitutes an immediate threat to the public health, safety or welfare.

(p) **State Administrative Process; Non-Tribal Members**. Any non-Tribal member Applicant for State Certification agrees by making such Application to be subject to State jurisdiction to the extent necessary to determine the Applicant's qualification to hold such certification, including all necessary administrative procedures, hearings and appeals pursuant to the Administrative Procedures Act, Title 41, Chapter 6, Arizona Revised Statutes and the administrative rules of the State Gaming Agency.

(q) **Administrative Process; Tribal Members**.

(1) Any member of the Nation applying for licensure by the

Tohono O'odham Gaming Office acknowledges that by making such Application, the State Gaming Agency, as set forth herein, may be heard concerning the Applicant's qualifications to hold such license. If the State recommends revocation, suspension, or denial of a license, and the Tohono O'odham Gaming Office revokes, suspends, or denies the license based on the State Gaming Agency's recommendation, the Tribal member may appeal that action to the Nation, to the extent any such right exists.

(2) If the Tohono O'odham Gaming Office takes any action with respect to a license of a tribal member despite a State recommendation to the contrary, the Tohono O'odham Gaming Office shall afford the State an opportunity for a hearing before an appropriate tribal forum of the Nation to contest the Tohono O'odham Gaming Office licensing decision. The decision of the Nation's forum shall be final.

(3) The Tohono O'odham Gaming Office shall afford the State Gaming Agency the opportunity to be heard in an appropriate forum of the Nation on its recommendation to suspend or revoke the license of any Tribal member in the same manner

as if the State Gaming Agency had recommended denial of the license in the first instance.

SECTION 6. TRIBAL REGULATION OF COMPACT PROVISIONS

(a) Tohono O'odham Gaming Office. The Tohono O'odham Gaming Office has the responsibility for the regulation of all Gaming Activities pursuant to the Nation's Gaming Ordinance and for the enforcement of this Compact on behalf of the Nation. The State Gaming Agency has the regulatory responsibility over Gaming Activities which is specifically set out in this Compact.

(1) The Nation's Gaming Ordinance, or draft thereof, is attached as Appendix B of this Compact.

(2) The Nation shall notify the State Gaming Agency of its intent to amend or repeal the draft Ordinance set forth in Appendix B, or to adopt regulations and shall provide a copy of any change or modification in Appendix B to the State Gaming Agency.

(3) The Nation's Gaming Ordinance shall provide for the detention of persons who may be involved in illegal acts for the purpose of notifying appropriate law enforcement authorities.

(4) The Tohono O'odham Gaming Office shall require the Gaming Facility Operator to establish, consistent with the provisions of Appendix C to this Compact, a closed-circuit television surveillance system capable of recording and preserving on videotape all areas of the Gaming Facilities required by this Compact to be under surveillance;

(5) The Tohono O'odham Gaming Office shall have the responsibility and authority to investigate alleged violations of this Compact, the Nation's Gaming Ordinance, and other applicable laws and to take appropriate disciplinary action against the Gaming Facility Operator or the holder of a license for a violation or to institute appropriate legal action for enforcement or both; and to confiscate or shut down any Gaming Device or other equipment or gaming supplies failing to conform to any required standards.

(b) **Gaming Facility Operator.** The Nation shall require the Gaming Facility Operator to have the responsibility for the on-site operation, management, and security of the Gaming Facility. The Nation shall require the Gaming Facility Operator to adopt reasonable procedures designed to provide for the following:

(1) The physical safety of its employees;

(2) The physical safety of patrons in the Gaming Facility;

(3) The physical safeguarding of assets transported to and from the Gaming Facility and cashier's cage department; and

(4) The protection of the patrons' and the Gaming Operation's property from illegal activity.

(c) **Tohono O'odham Gaming Office Staff and Executive Director.** The Nation has sole authority to determine the composition of the Tohono O'odham Gaming Office, however, no employee of a Gaming Facility Operator shall be employed by or be a member of the Tohono O'odham Gaming Office. The Nation shall designate an Executive Director of the Tohono O'odham Gaming Office. The Executive Director shall have overall responsibility for the administrative functions of the Tohono O'odham Gaming Office. The Executive Director shall serve as the formal liaison to the person holding the similarly titled position with the State Gaming Agency.

(d) **Right of Inspection.**

(1) The Tohono O'odham Gaming Office shall have the right to inspect any Gaming Facility at any time and shall have immediate access to any and all areas of a Gaming Facility for the purpose of ensuring compliance with the provisions of this Compact and the Nation's Gaming Ordinance.

(2) The Tohono O'odham Gaming Office shall employ inspectors or agents who shall act under the authority of the Tohono O'odham Gaming Office. Said inspectors shall be independent of the Gaming Facility Operator and any management contractor, and shall be supervised and accountable only to the Tohono O'odham Gaming Office. Said inspectors shall have the right to inspect any Gaming Facility at any time and shall have immediate access to any and all areas of the Gaming Facility. An inspector shall be present in the Gaming Facilities during all hours of gaming operation.

(e) **Reporting of Violations**. The Gaming Facility Operator, or the Tohono O'odham Gaming Office inspector, as applicable, shall report unusual occurrences and all violations or suspected violations of this Compact, or of the Nation's Gaming Ordinance by an employee or agent of the Gaming Facility Operator, or any

person on the premises whether or not associated with Gaming Activities, to the Tohono O'odham Gaming Office. Regardless of the identity of the reporter or to whom the report is made, the Tohono O'odham Gaming Office shall make a written record of any unusual occurrences, violations or suspected violations, without regard to materiality. Each entry shall be assigned a sequential number and shall include, at a minimum, the following information which shall be recorded in indelible ink in a bound notebook from which pages cannot be removed and each side of each page is sequentially numbered:

(1) The assigned number;

(2) The date;

(3) The time;

(4) The nature of the incident;

(5) The person(s) involved in the incident; and

(6) The name of the security department or Tohono O'odham Gaming Office employee assigned to investigate.

(f) **Investigations**. The Tohono O'odham Gaming Office shall investigate any reported violation of the Compact provisions or the Gaming Ordinance and shall require the Gaming Facility Operator to correct the violation upon such terms and conditions as the Tohono O'odham Gaming Office determines are necessary and proper under the provisions of the Nation's Gaming Ordinance.

(g) **Reporting to State Gaming Agency**. Within forty-eight (48) hours of the time a violation or suspected violation was reported, the Tohono O'odham Gaming Office shall notify the State Gaming Agency. Upon completion of any investigation of a violation or suspected violation, the Tohono O'odham Gaming Office shall provide copies of its investigative report to the State Gaming Agency, if such disclosure will not compromise on-going law enforcement investigations or activities.

(h) **Periodic Meetings**. In order to develop and foster a positive and effective relationship in the enforcement of the provisions of this Compact, representatives of the Tohono O'odham Gaming Office and the State Gaming Agency shall meet, not less than on a quarterly basis, to review past practices and examine methods to improve the regulatory program created by this Compact. The meetings shall take place at a location selected by the Tohono O'odham Gaming Office. The State Gaming Agency, prior to or during such meetings, shall disclose to the Tohono O'odham Gaming Office any concerns, suspected activities or pending matters reasonably believed to constitute potential violations of this Compact by any person, organization or entity, if such disclosure will not compromise on-going law enforcement investigations or activities. Following the first year of this Compact, the Tohono O'odham Gaming Office and the State Gaming Agency shall jointly determine the number of meetings necessary, but in no event shall less than two (2) meetings occur for any twelve (12) month period.

SECTION 7. STATE MONITORING OF COMPACT PROVISIONS

(a) **Monitoring**. The State Gaming Agency shall, pursuant to the provisions of this Compact, have the authority to monitor the Nation's Gaming Operation to ensure that the operation is conducted in compliance with the provisions of this Compact. Such monitoring shall include the authority to investigate suspected violations of the Compact. The monitoring shall be conducted in accordance with the following requirements:

(1) Agents of the State Gaming Agency shall have free and unrestricted access to all public areas of a Gaming Facility during operating hours without giving prior notice to the Gaming Facility Operator;

(2) The monitoring activities of these agents shall be conducted in a manner which does not unduly interfere with the normal functioning of the Nation's Gaming Operation;

(3) Agents of the State Gaming Agency shall be entitled to enter the non-public areas of any Gaming Facility licensed by the Nation after such state agents have:

(A) Provided proper identification to the senior supervisory employee of the Gaming Facility Operator on duty and to the Tohono O'odham Gaming Office inspector, who at his discretion, may witness the monitoring or investigation of non-public areas of the Gaming Facilities by the State Gaming Agency, and

(B) Given advance notice to the Tohono O'odham Gaming Office. Such advance notification shall not be required if such notification will compromise an ongoing law enforcement investigation or activity.

(b) **State's Access to the Nation's Gaming Records; Confidentiality Requirements.** Agents of the State Gaming Agency shall, upon twenty-four (24) hours advance notification to the Tohono O'odham Gaming Office, have the right to inspect and copy during normal business hours, all records maintained by the Gaming Facility Operator. Such advance notification shall not be required if such notification will compromise an ongoing law enforcement investigation or activity. However, all records, and copies thereof, shall remain the property of the Nation irrespective of their location. All such records, and the information derived from such records, are confidential and proprietary information of the Nation. Access to

all records, or documents of the Gaming Facility Operator, or copies thereof in the possession of the State shall be limited solely to employees of the State Gaming Agency and the Tohono O'odham Gaming Office and the State shall not disclose such records and documents to other persons within the state government or to third parties, provided however that disclosure shall be authorized when made pursuant to an order of a court of competent jurisdiction, or when disclosed to a federal, state or tribal regulatory or criminal justice agency pursuant to a regulatory or criminal justice investigation under this Section, or when disclosed pursuant to Section 5 (k). The State Gaming Agency shall immediately notify the Tohono O'odham Gaming Office of the receipt of any request for access to any such records from any person outside the State Gaming Agency unless ordered otherwise by a court of competent jurisdiction.

(c) **Retention of Records.** Throughout the term of this Compact and during the pendency of any litigation arising from this Compact, and for one (1) year following the termination of this Compact, the Nation shall require that all books and records relating to authorized Gaming Activities, including the records of any Management Contractor, the Gaming Facility Operator and the Tohono O'odham Gaming Office are separately maintained in order to facilitate auditing of these books and records to ensure compliance with this Compact. All such records shall be maintained pursuant to generally accepted accounting principles and shall be suitable for audit pursuant to the standards of the American Institute of Certified

Public Accounts.

(d) Nation's Access to State Records. The Nation shall have the right to inspect and copy all records received by the State Gaming Agency concerning the Nation's authorized Class III Gaming if such disclosure will not compromise on-going law enforcement investigations or activities, and would not violate applicable state and federal law.

(e) Notification to Tohono O'odham Gaming Office. At the completion of any inspection or investigation conducted by the State Gaming Agency, copies of an investigative report shall be immediately forwarded by the State Gaming Agency to the Tohono O'odham Gaming Office. Within forty-eight (48) hours of the receipt of any report of a violation of this Compact, the Nation's Gaming Ordinance, or the Act, the State Gaming Agency shall forward notification of such report of a violation to the Tohono O'odham Gaming Office.

(f) Cooperation with Tohono O'odham Gaming Office. The State Gaming Agency shall meet periodically, consistent with Section 6(h), with the Tohono O'odham Gaming Office and cooperate fully in all matters relating to the enforcement of the provisions of this Compact and immediately notify the Tohono O'odham Gaming Office of any activity suspected or occurring whether within the Gaming Facilities or not, which adversely affects State, Tribal or public health, safety,

or welfare interests relating to the Gaming Facility and Gaming Facility Operator, if such disclosure will not compromise an ongoing law enforcement investigation or activity.

## SECTION 8. CIVIL AND CRIMINAL JURISDICTION

Nothing in this Compact is intended to change, revise or modify the civil and criminal jurisdiction of the Nation or of the State. Nothing contained herein shall be deemed to modify or limit existing federal jurisdiction over Indians and the Gaming Operations authorized under this Compact.

## SECTION 9. CROSS-DEPUTIZATION AGREEMENT

The State and the Nation, to the extent permitted by law, may agree to enter into such cross-deputization agreements as necessary to facilitate cooperation between State and Tribal law enforcement personnel.

## SECTION 10. AUTHORIZATION TO ENACT RULES AND REGULATIONS

(a) **State Gaming Agency Rules.** Pursuant to its general rule-making authority, the State Gaming Agency may enact, as part of its rules governing gaming, all or part of the provisions of this Compact. The rules adopted by the State

Gaming Agency shall be consistent with the provisions and appendices of this Compact.

(b) **Tohono O'odham Gaming Office Regulations.** The Tohono O'odham Gaming Office may enact, as part of its rules or regulations governing gaming, all or part of the provisions of this Compact.

## SECTION 11. OPERATIONAL REQUIREMENTS

(a) **Additional Operational Requirements Applicable to Class III Gaming.** The Gaming Operation shall be operated pursuant to an internal control system approved by the Tohono O'odham Gaming Office. The internal control system shall be designed to reasonably assure that:

(1) Assets are safeguarded;

(2) Financial records are accurate and reliable;

(3) Transactions are performed in accordance with the Nation's general or specific authorization;

(4) Access to assets is permitted only in accordance with the Nation's specific authorization;

(5) Recorded accountability for assets is compared with actual assets at frequent intervals and appropriate action is taken with respect to any discrepancies; and

(6) Functions, duties and responsibilities are appropriately segregated and performed in accordance with sound practices by competent, qualified personnel.

(b) **Internal Controls.** The internal control system shall include:

(1) An organizational chart depicting appropriate segregation of functions and responsibilities;

(2) A description of the duties and responsibilities of each position shown on the organizational chart;

(3) A detailed, narrative description of the administrative and accounting procedures designed to satisfy the requirements of subsection (a) of this Section; and

(4) A description of procedures governing the maintenance and preservation of security and surveillance information.

(c) **Annual Audit**. The Gaming Operation shall be audited, not less than annually, by an independent certified public accountant licensed by the State. The Gaming Facility Operator shall notify the State Gaming Agency of its fiscal year end. Such audit shall be at the expense of the Gaming Facility Operator. The audited financial statement shall be prepared in accordance with the auditing standards published by the American Institute of Certified Public Accountants and shall be submitted to the Tohono O'odham Gaming Office and the State Gaming Office within one hundred twenty (120) days of the close of the fiscal year of the Gaming Operation. All auditors shall preferably have experience in Class III Gaming matters conducted pursuant to the Act. In addition, the State Gaming Agency shall be authorized to confer with the independent certified public accountant retained by the Nation during the preparation of the audit and the preparation of the financial statement. The Tohono O'odham Gaming Office shall be notified of and provided the opportunity to participate in and attend any such conference.

## SECTION 12. TRIBAL REIMBURSEMENT OF STATE GAMING AGENCY EXPENSES

(a) **Compensation to the State Gaming Agency**. The Nation agrees to pay the State Gaming Agency the necessary costs incurred by the State as a result of the State's performance of its rights or duties under the terms of this Compact.

(b). **Gaming Device Assessment.** The State and the Nation have determined that during the initial two (2) years of this Compact, an annual fee of five hundred dollars ($500) per Gaming Device shall be paid annually to the State Gaming Agency for necessary costs incurred for State regulation and enforcement duties. After the initial two (2) years, the regulatory assessment per Gaming Device shall be renegotiated by the Nation and the State based upon actual and projected costs and expenses incurred for State regulation and enforcement duties pursuant to this Compact. The assessment shall be payable in equal quarterly installments, the first of which shall be payable within fifteen (15) days of receipt by the Tohono O'odham Gaming Office of the notification of compliance pursuant to Section 4(a) of this Compact. The second and all ensuing installments shall be paid, respectively, on the first day of January, April, July, and October, as appropriate. For the purposes of assessment, Gaming Device counts will be made quarterly. If a Gaming Device is added to play any time during the quarter, it will be deemed to have been in play for the entire quarter and be assessed in such manner. Thereafter, should any deficit in necessary funds exist, the Nation shall be billed within thirty (30) days, its share of sums necessary to eliminate any such deficit. Monies in excess of the Nation's share of costs and expenses actually incurred by the State Gaming Agency shall be returned to the Nation annually thirty (30) days following the close of the State's fiscal year, or the overpayment shall be credited to the Nation for the succeeding year at the Nation's discretion. If credits are provided or if any excess remains at the

conclusion of the Compact term, the State shall return such monies to the Nation within thirty (30) days from the expiration date of this Compact.

(c) **Statement of Expenses**. The State Gaming Agency shall submit to the Nation verified statements of expenses with supporting documentation on a quarterly basis consistent with the provisions of subsection (b) of this Section commencing ninety (90) days after the Nation receives a letter of compliance pursuant to Section 4(a) of this Compact.

## SECTION 13. PUBLIC HEALTH, SAFETY AND WELFARE

(a) **Compliance**. The Nation shall comply with standards governing health and safety which shall apply to the Gaming Facilities and which shall be no less stringent than the standards generally imposed by the Uniform Laws Annotated Codes covering the following:

(1) The Uniform Building Code (1988 edition);

(2) The Uniform Mechanical Code (1988 edition);

(3) The Uniform Plumbing Code (1988 edition);

(4) The Uniform Fire Code (1988 edition).

In addition, public health standards for food and beverage handling shall be in accordance with United States Public Health Service requirements.

(b) **Emergency Service Accessibility.** The Nation shall require the Gaming Facility Operator to make provisions for adequate emergency accessibility and service.

(c) **Tort Remedies for Patrons.** The Nation shall establish procedures for the disposition of tort claims arising from alleged injuries to patrons of its Gaming Facilities, which procedures may be analogous to the remedial system available for similar claims arising against the State. The Nation shall not be deemed to have waived its sovereign immunity from suit with respect to such claims by establishing such procedures or by any provision of this Compact.

(d) **Liability for Damage to Persons and Property.** During the term of this Compact, the Nation shall maintain public liability insurance which provides no less than one million dollars ($1,000,000) for personal injury and property damage. The Nation's insurance policy shall include an endorsement providing that the insurer may not invoke Tribal sovereign immunity up to the limits of the policy set forth above.

## SECTION 14. PATRON DISPUTES

(a) **Refusal to Pay Winnings.** Whenever the Gaming Facility Operator refuses payment of alleged winnings to a patron, and the Gaming Facility Operator

and the patron are unable to resolve the dispute to the satisfaction of the patron and the dispute involves:

(1) At least five hundred dollars ($500), the Gaming Facility Operator shall immediately notify the Tohono O'odham Gaming Office. The Tohono O'odham Gaming Office shall conduct whatever investigation it deems necessary and shall determine whether payment should be made; or

(2) Less than five hundred dollars ($500), the Gaming Facility Operator shall inform the patron of his or her right to request that the Tohono O'odham Gaming Office conduct an investigation. Upon request of the patron, the Tohono O'odham Gaming Office shall conduct whatever investigation it deems necessary and shall determine whether payment should be made.

(b) **Notice to Patrons**. The Tohono O'odham Gaming Office shall mail written notice by certified mail, return receipt requested, to the Gaming Facility Operator and the patron of the decision resolving the dispute within thirty (30) days after the date that the Tohono O'odham Gaming Office first receives notification from the Gaming Facility Operator or a request to conduct an investigation from the patron.

(c) **Effective Date of Decision.** The decision of the Tohono O'odham Gaming Office is effective on the date it is received by the aggrieved party as reflected on the return receipt.

(d) **Review of Decision.** Within thirty (30) days after the date of receipt of the written decision, the aggrieved party may file a petition with the Tohono O'odham Gaming Office requesting a review of the decision. The Tohono O'odham Gaming Office may set a hearing on the matter or may make a decision based solely upon the prior decision and other documentation provided to it by the patron and the Gaming Facility Operator. The Tohono O'odham Gaming Office shall then issue a written decision and mail it to the parties pursuant to the procedures set forth in Section 14(b). The decision of the Tohono O'odham Gaming Office shall be final and binding upon the patron and the Gaming Facility Operator and shall not be subject to judicial review, dispute resolution or other legal action.

## SECTION 15. DISPUTE RESOLUTION

(a) **Procedures and Provisions Subject to Dispute Resolution.** The parties may discuss and reconsider Sections 4, 5, 7, 11, 12, 14 and all appendices to this Compact upon written notice and request by either party. Thereafter, if the Nation or the State believes that the other party has failed to comply with the requirements

of the foregoing Sections and appendices, or if any dispute arises as to the proper interpretation thereof, the procedures set forth in this Section shall apply.

(b) **Notice**. The party asserting noncompliance or seeking an interpretation shall serve written notice on the other party. The notice shall identify the specific Compact provision alleged to have been violated or in dispute and shall specify in detail the factual basis for the alleged noncompliance or the proffered interpretation of the Compact provision for which interpretation is sought.

(c) **Voluntary Resolution**. Representatives of the Nation and the State shall meet within ten (10) days following receipt of the notice in an effort to resolve the dispute.

(d) **Arbitration Procedures**. If the dispute is not resolved to the satisfaction of the parties within thirty (30) days after service of the notice set forth above, the dispute shall be adjudicated through arbitration in Arizona or such other place as the parties may agree as follows:

(1) The parties shall attempt to agree upon one arbitrator with expertise in the subject matter of the dispute.

(2) If the parties are unable to agree on an arbitrator, each party

shall select an arbitrator within ten (10) days of the commencement of the arbitration and the two (2) arbitrators shall mutually appoint a third arbitrator within twenty (20) days of their appointment. If the two (2) arbitrators are unable to agree on the appointment of a third arbitrator within twenty (20) days, the third arbitrator shall be appointed by the American Arbitration Association.

(3) The arbitrator(s) shall confer with the parties immediately after appointment to determine an arbitration schedule including whether and to what extent discovery is required. The arbitrator(s) may set the matter for an evidentiary hearing or oral argument, or may dispose of the dispute based upon written submissions only.

(e) **Arbitration Costs**. The cost of arbitration shall be borne equally by the parties, with one-half of the expenses charged to the Nation and one-half charged to the State. The parties shall bear their own costs and attorneys' fees associated with their participation in the arbitration unless the decision of the arbitrator shall specify otherwise.

(f) **Arbitration Decision**. The decision of the majority of the arbitrator(s)

shall be final, binding and unappealable. Failure to comply with judgment upon the award entered in such arbitration proceeding shall be deemed a breach of the Compact.

(g) **Action to Enjoin a Class III Gaming Activity Conducted in Violation of the Agreement**. The parties recognize that the Act provides at 25 U.S.C. § 2710(d)(7)(A)(ii) that the United States District Courts shall have jurisdiction over an action initiated by the State or the Nation to enjoin a Class III Gaming Activity located on Indian Lands and conducted in violation of this Compact.

SECTION 16. RESERVATION OF RIGHTS UNDER THE ACT

(a) **Status of Class I and Class II Gaming**. This Compact shall not apply to any Class I or Class II Gaming whether conducted within or without the Gaming Facilities, and shall not confer upon the State any jurisdiction or other authority over such Class I or Class II gaming conducted by the Nation on Indian Lands.

(b) **Prohibition on Taxation by the State**. Nothing in this Compact shall be deemed to authorize or permit the State or any political subdivision thereof to impose any tax, fee, charge or assessment upon the Nation or any Gaming Operation of the Nation, except for the payment of expenses as provided in Section 12 of this Compact.

(c) **Preservation of Tribal Self-Government**. Nothing in this Compact shall divest or diminish the sovereign governmental authority of either the Nation or the State.

(d) **Use of Net Revenues**. The net revenues derived from Class III Gaming authorized under this Compact shall be used by the Nation for the purposes permitted under the Act.

(e) **Tax Documentation**. For purposes of cooperation, the Tohono O'odham Gaming Office shall obtain from the Gaming Facility Operator and provide to the State Gaming Agency a copy of the documentation the Gaming Facility Operator submits to the Internal Revenue Service indicating gaming winnings of patrons of the Gaming Operation.

## SECTION 17. AMENDMENTS

Any amendment to this Compact shall be in writing and signed by both parties. The terms and conditions of this Compact shall remain in effect until amended, modified, or terminated.

SECTION 18. SEVERABILITY

Each provision of this Compact shall stand separate and independent of every other provision. If a court of competent jurisdiction finds any provision of this Compact to be invalid or unenforceable, it is the intent of the parties that the remaining provisions shall remain in full force and effect to the extent possible.

SECTION 19. THIRD PARTY BENEFICIARIES

This Compact is not intended to create any third-party beneficiaries and is entered into solely for the benefit of the Nation and the State.

SECTION 20. NOTICES

All notices required or authorized to be served under this Compact shall be served by certified mail (return receipt requested), commercial overnight courier service or by personal delivery, at the following addresses or such other address as either party shall hereafter inform the other by written notice:

State: The State of Arizona
State Gaming Agency
800 West Washington, 5th Floor
Phoenix, Arizona 85007

Nation:

Chairman
Tohono O'odham Nation
P. O. Box 837
Sells, Arizona 85634

Attorney General
Tohono O'odham Nation
P.O. Box 1202
Sells, Arizona 85634

Director
Tohono O'odham Gaming Office
P.O. Box 837
Sells, Arizona 85634

SECTION 21. CALCULATION OF TIME

In computing any period of time prescribed or allowed by this Compact, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday under the Nation's laws, State law, or federal law, or when the act to be done is the filing of or providing access to any report or document, and the last day of the period falls on a day in which the weather or other conditions have made the offices in which the report or document is to be filed inaccessible, in which event the designated period shall extend until the end of the next day on which the office is accessible which is not a Saturday, Sunday or legal holiday, and is not one of the previously mentioned days. When the period of time prescribed or allowed is less than eleven (11) days, intermediate Saturdays, Sundays and legal holidays under the Nation's laws, State law or federal law shall be excluded from the computation period.

SECTION 22. COUNTERPARTS

This Compact is executed in three original documents; one shall be maintained by the Chairman of the Nation, one shall be maintained by the Governor of the State and the third shall be sent to the Secretary of the Interior for approval.

SECTION 23. EFFECTIVE DATE AND DURATION

(a) Conditional Effectiveness; Effective Date.

(1) This Compact shall not be effective, and no rights, duties or obligations of the State or the Nation shall arise thereunder unless and until the execution of substantially similar Compacts by the State and all of the following: the Tohono O'odham Nation, the White Mountain Apache Tribe, the Pascua Yaqui Tribe of Arizona, the Yavapai-Prescott Indian Tribe, the Cocopah Indian Tribe, the Fort McDowell Mohave-Apache Indian Community and the Ak-Chin Indian Community shall have occurred within four (4) days of the date upon which the first of the foregoing and the State execute a Compact. The State and the Nation agree to execute an acknowledgement that this condition has been

satisfied after all such Compacts have been executed.

(2) Subject to the provisions of Section 23 (a)(1) above, this Compact shall become effective after it is executed by both the Governor of the State and the Chairman of the Nation, it is approved by the Secretary of the Interior, and notice of approval is published in the Federal Register pursuant to the Act.

(b) Duration.

(1) This Compact shall be in effect for a term of ten (10) years after the effective date.

(2) The duration of this Compact shall thereafter be automatically extended for terms of five (5) years, unless either party serves written notice of nonrenewal on the other party not less than one hundred eighty (180) days prior to the expiration of the original term of this Compact or any extension thereof.

(3) In the event written notice of nonrenewal is given by either party as set forth in this Section, the Nation shall cease all

Class III Gaming under this Compact upon its expiration date, unless extended by mutual agreement, or upon the date the procedures in subsection (5) of this Section are concluded and a successor Compact, if any, is not in effect.

(4) The Nation may operate Class III Gaming only while this Compact, or any extension thereof under this Section, is in effect.

(5) In the event that written notice of nonrenewal of this Compact is given by one of the parties under subsection (2) of this Section above, the Nation may, pursuant to the procedures of the Act, request the State to enter into negotiations for a successor Compact governing the conduct of Class III Gaming Activities to become effective following the expiration of this Compact. Thereafter, the State shall negotiate with the Nation in good faith concerning the terms of a successor Compact pursuant to 25 U.S.C. § 2710(d)(3)(A). If a successor compact is not concluded by the expiration date of this Compact, or any extension thereof under subsection (2) or (3), the Nation shall do one of the following:

(A) Immediately cease all Class III Gaming upon the expiration of this Compact, or any extension thereof under subsection (2) of this Section; or

(B) Commence an action in the United States District Court pursuant to 25 U.S.C. § 2710(d)(7) in which event this Compact shall remain in effect until the procedures set forth in 25 U.S.C. § 2710(d)(7) are exhausted.

(c) **Termination**. This Compact may be voluntarily terminated by mutual agreement of the parties, or by a duly adopted ordinance or resolution of the Nation revoking the authority to conduct Class III Gaming upon its lands, as provided for in 25 U.S.C. § 2710(d)(2)(D).

(d) **Enforceability**.

(1) The State and the Nation voluntarily enter into this Compact pursuant to 25 U.S.C. § 2710 (d) (3) (B). Furthermore, the State abandons any argument it may have had under the Tenth Amendment to the United States Constitution that its execution of this Compact was coerced.

(2) In the event that federal law changes to prohibit the gaming authorized by this Compact, the State may seek, in a court of competent jurisdiction, a declaration that this Compact is invalid.

(3) This Compact shall remain valid and enforceable against the State and the Nation unless or until it is held to be invalid in a final non-appealable judgment or order of a court of competent jurisdiction.

SECTION 24. GOVERNING LAW.

This Compact shall be governed by and construed in accordance with the applicable laws of the United States, and the Nation and the State.

SECTION 25. ENTIRE AGREEMENT

This Compact contains the entire agreement of the parties with respect to the matters covered by this Compact and no other statement, agreement, or promise made by any party, officer, or agent of any party shall be valid or binding.

**SECTION 26. AUTHORITY TO EXECUTE**

Each of the undersigned represents that he is duly authorized and has the authority to execute this agreement on behalf of the party for whom he is signing and that this Compact is a contractual agreement which is valid, enforceable and binding upon the parties.

STATE OF ARIZONA

Fife Symington, Governor

DATE: 6-24-93

TOHONO O'ODHAM NATION

Sylvester Listo, Chairman

DATE: 6 24 93

APPROVED:

By Ada E. Deer
ASSISTANT SECRETARY - INDIAN AFFAIRS

DATE: 7-30-93