



June 18, 2014

**By First Class Mail**

David Archambault II, Chairman  
Bldg. 1 North Standing Rock Ave.  
P.O. Box D  
Fort Yates, ND 58538

Re: Standing Rock Sioux Ordinance No. 198; Resolution No. 113-14

Dear Chairman Archambault:

This is to inform you that the Standing Rock Sioux's amended ordinance No. 198, submitted to the NIGC on March 12, 2014, is approved.

Pursuant to the Indian Gaming Regulatory Act, the NIGC Chair has ninety days from the date of submission to either approve or disapprove a gaming ordinance.<sup>1</sup> Any ordinance not acted upon at the end of that ninety day period is considered to have been approved by the Chair to the extent that it is consistent with the provisions of IGRA.<sup>2</sup> Because no decision was reached by the Chair within ninety days, the Tribe's ordinance is approved by operation of law, to the extent that it is consistent with IGRA.

If you have any questions, please feel free to contact NIGC Senior Attorney Maria Getoff at 202-632-7003.

Sincerely,

A handwritten signature in black ink, appearing to be "Eric Shepard", written over a horizontal line.

Eric Shepard  
Acting General Counsel

cc: Christopher Rausch, Esq.

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<sup>1</sup> 25 U.S.C. § 2710(e).

<sup>2</sup> *Id.*

## ORDINANCE NO. 198

NOW THEREFORE BE IT RESOLVED, that TITLE XXIII – LICENSING AND REGULATION OF BINGO AND OTHER GAMES OF CHANCE of the Tribal Code of Justice of the Standing Rock Sioux Tribe, be and the same is hereby amended.

[DOCUMENT ATTACHED – 79 PAGES]

### RESOLUTION NO. 113-14

WHEREAS, the Standing Rock Sioux Tribe is an unincorporated Tribe of Indians having accepted the Indian Reorganization Act of June 18, 1934 [48 Stat. 984], with the exception of Section 16; and the recognized governing body of the Tribe is known as the Standing Rock Sioux Tribal Council; and

WHEREAS, the Standing Rock Sioux Tribal Council, pursuant to the amended Constitution of the Standing Rock Sioux Tribe, Article IV, Section 1[c], 1[m], and Article V, are authorized to promote and protect the health, education and general welfare of the members of the Tribe, to engage in any business that will further the economic development of the Tribe and its members, and to propose and enact ordinances, provided they be posted for not less than ten [10] days prior to final adoption by the Tribal Council; and

WHEREAS, on February 5, 2014, the Tribal Council posted, for 20 days, amendments to TITLE XXIII – LICENSING AND REGULATION OF BINGO AND OTHER GAMES OF CHANCE of the Standing Rock Sioux Tribal Code of Justice;

NOW THEREFORE BE IT RESOLVED, that pursuant to the power vested in the Standing Rock Sioux Tribal Council under Article IV of the Constitution of the Standing Rock Sioux Tribe, that TITLE XXIII – LICENSING AND REGULATION OF BINGO AND OTHER GAMES OF CHANCE of the Code of Justice of the Standing Rock Sioux Tribe [previously amended by Resolution No. 145-03], be and the same is hereby further amended and replaced with the attached new TITLE XXIII – LICENSING AND REGULATION OF BINGO AND OTHER GAMES OF CHANCE, which shall take final effect upon approval by the National Indian Gaming Commission, as required by law; and

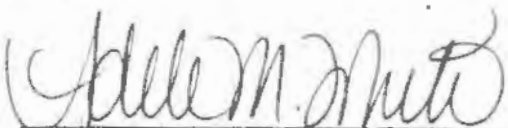
BE IT FURTHER RESOLVED, that the Chairman and Secretary of the Tribal Council are hereby authorized and instructed to sign this resolution for and on behalf of the Standing Rock Sioux Tribe.

### CERTIFICATION

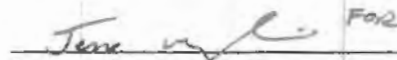
We, the undersigned, Chairman and Secretary of the Tribal Council of the standing Rock Sioux Tribe, hereby certify that the Tribal Council is composed of (17) members of whom 13 constituting a quorum, were present at a meeting thereof, duly and regularly, called, noticed, and convened and held on this 04<sup>th</sup> day of MARCH, 2014, and that the foregoing resolution was duly adopted by the affirmative vote of 11 members, with 0 opposing, and with 2 not voting. THE CHAIRMAN'S VOTE IS NOT REQUIRED, EXCEPT IN CASE OF A TIE.

DATED THIS 04<sup>th</sup> DAY OF MARCH, 2014.

ATTEST:



Adele M. White, Secretary  
Standing Rock Sioux Tribe

  
Dave Archambault II, Chairman  
Standing Rock Sioux Tribe

OFFICIAL TRIBAL SEAL]

**REGULAR TRIBAL COUNCIL MEETING**  
**INTER-OFFICE FOLLOW-UP**

MEETING DATE: March 4, 2014

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#34. MOTION WAS MADE BY JOE DUNN, SECONDED BY ROBERT TAKEN ALIVE, TO APPROVE OF TWELVE (12) ENROLLMENT APPLICATION, **BY SEPARATE RESOLUTIONS.**

**MOTION WAS WITHDRAWN**

#35. MOTION WAS MADE BY FRANK WHITE BULL, SECONDED BY MILTON BROWN OTTER, TO APPROVE TO AUTHORIZE THE TRIBAL CHAIRMAN AND/OR HIS DESIGNEE(S) TO BEGIN NEGOTIATIONS WITH THE BUREAU OF INDIAN AFFAIRS FOR THE STANDING ROCK SIOUX TRIBE TO ASSUME RESPONSIBILITY FOR TRIBAL ENROLLMENT, PURSUANT TO PUBLIC LAW 93-638, THE INDIAN SELF DETERMINATION AND EDUCATION ASSISTANCE ACT.

ROLL CALL VOTE:

ARCHAMBAULT II, DAVE - NOT VOTING

BROWN OTTER, Milton	YES	ARCHAMBAULT, Paul	YES
CLAYMORE, Duane	YES	BROWN OTTER, Ron	YES
DUNN, Joe	YES	LITTLE EAGLE, Avis	EX.
HARRISON, "Ben" Samuel	YES	MCLAUGHLIN, Jesse	NO
TAKEN ALIVE, Robert	YES	TAKEN ALIVE, Jesse	EX.
TWO BEARS, Cody	EX.	WHITE, Adele	EX.
WHITE BULL, Frank	YES	WHITE, Sr., Randal	YES
WHITE MOUNTAIN, Jr., Joseph	YES	YOUNG, Phyllis	N.V.

VOTE: YES - 10 NO - 1 NOT VOTING - 2

**MOTION CARRIED 4 - EXCUSED**

**JUDICIAL COMMITTEE** - Cheryl Long Feather, reporting  
February 28, 2014 [**SPECIAL MEETING**]

#36. MOTION WAS MADE BY JOE DUNN, SECONDED BY MILTON BROWN OTTER, TO APPROVE OF THE REVISED TITLE XXIII – LICENSING AND REGULATIONS OF BINGO AND OTHER GAMES OF CHANCE, **BY RESOLUTION.**

ROLL CALL VOTE:

ARCHAMBAULT II, DAVE - NOT VOTING

BROWN OTTER, Milton	YES	ARCHAMBAULT, Paul	YES
CLAYMORE, Duane	YES	BROWN OTTER, Ron	YES
DUNN, Joe	YES	LITTLE EAGLE, Avis	EX.
HARRISON, "Ben" Samuel	YES	MCLAUGHLIN, Jesse	YES

**REGULAR TRIBAL COUNCIL MEETING**  
**INTER-OFFICE FOLLOW-UP**

**MEETING DATE: March 4, 2014**

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**MOTION # 36 IS CONTINUED.**

TAKEN ALIVE, Robert	YES	TAKEN ALIVE, Jesse	EX.
TWO BEARS, Cody	EX.	WHITE, Adele	EX.
WHITE BULL, Frank	N.V.	WHITE, Sr., Randal	YES
WHITE MOUNTAIN, Jr., Joseph	YES	YOUNG, Phyllis	YES

VOTE: YES - 11 NO - 0 NOT VOTING - 2

**MOTION CARRIED 4 - EXCUSED**

#37. MOTION WAS MADE BY JOE DUNN, SECONDED BY ROBERT TAKEN ALIVE, TO APPROVE OF THE REVISED TITLE XXX – TRIBAL EMPLOYMENT AND CONTRACTING RIGHTS (TERO), **BY RESOLUTION.**

ROLL CALL VOTE: ARCHAMBAULT II, DAVE - NOT VOTING

BROWN OTTER, Milton	YES	ARCHAMBAULT, Paul	YES
CLAYMORE, Duane	YES	BROWN OTTER, Ron	YES
DUNN, Joe	YES	LITTLE EAGLE, Avis	EX.
HARRISON, "Ben" Samuel	YES	MCLAUGHLIN, Jesse	YES
TAKEN ALIVE, Robert	YES	TAKEN ALIVE, Jesse	EX.
TWO BEARS, Cody	EX.	WHITE, Adele	EX.
WHITE BULL, Frank	YES	WHITE, Sr., Randal	NO
WHITE MOUNTAIN, Jr., Joseph	YES	YOUNG, Phyllis	YES

VOTE: YES - 11 NO - 1 NOT VOTING - 1

**MOTION CARRIED 4 - EXCUSED**

**DISTRICT REPORTS:**

**RUNNING ANTELOPE DISTRICT** - Robert Taken Alive, reporting  
January 21, 2014

#38. MOTION WAS MADE BY ROBERT TAKEN ALIVE, SECONDED BY RON BROWN OTTER, TO APPROVE TO ACCEPT THOMASINE IRON AS THE NEW VICE CHAIRWOMAN FOR THE RUNNING ANTELOPE DISTRICT.

ROLL CALL VOTE: ARCHAMBAULT II, DAVE - NOT VOTING

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## TITLE XXIII

### LICENSING AND REGULATION OF BINGO AND OTHER GAMES OF CHANCE

(With Amendments through March 4, 2014)

#### CHAPTER 1. FINDINGS

##### 23-101. Findings.

The Standing Rock Sioux Tribal Council finds:

- (a) That, under the principles established by the United States Supreme Court in California v. Cabazon Band of Mission Indians, 480 U.S. 202 (1987), Indian tribes have the exclusive right to regulate gaming activity on Indian lands if the activity is not specifically prohibited by federal law and is conducted within a state which does not criminally prohibit the activity;
- (b) That the United States Congress has enacted the Indian Gaming Regulatory Act, 25 U.S.C. § 2701 et seq., providing for certain federal regulation of Indian gaming;
- (c) That tribal regulation of gaming activity on the Reservation is vital to the protection of trust land on the Reservation and to the protection of the interests of the Tribe and its members;
- (d) That to protect the Tribe's integrity and self-regulation, the Tribe agrees to adopt a gaming ordinance and regulations which are at least as stringent as those statutes and administrative rules adopted by the states of North Dakota and South Dakota;
- (e) That the Tribe has entered into tribal-state compacts with the State of North Dakota and the State of South Dakota which provide for the operation of Class III gaming;
- (f) That in order to ensure the public's support of gaming on the Standing Rock Reservation, the integrity and self-regulation of gaming must be protected; and
- (g) That operation of bingo and other games of chance by the Tribe and tribal subdivisions is a valid means of promoting tribal economic development and the health and welfare of tribal members.

## CHAPTER 2. DEFINITIONS

### 23-201. Class I Gaming.

"Class I Gaming" is regulated exclusively by the Tribe. 25 U.S.C. § 2710(a)(1). "Class I Gaming" includes:

- (a) Social games played solely for prizes of minimal value;
- (b) Traditional forms of Indian gaming – such as "stick" or "bone" games - engaged in as part of tribal ceremonies, celebrations, or pow-wows; and
- (c) Games such as rodeos or horse races, including those for which purses or prizes are awarded, and that are played as part of tribal ceremonies, celebrations, or pow-wows. This includes games operated prior to a ceremony, celebration or pow-wow, the purpose of which is raising funds for the ceremony, celebration, or pow-wow.

### 23-202. Class II Gaming.

The term "Class II Gaming" means:

- (a) Bingo: The game of chance which is played for prizes, including monetary prizes, with cards bearing numbers or other designations, in which the holder of the card covers such numbers or designations when objects - similarly numbered or designated - are drawn or electronically determined, and in which the game is won by the first person covering a previously designated arrangement of numbers or designations on such cards;
- (b) Electronic, computer or technological aides used in connection with Class II bingo, so long as all players are playing against each other to achieve the same sequence;
- (c) Games similar to bingo, if conducted at the same location as bingo, including: pull-tabs, lotto, punch boards, tip jars and instant bingo;
- (d) Notwithstanding any other provision of this Section, the term "Class II Gaming" includes those card games played in the States of Michigan, North Dakota, South Dakota or Washington that were actually operated in such states by an Indian Tribe on or before May 1, 1988, pursuant to 25 U.S.C. § 2703(7)(C); and
- (e) Card games as set forth in 25 U.S.C. § 2703(7)(A)(ii), which includes the game of poker as detailed in Chapter 8 of this Title.

**23-203.        Class III Gaming.**

"Class III gaming" means all forms of gaming that are not Class I or Class II gaming, including:

- (a) Any house banking game, including:
  - (1) Card games such as baccarat, chemin de fer, blackjack (21) and pai gow (if played as house banking games) or other games as set forth in this Title and the North Dakota Compact and/or the South Dakota Compact; and
  - (2) Casino games such as roulette, craps and keno;
- (b) Any slot machines as defined in 15 U.S.C. § 1171(a)(1) and electronic or electromechanical facsimiles of any game of chance;
- (c) Any sports betting and pari-mutuel wagering including wagering on horse racing, dog racing or jai alai; and
- (d) Lotteries as may be allowed pursuant to the North Dakota Compact and/or the South Dakota Compact.

**23-204.        Tribal Subdivision.**

"Tribal subdivision," for the purposes of this Title, means any of the following entities, provided they have been granted such status for gaming purposes pursuant to Section 23-406 of this Title:

- (a) The Districts of the Standing Rock Sioux Reservation, as set forth in Article III, Section 2 of the Constitution of the Standing Rock Sioux Tribe;
- (b) Nonprofit entities organized to raise funds and operate programs to promote the health and welfare of tribal members and/or to organize and operate ceremonies, celebrations, and powwows; and
- (c) Tribal school boards.

**23-205.        Net Revenues.**

"Net revenues" shall be determined pursuant to the definition set forth in 25 U.S.C. § 2703(9) and according to Generally Accepted Accounting Principles (GAAP) as recognized by the American Institute of Certified Public Accountants.

**23-206.        Primary Management Official.**

"Primary management official" means (1) any person having management responsibility for a management contract; (2) any person who has authority to hire and fire employees or implement working policy for a gaming operation; (3) the chief financial officer or other person who has financial management responsibility; and (4) any other person designated by the Tribe as a primary management official.

**23-207.        Key Employee.**

"Key employee" means (1) a person who performs one or more of the following functions: bingo caller, counting room supervisor, chief of security, custodian of gaming supplies or cash, floor manager, pit boss, dealer, croupier, approver of credit or custodian of gambling devices including persons with access to cash and accounting records within such devices, and others that from time to time may be deemed essential to the Tribe's gaming operation; (2) if not otherwise included, any other person whose total cash compensation is in excess of \$50,000 per year; (3) if not otherwise included, the four most highly compensated persons in a gaming operation; and (4) any other person designated by the Tribe as a key employee.

**23-208.        Non-Gaming Staff.**

"Non-gaming staff" means an employee of a gaming operation who does not otherwise qualify as a primary management official or key employee as defined under Sections 23-207 and 23-208, respectively, and who does not have access to: money; gaming revenues or other items of value including chips, credits, coins or bills of legal tender value of gaming; wagering or gaming devices ; in general, money, bank drafts, checks, credit or any other bank cards for procuring money from financial institutions; or sensitive areas.

**23-209.        Temporary Access Badge**

"Temporary access badge" means a badge that may be issued by the casino security department of a casino licensee to a casino key employee or casino employee who does not have the license access



badge on his or her person, or whose access badge has been stolen, lost or destroyed, to enable the employee to enter a public or restricted area to perform his or her duties. Issuance of a temporary access badge shall be done in accordance with the procedures established by the gaming facility.

**23-210. North Dakota Compact.**

“North Dakota Compact” means the document entitled “Amended Tribal State Compact for Control of Class III Games of Chance, Standing Rock Sioux in North Dakota,” entered into between the Standing Rock Sioux Tribe and the State of North Dakota, or the same or similar document which from time to time may be amended, extended or adopted by the parties to the same.

**23-211. South Dakota Compact.**

“South Dakota Compact” means the document entitled “Gaming Compact between the Standing Rock Sioux Tribe and the State of South Dakota,” entered into between the Standing Rock Sioux Tribe and the State of South Dakota, dated July 14, 1992, and respective Amendments made to the Class III Gaming Compact, dated August 30, 2001 and August 19, 2009, or the same or similar document which from time to time may be amended, extended or adopted by the parties to the same.

**23-212. Compacts.**

As used in this Title, “Compacts” jointly refers to the North Dakota Compact and the South Dakota Compact as each is respectively defined in this Title.

**23-212.1. Act.**

“Act” means the Indian Gaming Regulatory Act, 25 U.S.C. § 2701 et.seq., and all applicable regulations promulgated thereunder.

**23-213. North Dakota Portion of the Reservation.**

“North Dakota portion of the Reservation” means that portion of the Standing Rock Sioux Reservation which lies within the boundaries of the State of North Dakota.

**23-214.        South Dakota Portion of the Reservation.**

“South Dakota portion of the Reservation” means that portion of the Standing Rock Sioux Reservation which lies within the boundaries of the State of South Dakota.

**23-215.        Commission and Professional Staff.**

“Commission” means the Standing Rock Gaming Commission as established and provided for pursuant to Chapter 3 of this Title, which shall consist of the Chairman-Executive Secretary and eight (8) commission members. Professional staff shall mean the Chairman-Executive Secretary; an Office Manager; Gaming Inspectors, one of whom shall be a Lead Inspector; a Licensing Assistant; a South Dakota Liaison to work with Grand River Casino and Resort; a North Dakota Liaison to work with Prairie Knights Casino & Resort; an Office Clerk/Test Administrator; and all other such employees who from time to time may be deemed necessary by the Commission to carry out its duties and responsibilities under this Title or as may be required by rules and/or policies promulgated by the Commission.

**23-216.        Casino Executive Committee.**

“Casino Executive Committee” or simply “Executive Committee” means the Tribal Chairman and the North Dakota and South Dakota Tribal Liaisons.

**23-217.        National Indian Gaming Commission.**

“National Indian Gaming Commission” or simply “NIGC” means the National Indian Gaming Commission established pursuant to 25 U.S.C. § 2704.

**23-218.        Tribe.**

“Tribe” means the Standing Rock Sioux Tribe.

**23-119.        Tribal Council.**

“Tribal Council” or simply “Council” means the Tribal Council of the Standing Rock Sioux Tribe.

**23-220. Professional Agent.**

“Professional Agent” shall mean an outside individual, specifically retained by the Gaming Commission, who shall work for the Commission to provide it with legal counsel, auditing, consultation, training and/or investigations. For the purpose of this Title, an individual otherwise employed with the Tribe or any other tribal entity who provides similar services for the Commission – including an attorney employed or contracted by the Tribe in the Tribe’s In-House Legal Department – is not a “Professional Agent” unless they have a separate contract with the Commission itself.

**23-221. Persons or Entities with a Financial Interest In, or Having Management Responsibility For, a Management Contract.**

“Persons or entities with a financial interest in, or having management responsibility for, a management contract” shall mean individuals who are deemed to have a direct or indirect financial interest in a management contract and individuals who have management responsibility for a management contract as defined or identified under the Act.

**23-222. Vendor.**

“Vendor” shall mean:

- (a) Any person or entity providing Class III gaming equipment to a gaming operator; or
- (b) Any other person or entity which provides goods or services (other than accounting or legal services) to a gaming operator.

**23-223. Chairman-Executive Secretary.**

The “Chairman-Executive Secretary” shall be a tribal employee who shall serve concurrently as the Chairman of the Standing Rock Gaming Commission and the Executive Secretary of the Standing Rock Tribal Gaming Department, and whose duties for those respective positions shall be set forth in Chapter 3 of this Title.

**23-224. Participate as a Player.**

“Participate as a player” or “participation as a player” shall mean any act of inserting currency or tokens in any machine, playing any banking card or table game, or activating the spin button or arm of any machine, whether done alone or in concert with others.

### CHAPTER 3. TRIBAL GAMING COMMISSION AND TRIBAL GAMING DEPARTMENT

#### 23-301. Establishment.

There is hereby established the Standing Rock Gaming Commission ("Commission"), the gaming regulatory body of the Tribe, consisting of the Chairman-Executive Secretary and eight (8) commission members. There shall be established a Standing Rock Tribal Gaming Department ("Department") staffed by a Professional Staff which shall include: the Chairman-Executive Secretary; an Office Manager; Gaming Inspectors, one of whom shall be a lead inspector; a Licensing Assistant; Tribal Liaisons; an Office Clerk/Test Administrator; other such employee(s) that may from time to time be deemed necessary by the Commission to carry out its duties and responsibilities under this Title or as may be required by rules and/or policies promulgated by the Commission; and any Professional Agents retained by the Commission. The monthly Gaming Inspector reports of the Gaming Office shall be directed to, and made under the supervision of, the Chairman-Executive Secretary. The North Dakota and South Dakota Tribal Liaisons must be members of the Tribal Council, recommended by the Tribal Chairman, and appointed by the Tribal Council. After appointment, the respective Tribal Liaisons shall report to the Tribal Council.

The Commissioners, Professional Staff, and Professional Agents retained by the Commission shall not be allowed to participate as a player in any Class III gaming, or play any Class II gaming device, operated under the regulatory jurisdiction of the Standing Rock Sioux Tribe, provided, however, that (1) nothing in this Title shall constrain the Commissioners, Professional Staff and Professional Agents from participating as a player in Class I gaming, poker and/or bingo, and (2) the Tribal Liaisons shall only be restricted from gaming to the extent that they may not participate as a player in any gaming at the casino to which they are assigned. Violation of this paragraph will result in appropriate sanction, which may include, as applicable: removal of the commissioner and/or termination of the Professional Staff member and/or termination of any professional contract or relationship as outlined by Section 23-306 of this Title, Title XVIII of the Standing Rock Code of Justice, and/or Title XXXIX of the Standing Rock Code of Justice. The gaming establishment is hereby authorized to have the individual offender removed from the premises and forfeit any winnings.

Commissioners, Professional Staff members and Professional Agents shall sign an oath of confidentiality prior to, as applicable, the beginning of their term of office, commencement of employment, and/or commencement of the contractual relationship, and shall abide by the oath during and after such term, employment or contract duration. Violation of the duty of confidentiality by a current Commissioner, Professional Staff member or Professional Agent shall result, as applicable, in removal from office, termination of employment, and/or termination of the contractual relationship. Violation of the duty of confidentiality after leaving office or employment may result in civil suit for invasion of privacy, which may include injunctive relief and/or referral for possible criminal prosecution.

**23-302.        Function.**

The Commission shall have the following powers and duties:

- (a) The Commission shall have primary responsibility for regulatory functions relating to tribal gaming operations authorized under this Title and shall be responsible for ensuring the requirements of this Title, the Act, and the Compacts are complied with. The Commission shall be bound by and follow the laws of the Tribe, this Title, the Act and the Compacts;
- (b) The Commission shall review all license applications and determine whether the application is complete and in compliance with the Title, and whether such license should be issued or denied. After individuals or facilities have been granted gaming licenses, the Commission shall make any necessary or appropriate determination on whether such licenses should be revoked, suspended or renewed;
- (c) The Commission shall have the power to issue a conditional/temporary license pending the completion of the investigation into an applicant's suitability to be issued a permanent license and, in the discretion of the Commission, to impose further conditions on a licensee after his/her permanent license has been granted if in accordance with the law;
- (d) The Commission shall collect any fees required to be paid under this Title. Such fees shall become tribal revenues and will be specifically disbursed to the gaming department budget as approved by the Tribal Council;
- (e) The Commission may, subject to the approval by the Tribal Council, bring any civil action in any court of competent jurisdiction to enforce the provisions of this Title, the Act, or the Compacts, or to enjoin or otherwise prevent any violation of the same, whether occurring or threatened to occur. The Tribal Chairman shall be authorized to approve litigation requests brought by the Commission between sessions of the Tribal Council, subject to the ratification of Tribal Council at their next regular or special session;
- (f) The Commission shall, subject to approval by the Tribal Council:
  - (1) Promulgate such regulations as it deems necessary in order to implement and enforce the provisions of this Title;
  - (2) Recommend to the Tribal Court the selection of an independent auditor to audit the Casinos, as required by the Act;

- (3) Engage the services of legal counsel under Sections 23-220 and 23-301 of this Title, who shall be admitted to practice law in the state bar(s) of North Dakota and/or South Dakota or is certified or eligible to practice before the highest court of any other state or the United States Supreme Court or in the Standing Rock Sioux Tribal Court; and
- (4) Issue all gaming licenses, required by this Title, to ensure compliance with the Title, the Act, the Compacts and any other applicable laws or regulations;
- (g) Each Commission member shall make monthly reports to his or her local District at a regularly scheduled District meeting;
- (h) The Commission shall have the authority to conduct investigations into suspected gaming violations, or violations of other applicable tribal, federal and/or state laws or regulations which may directly or indirectly affect or impugn the integrity of tribal gaming;
- (i) The Commission shall have the authority to ensure that the surveillance departments of Class II and Class III establishments operate independently, with no outside influence from management; and
- (j) The Commission shall carry out a quasi-judicial role when it considers denial, revocation or suspension of a licensee for violation of this Title, the Compacts, the Act, or any rules, regulations or policies that the Commission may promulgate.

**23-303.        Appointment of Members.**

One Commission member must be a resident of each District of the Reservation. Each District shall recommend persons to serve as the Commission member from that District to the Tribal Council. The members of the Commission shall be appointed by majority vote of the Tribal Council members voting on the question at a meeting at which a quorum is present. The Chairman-Executive Secretary shall be hired as a permanent Tribal employee through a process comporting with Title XVIII of the Standing Rock Code of Justice and any policies and procedures promulgated thereunder, and may reside anywhere on the Reservation.

**23-304.        Terms.**

- (a) The Chairman-Executive Secretary shall serve as a permanent Tribal employee consistent with the Standing Rock Sioux Tribe Personnel Policies and Procedures and with the provisions of this Title and is subject to the supervision of the Standing Rock Sioux Tribal Chairman.



- (b) The terms for Commissioners other than the Chairman-Executive Secretary shall be for four (4) years and any additional time necessary until a qualified successor is appointed, and shall be staggered so that the term of not more than four (4) Commissioners will expire in any one (1) year. Commissioners from the Districts of Cannonball, Bear Soldier, Running Antelope and Rock Creek shall serve until December 31, 2016, with subsequent terms expiring every four (4) years thereafter. Commissioners from the Districts of Porcupine, Fort Yates/Long Soldier, Kenel and Wakpala shall serve until December 31, 2017, with subsequent terms expiring every four (4) years thereafter. If a vacancy occurs during a term, the Council may appoint a successor for the unexpired portion of the term, with recommendations from the District in which the vacancy arose - provided the successor meets the qualifications set forth in Section 23-305 of this Title. Commissioners may serve for an unlimited number of terms pursuant to the procedures set forth in Section 23-303 of this Title which must be implemented at the expiration of a Commissioner's term.

**23-305.            Qualifications.**

To be eligible to serve as Chairman-Executive Secretary or other member of the Commission, a person shall:

- (a) Be of high moral character and reputation to promote public confidence in gaming by the Tribe;
- (b) Have sufficient education and work experience to be able to fulfill the functions of the Commission;
- (c) Have no financial stake in any gaming operated under this Title. A person has a "financial stake in any gaming operated under the Title" if that person, or that person's spouse, brother, sister, mother, father, grandmother, grandfather, son, daughter, grandson, granddaughter or first cousin has invested in, has a direct or indirect financial interest in, has a management contract in, or has any other pecuniary interest whatsoever in gaming operated under this Title. Membership in the Tribe does not, in itself, create a "financial stake in any gaming operated under this Title." Employment at a tribally licensed gaming facility, other than as a primary management official, by a person or that person's spouse, brother, sister, mother, father, grandmother, grandfather, son, daughter, grandson, granddaughter or first cousin does not create in such person a "financial stake in any gaming operated under this Title;"
- (d) Never have been convicted of a tribal, federal or state felony;
- (e) Once appointed, not participate as a player in any Class II or Class III game of chance conducted by a facility or operator licensed under this Title, except as permitted and/or exempted under Section 23-301 of this Title;

- (f) Submit to an annual background investigation under the same procedures applicable to prospective Class III primary management officials and key employees under Section 23-503 of this Title, to be conducted in the state in which the prospective Commissioner resides. The Chairman-Executive Secretary shall determine whether the prospective Commission member meets the licensing standard set forth in Section 23-504;
- (g) Not be a member of the Tribal Council, serve as a local District officer, or sit as a member of or advise a local organization that operates or conducts Class II or Class III gaming activities;
- (h) Not be delinquent on a debt to the Tribe, any agency of the Tribe, or corporation owned or controlled by the Tribe, as defined in Title XV of the Standing Rock Code of Justice;
- (i) Not have been convicted of a petty theft offense within one (1) year prior to the date of application;
- (j) Not have been convicted of a misdemeanor involving fraud, misrepresentation, theft or gambling in the five (5) years prior to the date of application; and
- (k) Have no current active bench or arrest warrants which have been outstanding for more than 14 days after the Commission becomes aware of the warrant and notifies the individual subject to the warrant of its potential impact on their ability to serve on the Commission.

**23-306.        Removal and Vacancies.**

Commissioners may be removed only for cause, by a two-thirds (2/3) vote of the Tribal Council, at a meeting at which a quorum is present. For the purpose of this Section, "for cause" shall include: delinquency on a debt to the Tribe; malfeasance; neglect of duty; unexcused failure to attend three (3) successive Commission meetings; three (3) successive notifications from the Commissioner's District that the Commissioner has failed to report to the District on Commission matters; failure to continue to meet the qualification requirements of Section 23-305 of this Title; conviction of a felony; conviction of a misdemeanor involving fraud, misrepresentation, theft, gambling or petty theft; failure to disclose a conviction; or failure to comply with the Constitution or laws of the Tribe, including the provisions of this Title.

Any Commissioner being considered for removal shall be provided with notice from the Tribal Chairman or Tribal Secretary stating the grounds for removal, specifying a date, time, and place for a hearing to be held by the Tribal Council. Such notice must be provided to the subject Commissioner no fewer than ten (10) days prior to the hearing before the Council. At the hearing, the Commissioner shall be entitled to appear, present testimony and other evidence, and be represented by an attorney at the



Commissioner's own expense. Vacancies shall be filled by majority vote of the Council, at a meeting at which a quorum is present, for the unexpired term - with recommendations provided by the Districts from which the vacancies arose - provided that the successor meets the qualifications set forth in Section 23-305.

The Chairman-Executive Secretary may be removed in accordance with Title XVIII of the Standing Rock Code of Justice and the policies and procedures promulgated thereunder. A vacancy in the Chairman-Executive Secretary position shall be filled pursuant to Section 23-311 of this Title.

The Chairman-Executive Secretary shall report to the Tribal Chairman any act or failure to act of a Commissioner that is in violation of this Title, including any conduct which would render an individual ineligible to serve on the Commission under Section 23-305.

**23-307.        Meetings.**

The Commission shall meet as necessary to fulfill its duties and obligations under this Title, but in no event shall the Commission meet less frequently than once per month. Meetings may be called by the Chairman-Executive Secretary, or by any three (3) members of the Commission, upon at least three (3) days written notice to all members. If the Chairman-Executive Secretary or any three (3) members certify in writing that a meeting must be held on less than three (3) days notice, a meeting may be held as necessary, provided that best efforts have been made to provide the Chairman-Executive Secretary and all members with as much advance notice of such meeting as possible. Five (5) members - or four (4) members and the Chairman-Executive Secretary - shall constitute a quorum for the transaction of business. The vote of a majority of the members present at a meeting at which a quorum is present shall be the act of the Commission. The Chairman-Executive Secretary shall not vote, unless in case of a tie.

**23-308.        Compensation.**

Members of the Commission shall be compensated in accordance with a budget approved by the Tribal Council.

**23-309.        Monthly Reports.**

The Chairman-Executive Secretary shall make a report to the Tribal Council at least once per month, or more often as may be requested. Each report shall include a summary of all licensing and enforcement activities, a summary of meeting and travel activities and dates, and any additional information requested by the Tribal Council or the Judicial Committee.

**23-310.        Notice of Commission Decisions.**

The Commission shall provide written notice to any applicant and any other interested party of any decision or order pertaining to that applicant or interested party. Notice shall be provided pursuant to the procedures set forth in Chapter 14 of this Title.

**23-311.        Tribal Gaming Commission Chairman-Executive Secretary.**

- (a) There is hereby created a Tribal Gaming Chairman-Executive Secretary who shall be responsible for oversight of gaming activities as set forth in this Title. Such individual shall serve as Chairman of the Commission, and Executive Secretary of the Department.
- (b) The Chairman-Executive Secretary shall have primary responsibility for the functions of the Commission, and shall supervise all Professional Staff members and Professional Agents retained by the Commission and/or Department.
- (c) The Chairman-Executive Secretary shall be a full-time, permanent employee, subject to the Tribe's personnel policies and procedures promulgated under Title XVIII of the Standing Rock Code of Justice, and shall be under the supervision of the Tribal Chairman.
- (d) To be eligible for the position of Chairman-Executive Secretary, an individual must have a bachelor's degree and/or at least five (5) years of work-related experience in administration, business, gaming or a related field. The Chairman-Executive Secretary shall not be a Tribal Council member or District Officer. When the position of Chairman-Executive Secretary is vacant, the position shall be filled by advertising the position with the position description detailing the duties and responsibilities inherent to the position and as authorized by the Tribal Council.
- (e) The Chairman-Executive Secretary shall develop an annual budget in consultation with the Commission, subject to approval by the Tribal Council.
- (f) The Chairman-Executive Secretary shall have the following duties:
  - (1) Oversee all functions relating to the Tribe's regulation of gaming operations, including Tribal Internal Control Standards (TICS) and all financial aspects of such gaming;
  - (2) Assist in fulfilling the Tribe's duties under any Class III management agreement and the Compacts;

- (3) Provide supervision on personnel matters regarding Gaming Inspectors and other Professional Staff;
  - (4) Determine whether prospective Commission members meet the qualification requirements set forth in Section 23-305 of this Title;
  - (5) Secure audits as required by this Title;
  - (6) Initiate and/or conduct investigations of violations of this Title, any rules or regulations promulgated under this Title, the United States Code, the Act, the Compacts, and all applicable tribal, federal or state laws the violation of which could affect the integrity and self-regulation of gaming on the Reservation;
  - (7) Serve as presenting officer in license suspension or revocation hearings and over customer disputes;
  - (8) Sign and submit environment, public health and safety attestations as required by the Act; and
  - (9) Fulfill such other duties as may be delegated by the Tribal Council.
- (g) The Chairman-Executive Secretary shall maintain and protect the confidentiality of records and proceedings that come before the Commission and/or Department.
  - (h) The Chairman-Executive Secretary is authorized to approve Temporary Licenses as needed, provided that such Temporary Licenses shall be submitted for final approval and ratification to the Commission at the Commission's next meeting following the Chairman-Executive Secretary's approval of the Temporary License.

**23-312.        Gaming Inspectors.**

- (a) The Tribe shall employ Gaming Inspectors who shall have primary responsibility for monitoring ongoing Class II and Class III gaming operations authorized by this Title.
- (b) Gaming Inspectors shall be full-time tribal employees and shall be subject to Title XVIII of the Standing Rock Code of Justice and any personnel policies and procedures promulgated thereunder. The Chairman-Executive Secretary shall supervise the Gaming Inspectors with respect to compliance with personnel policies and procedures. The budget for the Tribal Gaming Department shall include the costs associated with Gaming Inspectors.

- (c) Gaming Inspectors shall report any violations of this Title, any rules or regulations promulgated under this Title, the Act, or the Compacts to the Chairman-Executive Secretary.
- (d) Gaming Inspectors shall have the authority to investigate, upon request or as assigned, on behalf of the Commission and/or Chairman-Executive Secretary, any violations of this Title, the Act, the Compacts and/or rules or regulations promulgated by the Commission.
- (e) Gaming Inspectors shall have the authority to carry out the purpose and intent of the Drug Free Workplace Policy of the Commission and/or Standing Rock Sioux Tribe.

**23-313. Tribal Gaming Commission Legal Counsel.**

- (a) The Commission may employ professional legal counsel pursuant to Sections 23-220 and 23-301 of this Title, who shall provide legal advice to and represent the Commission on all issues coming before the Commission and/or arising under this Title.
- (b) The Commission legal counsel shall be admitted to practice law in the state bar(s) of North Dakota and/or South Dakota, or shall be licensed or eligible to practice before the highest court of any other state or the United States Supreme Court or in the Standing Rock Sioux Tribal Court.
- (c) In addition to, or in lieu of, hiring outside legal counsel as a Professional Agent, the Standing Rock Tribal In-House Legal Department – and any attorney employed in that Department – may provide legal services to the Commission and Department as long as such services do not create a conflict of interest and are allowed under that attorney’s scope of work with the Tribe. As provided under this Title, such attorney shall not be considered a “Professional Agent” of the Commission unless they have entered into a separate agreement with the Department and/or Commission.

**23-314. North Dakota and South Dakota Tribal Liaisons.**

There shall be established North Dakota and South Dakota Liaisons who shall be responsible for the oversight of the Standing Rock Sioux Tribe’s proprietary interests in both the Prairie Knights Casino and Resort located on the North Dakota portion of the Reservation, and the Grand River Casino and Resort located on the South Dakota portion of the Reservation, respectively. The North Dakota and South Dakota Liaisons shall undertake those measures necessary to safeguard the integrity of Tribal gaming while maximizing the effectiveness of management and the opportunities to the Tribe.

The North Dakota and South Dakota Liaisons shall operate in accordance with their respective position descriptions and budgets as adopted by the Standing Rock Sioux Tribe detailing their duties and responsibilities, which shall include:

- (a) Meeting with casino management on a regular basis on casino operations;
- (b) Submission of written reports on the status of casino operations on a monthly basis to both the Tribal Gaming Department and the Tribal Council;
- (c) Assuring compliance with management contracts and/or management employee agreements of the respective casino enterprises (Class II and Class III);
- (d) Assuring the submission of financial and monthly reports to the Tribal Council of the Tribe's gaming enterprises (Class III);
- (e) Assuring the Tribe's gaming enterprises are operating according to generally accepted gaming industry standards;
- (f) Assuring that Indian Preference remains a priority in recruitment, hiring, training, lateral transfers, promotions, and career opportunities within the Tribe's casino enterprises;
- (g) Meeting with gaming employees to hear their concerns;
- (h) Reviewing the Tribal gaming facilities' policies and procedures and recommend changes to improve the working relationships between management and staff, improve the morale of the staff, etc.;
- (i) Serving in an advisory capacity to management in employee grievance hearings when deemed necessary by the Liaison or requested by management;
- (j) Serving on the Executive Committee and participating in any authorized acts of the Executive Committee;
- (k) Aiding, assisting and advising the Tribe and the Commission on Tribal/gaming relations and ensuring that communications are maintained between the Tribe and the Commission;
- (l) Having access and ability to review investigative reports and make subsequent recommendations on any corrective action plan or administrative action needed; and

- (m) Taking all reasonable steps necessary to ensure Prairie Knights Casino and Grand River Casino comply with any and all health and safety requirements as provided in Section 23-405 of this Title.

**23-315. Tribal Immunity.**

Nothing in this Title shall be construed to waive the immunity from suit of the Tribe, the Commission or Professional Staff; provided that judicial review of actions of the Commission shall be available as set forth in this Title. In no event shall this Title be construed as consent to any money judgment, lien or attachment of any property of the Tribe, Commission or Professional Staff. No money damages shall be awarded against a Commission member, Professional Staff member, or other Tribal official acting in good faith within the scope of their official duties under this Title.

**23-316. Confidentiality of Records.**

All records in the possession of the Commission are deemed to be confidential and cannot be released to the general public. For purposes of this Section, "records in the possession of the Commission" are all documents of any kind which come into the possession of the Commission upon request of the Commission or as required by this Title the Act or the Compacts. Records or documents that are required by court order to be released, or required to be shared with the Tribal Council, or be viewed during license suspension or revocation hearings, can be released by the Commission for the limited purpose of their release.

**23-317. Executive Committee.**

The Executive Committee shall:

- (a) Conduct annual performance evaluations for the Tribe's casino management which shall be referred to the Tribal Council for approval; and
- (b) Hear gaming employee grievance appeals when an employee has exhausted all remedies at the casino-level. Such hearings shall be conducted pursuant to promulgated rules and/or procedures, provided that such rules shall provide for any reasonable and/or necessary due process. The authority of the Executive Committee under this subsection shall cease and be rescinded upon the establishment of, or delegation to, a separate Tribal body or department which is designated and authorized to conduct such hearings and/or appeals for Tribal entities, including gaming entities.



## **CHAPTER 4. COMPLIANCE WITH THE ACT AND OPERATIONS LICENSES**

### **Subchapter A. Compliance with Indian Gaming Regulatory Act**

#### **23-401. Applicability.**

All Class II and Class III gaming on the Reservation shall be conducted according to the provisions of this Title and in compliance with the Act.

#### **23-402. Sole Proprietary Interest and Ability to Conduct Gaming Under Title.**

The Tribe may conduct any form of gaming – whether Class I, Class II, Class III, or charitable in nature – if done pursuant to the Act, this Title and any applicable Compact provision(s). Class III gaming operations may only be conducted by the Tribe. The Tribe and all eligible tribal subdivisions, properly designated as such pursuant to Section 23-406 of this Title, may conduct Class I gaming if so permitted and conducted pursuant to Chapter 7 of this Title and/or charitable gaming if so permitted and conducted pursuant to Section 23-1503 of this Title. The Districts shall be the only tribal subdivision which may conduct Class II gaming, provided the District is designated as a tribal subdivision pursuant to Section 23-406 of this Title.

In compliance with 25 U.S.C. 2710(b)(2)(A), the Tribe shall have the sole proprietary interest and responsibility for the conduct of any gaming activity on the Reservation. The Tribe may delegate to the Districts the sole proprietary interest in any Class II gaming operations, so long as revenue use is consistent with 25 U.S.C. 2710(b)(2)(B) and Section 23-403 of this Title. Ownership of any Class II or III game by any other entity or individual is prohibited.

To the extent this Title is amended or construed as allowing for Class II gaming activities by a non-Tribal entity, the provisions of 25 U.S.C. § 2710(b)(4) shall apply.

#### **23-403. Use of Revenue.**

In compliance with 25 U.S.C. § 2710(b)(2)(B), net revenues from any gaming activity are not to be used for any purposes other than:

- (a) To fund tribal government operations or programs;

- (b) To provide for the general welfare of the Tribe and its members;
- (c) To promote tribal economic development, in accordance with the Compacts;
- (d) To donate to charitable organizations;
- (e) To help fund operations of local government agencies of the State and its political subdivisions;  
and
- (f) To provide per capita payments to the Standing Rock Sioux Tribe enrollees if based upon a plan approved by the Tribal Council and the Secretary of the Interior which is in accordance with the Act.

**23-404.        Audits.**

In compliance with 25 U.S.C. § 2710(b)(2)(C) and (D), all gaming activities shall be subject to an audit by independent certified accountants, not less than annually. The audit shall include all contracts for supplies, services or concessions for a contract amount in excess of \$25,000 annually (except contracts for professional legal or accounting services) relating to Class II or Class III gaming. The audit shall be arranged by the licensee conducting the gaming, who shall provide a copy of the audit to the Tribal Gaming Department upon completion. The Department shall thereafter forward the audit report to the Tribal Council, the Commission, the National Indian Gaming Commission, and any other entity or agency required to receive copies of the audit reports under the Compacts. Additionally, all Class III gaming establishments must provide proof of compliance with the Tribal Internal Control Standards (TICS), as required by federal law.

**23-405.        Environmental and Public Health and Safety Standards.**

In compliance with 25 U.S.C. § 2710(b)(2)(E), the construction and maintenance of any Class II and Class III gaming facility - and the operation of Class II and Class III gaming activities - shall be conducted in a manner which adequately protects the environment and the public health and safety, and for that purpose shall comply with all applicable health, safety and environmental standards enacted by the Tribe or that are currently in use by the Tribe.

In the absence of Tribal standards and regulations, those standards generally imposed by the laws and regulations of the State of North Dakota relating to public facilities with regard to building, sanitary, and health standards and fire safety shall be deemed to be incorporated by this Title as the laws of the Tribe applicable to gaming facilities of the Tribe on the North Dakota portion of the Reservation, provided, however, that such state laws have no force or effect on the Reservation other than by incorporation



into this Title, and provided further that if an approved management agreement stipulates that federal building, electric and fire codes apply, then those standards shall be used. The Commission shall arrange to have quarterly or such other inspections as may be necessary to fulfill the obligations imposed by this Section.

In the absence of Tribal standards and regulations, those standards generally imposed by the laws and regulations of the State of South Dakota relating to public facilities with regard to building, sanitary, and health standards and fire safety shall be deemed to be incorporated by this Title as the laws of the Tribe applicable to gaming facilities of the Tribe on the South Dakota portion of the Reservation, provided, however, that such state laws have no force or effect on the Reservation other than by incorporation into this Title, and provided further that if an approved management agreement stipulates that federal building, electric and fire codes apply, then those standards shall be used. The Commission shall arrange to have quarterly or such other inspections as may be necessary to fulfill the obligations imposed by this Section.

**23-406.        Status as a Tribal Subdivision.**

Each entity seeking designation as a tribal subdivision for the purpose of this Title shall file an application with the Standing Rock Sioux Tribal Council. The application shall provide information on the nature and purpose of the entity and the programs it operates, and shall demonstrate that the uses to which it puts its funds conform to Section 23-403 of this Title. The decision of the Council on any application shall be final. While Districts are generally designated as tribal subdivisions, a District must still seek designation as such for gaming purposes and shall be granted such designation if it has provided the information required under this Section and specifies, in writing, the members of the District entity responsible for gaming by that District. Tribal subdivisions shall be eligible for Class I, Class II and charitable gaming only. Of those organizations which may be designated as a tribal subdivision, only Districts may engage in Class II gaming.

**Subchapter B.    Licensing of Class II and Class III Gaming Operations**

**23-407.        Scope of Subchapter.**

This subchapter contemplates licensing for Class II and Class III gaming operations. Licensing for charitable gaming operations shall be conducted pursuant to regulations promulgated by the Commission in accordance with Section 23-1503 of this Title. Licensing for Class I gaming operations shall be conducted pursuant to Section 23-704 of this Title.

**23-408.        Licenses for Gaming Activities.**

The Commission shall issue a license for each place, facility, or location where Class II and/or Class III gaming is conducted. For each location licensed, a sworn application must be filed by the Tribe or the tribal subdivision which contains a full and complete showing of the following:

- (a) Satisfactory proof that the applicant is of good character and reputation among the people of the Reservation, with particular reference to the Indian people, and that it is financially responsible;
- (b) A description of the premises in which the game is to be held, and proof that the applicant is the owner of such premises, or lessee of such premises, for at least the term of the license;
- (c) Agreement by the applicant to accept and abide by all applicable provisions of this Title and all conditions of the tribal license;
- (d) Satisfactory proof that primary management officials, key employees and non-gaming staff identified and/or known at the time of the application would meet the requirements set forth in Section 23-504 of this Title; and
- (e) Assurance that the facility will comply with Tribal liquor laws and all other laws of the Tribe, including policies and procedures promulgated by the Commission.

At the time each applicant appears before the Commission when the Commission is to consider the pending application, the applicant must provide the Commission with satisfactory proof that notice of the application has been posted in a prominent, noticeable place in the Tribal Office and on the premises where the game is to be held for at least 30 days prior to consideration by the Commission, and published at least twice in a local newspaper serving the Reservation. The notice shall state the date, time and place when the application is to be considered by the Commission.

**23-409.        License Fees and Duration of License.**

- (a) Each application for a Class II gaming license under this Section shall be accompanied by an application fee of \$50.00 provided, however, that the Tribe shall not be required to pay any such fee. The Commission may, in its discretion, waive such fee for non-profit fundraising groups.
- (b) Where the Tribe is the licensee, and the Tribe retains a management contractor pursuant to Chapter 6 of this Title, the management contractor shall pay an annual license fee of \$10,000.00, per facility. The first such license fee shall be due prior to the contractor operating any Class III games. Thereafter, such license fees shall be due on December 31 of each year for the following calendar year, and the notice provisions of Section 23-407 shall apply.

- (c) For both Class II and Class III gaming, a license shall expire on December 31 of the calendar year in which it is issued, and may be renewed by the Commission upon proper application made at least 30 days prior to its expiration. Any management contractor who terminates operations within the calendar year shall be entitled to a prorated refund of the fees paid.

**23-410.        Hearing on Application for a License for Gaming Activities.**

- (a) An application for a Class II or Class III gaming facility license shall be considered by the Commission in open session which shall comply with Chapter 14 of this Title, and at which the applicant, his or her attorney and any person protesting the application shall have the right to be present, and to offer sworn oral or documentary evidence relevant to the application. Prior to the hearing, the applicant shall be entitled to review any documentation in possession of the Commission which is intended to be utilized in support or denial of the facility license, prior to the hearing. After the hearing, the Commission shall determine whether to grant or deny the application, based on the Commission's determination of the best interests of the Tribe. The decision of the Commission shall be final.
- (b) Existing licensees shall have no vested right to have their licenses renewed or extended, and compliance with this Title does not guarantee an existing licensee a renewal or extension. In each case, the Commission shall, in the exercise of its discretion, make its determination based on all the evidence presented to it, provided that, with respect to Class II and/or Class III gaming operated under a management contract, the Commission shall not revise or fail to renew a license except on grounds permissible under such management contract, this Section, or Section 23-407 of this Title.

**23-411.        Conditions of the Tribal License.**

Any Class II or Class III facility tribal license issued under this Title shall be subject to such reasonable conditions as the Commission shall fix, including:

- (a) The licensee shall at all times maintain an orderly, clean, and neat establishment, both inside and outside the licensed premises.
- (b) The licensed premises shall be subject to patrol by the tribal and BIA law enforcement officers for the purpose of enforcing tribal law, and the licensees shall cooperate at all times with such law enforcement officers.

- (c) The licensed premises shall be open to inspection by duly authorized tribal officials and officials of the National Indian Gaming Commission at all times during regular business hours.
- (d) There shall be no discrimination in the operations under a tribal license by reason of race, color or creed, age, sex, sexual orientation or national origin, provided, however, that a licensee shall give a preference in employment to Indians.
- (e) Management shall not allow any person prohibited from participating as a player under Section 23-301, Section 23-504 and Section 23-615 of this Title to play, participate as a player or make/place a wager in any Class II and Class III game conducted by the operator which would be proscribed by the provisions of this Title.
- (f) No beverage containing alcohol, including beer, wine and liquor, shall be offered or awarded as a prize or in lieu of a prize for winning at any of the activities authorized by this Title.
- (g) No firearms, air guns which are capable of discharging dangerous projectiles - including B.B. guns, CO2 guns, rifles, shotguns, pistols or revolvers - shall be offered or awarded as a prize or in lieu of a prize for winning at any of the activities authorized by this Title.
- (h) No persons involved in the operation of any activity authorized by this Title shall - directly or indirectly, and in the course of such operation - employ any device, scheme or artifice to defraud, make any untrue statement of a fact, or omit to state a consideration of the circumstances under which such statement was made, or engage in any act, practice, or course of operation as would operate as a fraud or deceit upon any person.
- (i) All licensees shall comply with all applicable requirements of the Federal Internal Revenue Code.
- (j) All licensees must comply with Tribal liquor law for underage drinking and curfew laws.
- (k) All applicants for a gaming license and licensees must comply with the Commission's Drug Free Workplace Policy regarding pre-employment and employment testing.
- (l) The Commission adopts a "zero tolerance" standard for certain violations which may result in suspension or revocation of a gaming license. Said violations include: theft, alcohol and drug use, harassment of any kind, lewd or licentious conduct, and violation of the Drug Free Workplace Policy.
- (m) All licensees shall comply with any and all applicable tribal, federal and state health and safety regulations as provided in Section 23-405 of this Title.

- (n) The licensee(s) shall designate an individual from the HR Department of each respective casino to attend regular Commission meetings during their employees' license application review process.

**23-412.        Assignment or Transfer.**

No Class II or Class III facility license issued under this Title shall be assigned or transferred.

**23-413.        Cancellation and Suspension.**

The licensee must have and exercise complete control over the premises being used for gaming at all times games governed by this Title are being played. The licensee, manager, and employees shall be legally responsible for any violation of this Title. Any license issued hereunder may be cancelled by the Commission for the breach of any of the provisions of this Title or of the tribal license, upon hearing before the Commission, after ten (10) days notice of the claimed breach to the licensee pursuant to the notice and hearing procedures set forth in Chapter 14 of this Title. A license may be suspended during the 10 day period by a majority vote of the Gaming Commission at a meeting at which a quorum is present.

The final decision of the Commission may be appealed to the Tribal Court within thirty (30) days after the decision is rendered for review to ensure the action of the Commission was not arbitrary or capricious. On appeal, should the Court hold in favor of the licensee, the scope and extent of relief which may be afforded the licensee is reinstatement of the license. The licensee shall not be entitled to monetary damages, and the Court shall not order the same.

**23-414.        Report to the Commission.**

Each licensee shall submit to the Commission, on a quarterly basis, a financial report for the previous quarter's operations. Such reports shall be signed, under oath, by an official or representative of the licensee, who in the case of a tribal operation shall be the operation's manager. The reports shall document:

- (a) Gross receipts for each month;
- (b) Names of each employee and the salary or other compensation paid to each;
- (c) All expenses in the operation of the facility, specifying all payments to vendors and contractors;
- (d) The amount paid in prizes each month;

- (e) All bank deposits made from proceeds of the facility operations, including any interest received on such deposits;
- (f) All bank withdrawals, and the purpose of each;
- (g) All expenditures of net proceeds including the amount, person or organization paid, date, and purpose of such expenditures;
- (h) That each licensee will submit copies of all IRS required forms; and
- (i) The stated dollar value of complimentary services or items as set forth in 25 C.F.R. § 542.17 and the Tribal Internal Control Standards.

#### **CHAPTER 5. BACKGROUND INVESTIGATIONS AND LICENSING OF KEY EMPLOYEES, PRIMARY MANAGEMENT PERSONNEL AND NON-GAMING STAFF**

##### **23-501. License Required.**

All primary management officials, key employees and non-gaming staff of any Class II or Class III gaming facility on the Reservation or licensed under this Title shall be required to obtain a gaming license from the Commission prior to the commencement of employment. The Commission shall conduct a background investigation as soon as practicable after the prospective official or employee has been offered employment and has successfully passed the pre-employment drug test required by the Drug Free Workplace Policy.

##### **23-502. Assignment or Transfer.**

A key license or non-gaming license issued under this Title may be transferred with the written approval of the Commission, provided that the individual holding the key license or non-gaming license meets the qualifications for obtaining a license in the jurisdiction into which the license is to be transferred. A key employee, who seeks to transfer his or her license, shall make an application for a license as set forth in Section 23-505 of this Title, and the transfer must meet the conditions of the applicable Compact.

A primary management license issued under this Title may not be transferred unless first requested by the Tribal Council by formal motion or resolution, and must thereafter follow the similar procedure, and meet similar requirements, as those required for the transfer of key or non-gaming licenses.



**23-503.        Background Investigation.**

- (a) As part of the licensing process, each prospective primary management official and key employee shall be subject to a background investigation prior to licensure. For Class III gaming conducted on the North Dakota portion of the Reservation, the investigation shall be conducted by the State of North Dakota, the Federal Bureau of Investigation ("FBI") and the Tribe. For Class III gaming conducted on the South Dakota portion of the Reservation, the investigation shall be conducted by the State of South Dakota, the FBI and the Tribe. Any costs of such investigations shall be paid by the applicant or the gaming establishment and are non-refundable. In addition, the Commission may conduct its own investigation on any applicant for such license, with the costs paid by the applicant. Each applicant for a Class III license shall execute a release of information permitting the appropriate state, the FBI, the Tribal Court and the Commission to conduct such investigation, and shall provide (1) his or her social security number, (2) his or her full name, and (3) any and all other names used and addresses resided at for the past ten (10) years.
- (b) For Class II gaming conducted on the Reservation, the investigation shall be conducted in the same manner as set forth in subsection (a) of this Section.
- (c) For non-gaming employees, background checks shall be required and administered in a manner sufficient to determine if the prospective employee may be licensed pursuant to Section 23-504(b) of this Title, and each prospective non-gaming employee shall execute a release of information equivalent to that required for prospective management officials and key employees as set forth in this Section.
- (d) A report of a background investigation made under this Section shall be retained by the Commission for no less than three (3) years from the date of termination of employment by the licensed employee, and shall be made available for inspection by the NIGC upon request. The report of the background investigation shall include: (1) steps taken in conducting the background investigation; (2) results obtained; (3) conclusions reached; and (4) the basis for those conclusions.

**23-504.        Licensing Standard.**

This Section shall set forth licensing standards for primary management officials, key employees or entities, and non-gaming staff. For the purposes of this Section, the time of a "conviction" shall refer to the time at which no portion of an individual's sentence remains unexecuted, the time period for appeal has ended, and the period of probation has ended.

- (a) No primary management official, key employee or entity shall be issued a license to serve as a primary management official or key employee if he or she:

- (1) Has been convicted of a federal, state or tribal felony;
- (2) For such officials and employees on the North Dakota portion of the Reservation, within the ten (10) years prior to the date of application, has been convicted of, entered a plea of guilty or no contest to, or has been released from parole, probation or incarceration, whichever is later in time, of a misdemeanor involving a gambling related offense, or any fraud or misrepresentation, unless:
  - i. That person has been pardoned for the prohibiting offense, in which case such conviction shall not bar licensure of the individual; or
  - ii. The Commission has made a determination that the person has been sufficiently rehabilitated, in which case the timeframe in this subsection shall be reduced to a period of five (5) years, provided the Commission shall notify the State in writing of the determination made;
- (3) For such officials and employees on the South Dakota portion of the Reservation, within the five (5) years prior to the date of application, has been convicted of, entered a plea of guilty or no contest to, or has been released from parole, probation or incarceration, whichever is later in time, of a misdemeanor involving a gambling related offense, or any fraud or misrepresentation offense;
- (4) Through the person's prior activities, criminal record, reputation, habits and associations, is found to (i) constitute a threat to the public interest of the Tribe, the State of North Dakota or the State of South Dakota; (ii) constitute a threat to the effective regulation and control of gaming; or (iii) create or enhance the dangers of unsuitable, unfair or illegal practices, methods, and activities in the conduct of gaming or the carrying on of the business and financial arrangements incidental to the conduct of gaming;
- (5) Has an active and outstanding bench or arrest warrant issued by a state or Tribe;
- (6) Has been given an "other than honorable" or dishonorable discharge from the armed services and, upon review of the Commission, it is determined the applicant's discharge is found to constitute the applicant as a person not of good character, honesty and integrity pursuant to Section 23-504(a)(4)(i) of this Title; or
- (7) Has failed the pre-employment drug testing required by the Drug Free Workplace Policy.



- (b) In contemplating and issuing licenses for non-gaming staff, the Commission shall abide by the following considerations and requirements:
- (1) Non-gaming staff, as defined in Section 23-209, and applicants for such positions, shall be required to submit to a background investigation and:
    - i. Shall not have any felony convictions, or have been released from incarceration from such conviction, whichever is later in time, within five (5) years prior to the commencement of their employment; and
    - ii. Shall have no convictions for misdemeanors involving theft, gambling, misrepresentation or fraud, or have been released from incarceration from such conviction, whichever is later in time, within one (1) year from the date of application for employment.
  - (2) The Commission shall be authorized to waive the aforementioned prohibition on felony convictions in subsection (b)(1)(i) of this Section provided the applicant is an enrolled member of the Tribe and has not had a felony conviction, nor any of the misdemeanor convictions enumerated in subsection (b)(1)(ii) of this Section, nor was released from incarceration from any convictions listed in subsection (b)(1) of this Section, whichever may be later in time, within one (1) year prior to the date of application for employment. An applicant who seeks such a waiver must request a waiver from the Commission, supply proof of enrollment and request a hearing before the Commission on the license application. The Commission shall then have discretion on whether to grant the requested waiver, which shall be based upon a determination of whether the applicant has been properly rehabilitated and is not otherwise disqualified pursuant to subsection (b)(4), (b)(5) or (b)(6) of this Section.
  - (3) Non-gaming staff who have previously been convicted of any felony shall not be allowed to assume any primary management official or key employee positions or duties and responsibilities at any time. Any change of status from non-gaming to key or primary employee, or from key to primary employee, shall be subject to the licensing process in this Chapter, prior to obtaining such license(s).
  - (4) In addition to the requirements under this Section regarding a non-gaming employee's criminal background, the Commission shall also consider whether, through the person's prior activities, criminal record, reputation, habits and associations, the applicant is found to: (i) constitute a threat to the public, the interest of the Tribe, the State of North Dakota, or the State of South Dakota; (ii) constitute a threat to the effective regulation and control of gaming or the operation of the gaming establishment; or (iii) create or enhance the dangers of unsuitable, unfair or illegal practices, methods, and activities in the conduct of

faming or the carrying on of the business and financial arrangements incidental to the conduct of gaming. If the Commission finds that such person may constitute a threat as described in this subparagraph, they can either deny the license outright or, if the threat would only be present if the person was employed in certain positions, grant a license of limited scope which does not permit the individual to be licensed for those positions.

- (5) Non-gaming staff shall have no active outstanding bench or arrest warrant(s).
- (6) Non-gaming staff shall not be granted a license if they fail a pre-employment drug test required by the Drug Free Workplace Policy.
- (c) Once licensed, no primary management official, key employee or non-gaming employee shall be allowed to play, participate as a player, or make/place a wager in the Class III facility where the primary management official, key employee or non-gaming employee is licensed. If any such official or employee is found to participate as a player in violation of this subsection, it shall constitute grounds for license revocation and/or non-renewal of a license.

**23-505.        Application for License.**

- (a) Each primary management official, key employee, or non-gaming employee shall - after an offer of employment is made but prior to the commencement of employment - fill out an application for a tribal gaming license to be provided by the Commission. Each such application shall have printed on it the following notices:

- (1) Privacy Notice:

In compliance with the Privacy Act of 1974, the following information is provided: Solicitation of the information on this form is authorized by 25 U.S.C. § 2701 et seq. The purpose of the requested information is to determine the eligibility of individuals to be granted a gaming license. The information will be used by the Tribal gaming regulatory authorities and by the National Indian Gaming Commission members and staff who have need for the information in the performance of their official duties. The information may be disclosed to appropriate Federal, Tribal, State, local or foreign law enforcement and regulatory investigations or prosecutions or when pursuant to a requirement by a tribe or the National Indian Gaming Commission in connection with issuance, denial or revocation of a gaming license, or investigations of activities while associated with a tribe or a gaming operation. Failure to consent to the disclosures indicated in this notice will result in a tribe's being unable to license you for a primary management official or key employee position. The disclosure of your Social Security Number (SSN) is voluntary. However, failure to supply a SSN may result in errors in processing your application.

(2) Notice regarding false statements:

A false statement on any part of your license application may be grounds for denying a license or the suspension or revocation of a license. Also, you may be punished by fine or imprisonment (U.S. Code, title 18, Section 1001).

(b) The applicant will provide the following information in their initial application for licensure:

- (1) Full name, other names used (oral or written), social security number(s), birth date, place of birth, citizenship, gender, all languages (spoken or written);
- (2) Currently and for the previous five (5) years: business and employment positions held, ownership interests in those businesses, business and residence addresses, and driver license numbers;
- (3) The names and current addresses of at least three (3) personal references, including one (1) personal reference who was acquainted with the applicant during each period of residence listed in subparagraph 2 of this subsection;
- (4) Current business and residence telephone numbers;
- (5) A description of any existing and/or previous business relationships with Indian tribes, including ownership interests in those businesses;
- (6) A description of any existing and/or previous business relationships with the gaming industry generally, including ownership interests in those businesses;
- (7) The name and address of any licensing or regulatory agency with which the applicant has filed an application for a license or permit related to gaming, whether or not such license or permit was granted;
- (8) For each felony for which there is an ongoing prosecution or a conviction, the charge, the name and address of the court involved, and the date and disposition, if any;
- (9) For each misdemeanor conviction or ongoing misdemeanor prosecution (excluding minor traffic violations) within ten (10) years of the date of the application: the charge, the name and address of the court involved and the date and disposition;
- (10) For primary management officials and key employees, for each criminal charge (excluding minor traffic charges) within ten (10) years of the date of application, whether or not there is a conviction and is not otherwise listed pursuant to subparagraphs 8 and 9 of this Section:

the charge, the name and address of the Court involved, and the date and disposition of the charge;

(11)The name and address of any licensing or regulatory agency with which the person has filed an application for an occupational license or permit, whether or not such license or permit was granted;

(12)A photograph;

(13)Fingerprints consistent with procedures adopted by the Tribe;

(14)Official results of a successful drug test; and

(15)Any other information which, in a particular case, the Commission deems relevant.

(c) An application under this Section shall be retained by the Commission for no less than three (3) years from the date of termination of employment by the licensed employee, and shall be made available for inspection by the NIGC upon request.

**23-506.        Determination of Eligibility.**

On the basis of the information received under subsection (b) of Section 23-505 and the background investigation conducted by the appropriate state, federal or tribal agency or entity, the Commission shall consider the applicant for a license. Upon a vote of a majority of its members, the Commission shall make a determination of the applicant's eligibility for a license, pursuant to the standards set forth in Section 23-504. The Commission shall make its determination of eligibility within 30 days of receipt of the information under Section 23-505(b) based in part on the result of the background investigation of the appropriate state, federal or tribal agency or entity, and the results of the additional background investigation, if any, conducted by the Commission. Notwithstanding any other provision, any person who supplies materially false or misleading information, who has omitted material information in connection with the requirements of this Chapter, or has failed to disclose a recent conviction shall be denied a license.

**23-507.        Issuance of License.**

When a key employee or a primary management official begins work at a gaming operation, the Commission shall, within 60 days after the applicant begins work, forward to the NIGC the notice of the results of the background investigation into the applicant containing all required information under federal law or regulation. If, at the conclusion of the 30-day period beginning when the National Indian Gaming Commission receives the notice of results submitted pursuant to this Section, the National

Indian Gaming Commission has not notified the Commission that it has any objection, or after a shorter period of time if the National Indian Gaming Commission informs the Commission it has no objection, the Commission may issue the license to the applicant. If the National Indian Gaming Commission informs the Commission that it objects to the issuance of the license, the Commission shall reconsider the application in light of the National Indian Gaming Commission's objections. The Commission shall then make the final decision on whether to issue such license.

The burden of proving an applicant's qualification to receive any license hereunder is at all times on the applicant. Applicants must accept any risk of adverse public notice, embarrassment or other action which may result from the application process and expressly waive any claim for damages as a result thereof.

**23-508. Temporary/Conditional License.**

Upon a request from the gaming establishment and pending the results of the background investigation, the Commission may issue a Temporary Gaming License to any primary management official, key employee or non-gaming employee not to exceed 30 days with the understanding that the employee is a temporary, probationary employee, whose employment is initially conditioned upon a successful background investigation, and provided said employee has passed the pre-employment drug test required by the Drug Free Workplace Policy. Any official or employee working pursuant to a Temporary Gaming License shall be terminated with no right of appeal to the Commission if the background investigation reveals an impediment to the hiring of the official or employee. To receive a temporary gaming license, the applicant must meet at least one (1) of the following conditions:

- (a) The applicant has a current state or out-of-state gaming license;
- (b) The applicant has prior employment at Grand River Casino or Prairie Knights Casino within the past five (5) years and department in good standing; or
- (c) The applicant has not lived outside of North Dakota and/or South Dakota within the past ten (10) years.

However, no temporary gaming license shall be issued to any surveillance staff or primary management official unless the applicant has a current state or out-of-state gaming license. An out-of-state gaming license may be a license issued by another tribe that conducts and regulates Class II and Class III gaming operations. Each primary management official and/or key employee applicant may be issued a temporary gaming license no more than three (3) times, for a total of no more than 90 days. Each non-gaming employee may be issued a temporary gaming license no more than three (3) times, for a total of no more than 90 days, provided, however, that the Commission may extend this time for non-gaming employees for good cause.

**23-509.        Duration of License and Renewal.**

- (a) Except as provided in subsection (d) of this Section, each license shall be effective for a period of one (1) year from the date of issuance. Prior to expiration of the license, the licensee shall update the information produced during the original investigation as required by Section 23-505(b). The Commission shall conduct a review to determine that each licensee continues to meet the standards of Section 23-504 and shall make its determination within 30 days of receipt of the renewal sheet. If the Commission finds the licensee continues to meet the standards, it shall renew the license for an additional year. If the Commission finds the applicant does not meet the standards, the license renewal request shall be denied.
- (b) Conviction of a felony, gambling-related offense, theft offense, or offense involving fraud or misrepresentation within one (1) year prior to the date of application for renewal shall render the applicant ineligible for a renewal, regardless of whether the applicant is seeking renewal of a primary management official, key employee or non-gaming license.
- (c) License renewal request shall not be "tabled" by the Commission unless to request the applicant provide information required by the Commission to make a determination on the renewal request. Notice of any such renewals granted by the Commission shall be forwarded to the National Indian Gaming Commission. Any licenses issued under this Section are for a period of one (1) year, and create no right or expectation of a right to receive a license renewal.
- (d) Notwithstanding the general one (1) year period for each license issued, a license issued under this Section terminates upon the employee's termination from employment at a facility at which they are licensed, and that individual must re-apply for a license before starting employment at any facility operated under this Title.

**23-510.        Effects of License Denial.**

- (a) Any individual who is denied a key license or primary management official license, but still meets the qualifications for a non-gaming license, may apply for a non-gaming license.
- (b) Notwithstanding subsection (a) of this Section, any persons who have been denied a license – or had a license revoked – for refusal to submit to, or failing, pre-employment or employment drug testing as required by the Drug Free Workplace Policy shall not be employed in any capacity at a Tribally authorized gaming facility, or licensed to work at such facility in any capacity, provided that such person shall be eligible to reapply for any Tribal gaming license after a period of time set forth in the Drug Free Workplace Policy; provided, if the Drug Free Workforce Policy contains



no provision(s) on the length of such periods, the default period shall be for a period of one (1) year.

**23-511.        Hearings.**

Any person who applies for a license under this Chapter may request a hearing before the Commission on its license application. The Commission may grant such a request in its sole discretion provided that, if the hearing is requested by a person or entity whose application under this Chapter has been denied by the Commission, the Commission must grant the hearing request to reconsider the denial of the applicant's license. Any hearing under this Section shall be conducted pursuant to the notice and hearing procedures set forth in Chapter 14 of this Title.

Notwithstanding any other provision of this Section and Title, no individual is entitled to a hearing under this Title if they have refused a drug test, or failed a pre-employment drug test.

**23-512.        License Suspension.**

(a) If, after issuance of a license under this Chapter:

- (1) The Commission receives reliable information from the NIGC that the licensee no longer meets the standards for licensure and/or is no longer eligible for a license under this Chapter, the Commission shall immediately suspend the license and notify the licensee in writing of the suspension and proposed revocation. The suspension of the license shall not be deemed to be in effect until the licensee is in receipt of the notice. Receipt shall be deemed accomplished by either (i) personal service of the written notice upon the licensee; or (ii) if the notice is mailed to the licensee, receipt shall be deemed to be in effect three (3) days after the notice has been postmarked. The notice shall inform the licensee of their right to a revocation hearing as outlined in subsection (b) of this Section, and shall state the time and place that such a hearing shall occur.
- (2) The Commission receives reliable information from a source other than the NIGC that the licensee is not, or is no longer, eligible for a license under this Chapter, the Commission shall either:
  - i. In addition to any other remedies or penalties provided for in this Title, impose additional conditions on the licensee to bring the licensee into compliance; or
  - ii. Suspend the license and notify the licensee in writing of the suspension and proposed revocation. The suspension of the license shall not be deemed to be

in effect until the licensee is in receipt of the notice. Receipt shall be deemed accomplished by either (A) personal service of the written notice upon the licensee, or (B) if the notice is mailed to the licensee, receipt shall be deemed to be in effect three (3) days after the notice has been postmarked. The notice shall inform the licensee of their right to request a revocation hearing as outlined in subsection (b) of this Section. Such request must be made within ten (10) days of receipt of the notice. If no request is timely made, the licensee shall have waived their right to a hearing, and his or her license shall be automatically revoked.

- (b) Whether automatically scheduled under subsection (a)(1) of this Section, or properly requested under subsection (a)(2) of this Section, a revocation hearing shall be conducted pursuant to the notice and hearing requirements of Chapter 14 of this Title. If the licensee does not appear at a scheduled revocation hearing, the licensee waives the right to present evidence on their behalf, and the licensee's license shall be automatically revoked.
- (c) Notwithstanding the notice and hearing requirements of Chapter 14, for a hearing scheduled under subsection (a)(2) of this Section, the Commission may, at its discretion, hold a discovery hearing prior to the initial suspension of the licensee in order to determine whether such an initial suspension is appropriate. The discovery hearing will be conducted pursuant to the general hearing procedures outlined in Chapter 14 of this Title. If the Commission finds there is good cause for the suspension, the licensee's license shall be suspended, and the licensee may request a revocation hearing as provided under subsection (b) within ten (10) days of receipt of notice of the Commission's finding of good cause.
- (d) A licensee whose license has been suspended pursuant to the Drug Free Workplace Policy shall be entitled to a revocation hearing under subsections (a) and/or (b) and the provisions of the Policy. In addition to license revocation, a licensee who obtains an unfavorable result from the hearing process – whether by decision of the Commission, failure to appear at a hearing, or failure to request a hearing if the matter arose under subsection (a)(2) of this Section – shall be subject to any other penalty provided for under Section 23-509(b) of this Title.
- (e) The Commission may also suspend the license of any primary management official or key employee who is found to have failed to report suspected violations of this Title, the Act or the Compact to the Commission twice during the calendar year. The procedure for such a suspension shall follow the provisions set forth in subsections (a)-(c) of this Section.
- (f) After a revocation hearing under this Section, the Commission shall determine, based on the evidence presented at the hearing, whether to revoke or reinstate the license. If the licensee continues to meet the standards of Section 23-504, the license shall be reinstated. If not, the license shall be revoked. The Commission shall decision of any license revoked to the National



Indian Gaming Commission; if this matter arose under subsection (a)(1) of this Section, such results must be forwarded within 45 days of having initially received notification from the NIGC.

- (g) Any person convicted of a crime of theft (or a related crime, however denominated), which arose in connection with a casino of the Tribe, shall immediately have his or her license suspended. Such person is entitled to a revocation hearing as provided under subsections (a)-(b) of this Section. If, following a revocation hearing, the Commission determines the person has been convicted of theft (or a related crime, however denominated) by a court of competent jurisdiction, such person shall have his or her license revoked.
- (h) Any person who refuses to submit to a drug test as required by the Drug Free Workplace Policy shall immediately have his or her license revoked. Such person is entitled to request a revocation hearing as provided for under subsections (a)-(b) of this Section.
- (i) If it becomes necessary to suspend a person's license as a result of a positive drug test between regularly scheduled meetings of the Commission, the Chairman-Executive Secretary shall have the power to suspend said license pending the next meeting of the Commission.

**23-513.        Appeals.**

- (a) An applicant for a license, or any other aggrieved party, may appeal from any final order or decision of the Commission by filing a Complaint and Notice of Appeal with the Tribal Court and providing Notice to the Commission within 30 days of receipt of notice of the final order or decision being appealed.
- (b) The Commission shall certify the hearing record within 30 days of receipt of a notice of appeal.
- (c) Review by the Tribal Court shall be based on the record. A decision or order of the Commission shall be affirmed unless arbitrary and capricious, or contrary to law.
- (d) The Tribal Court shall have no jurisdiction to award money damages against the Commission, any member of the Commission, the Tribe, or a casino of the Tribe for any action appealed under this section.

**23-514.        Law Trained Judges.**

Any party to an appeal taken under section 23-513, including the Commission, shall have a right, upon timely request, to have a licensed attorney serve as Tribal Judge with respect to such appeal. A request for a licensed attorney to serve as Judge shall be timely under this Section if the party submits such a

request to the Tribal Court at the time of the filing of the notice of appeal, or, in the event an order is issued without notice against a party by a Judge who is not a licensed attorney, within ten (10) days of notice of such order. Upon a timely request, if a licensed attorney Chief Judge or Associate Judge of the Tribal Court is not available to hear the case, because of disqualification or otherwise, the Chief Judge shall appoint a Special Judge to hear such case. The Clerk of Court shall maintain a list of qualified persons who can serve as Special Judge for such cases.

## **CHAPTER 6. MANAGEMENT CONTRACTORS AND VENDORS**

### **23-601. Management Contracts Allowed.**

Subject to the approval of the Tribe and the National Indian Gaming Commission, a licensee may enter a management contract for the operation and management of gaming activities.

### **23-602. Standard for Approval.**

The Tribe shall not approve any management contract unless its terms include all relevant and applicable provisions required under the relevant Compact and federal law and/or regulation, including:

- (a) Adequate accounting procedures to be maintained by the contractor which include any applicable federal requirements, and a contractual requirement that all verifiable financial reports be submitted to the Tribe on a monthly basis;
- (b) Access to the daily operation of the gaming for appropriate officials of the licensee, the Commission and the Tribe, who shall also have the right to verify the daily gross revenues and income made from the gaming activity;
- (c) A minimum guaranteed payment to the licensee that has preference over the retirement of development and construction costs;
- (d) A contract term not to exceed five (5) years, provided that the term may be extended for up to seven (7) years upon approval by the Chair of the NIGC;
- (e) A management fee;
- (f) Grounds and mechanisms for terminating the contract;

- (g) An agreed upon maximum dollar amount for the recoupment of development and construction costs;
- (h) The method of reimbursing and compensating the management contractor;
- (i) Dispute provisions;
- (j) A provision clarifying whether changes in ownership interest(s) require advance approval by the Tribe;
- (k) Statements that all gaming under the contract be conducted pursuant to the Act and this Title, and that the contract's effective date shall be subsequent to approval by the Chair of the NIGC; and
- (l) Enumeration of the responsibilities of each party for each identifiable function, including those responsibilities specifically required by federal law.

**23-603.        Submission to the National Indian Gaming Commission.**

The Tribe shall submit to the National Indian Gaming Commission for approval any management contract – or amendments thereto - for the operation of a Class II or Class III game, along with any other related documents required by law. The Tribe shall submit with the contract all information required by the National Indian Gaming Commission, including such information required under 25 U.S.C. § 2711, for its review.

**23-604.        License Required.**

All persons or entities with a financial interest in, or having a management responsibility for, a Class II or Class III management contract shall be required to obtain a primary license from the Commission. For each person or entity with a financial interest in or having a management responsibility for a Class II or Class III management contract, the initial license fee shall be \$1,000, and the renewal license fee shall be \$500.

**23-605.        Vendor License Required.**

All person or entities which are vendors to a Class II or Class III gaming operation under this Title shall be required to obtain a license from the Commission. For each vendor to a Class II or Class III gaming operation, the annual license fee per each Class II or Class III facility shall be:

- (a) \$500.00 for vendors who have not supplied gaming equipment to a Class II or Class III gaming establishment on the Reservation. First time applicants shall receive the license, which shall be in effect until December 31 of the year of issuance. Thereafter, the vendor license fee shall be based according to sales pursuant to the scale set forth in subsections (b) through (f) of this Section;
- (b) \$300.00 for sales less than \$10,000.00 in the last year the vendor had an approved license under this Title;
- (c) \$500.00 for sales equal to or in excess of \$10,000.00, but less than \$25,000.00 in the last year the vendor had an approved license under this Title;
- (d) \$1,000.00 for sales equal to or in excess of \$25,000.00, but less than \$50,000.00 in last year the vendor had an approved license under this Title;
- (e) \$2,500.00 for sales equal to or in excess of \$50,000.00, but less than \$100,000.00 in the last year the vendor had an approved license under this Title; and
- (f) \$5,000.00 for sales equal to or in excess of \$100,000.00 in the last year the vendor had an approved license under this Title.

The fees collected under this Section shall be non-refundable and shall become Department/Commission revenue. Any license issued under this Section shall be valid until December 31 of the year of issuance. The licensee must reapply for license renewal by December 31 of each year for the following year.

**23-606.        Background Investigation.**

As part of the licensing process, each person or entity having a financial interest in or having a management responsibility for a management contract and each vendor shall be subject to a background investigation. For Class II and Class III gaming conducted in North Dakota, the investigation shall be conducted by (a) the State of North Dakota, (b) the NIGC and/or FBI, and (c) the Tribal Court. For Class II and Class III gaming conducted in South Dakota, the investigation shall be conducted by (a) the State of South Dakota, (b) the NIGC and/or FBI, and (c) the Tribal Court. The costs of such investigation shall be paid by the applicant. In addition, the Commission may conduct its own investigation on any such person or entity, with the costs paid by the applicant. Each applicant for a license shall execute a release of information permitting the appropriate state, the FBI, the Tribal Court and the Commission to conduct such investigations, and shall provide his or her full name, address and social security number.

**23-607.        Licensing Standard.**

- (a) No person or entity shall be issued a license under this Chapter if that person or entity (or a principal of such entity):
  - (1) Has been convicted of a federal, state or tribal felony;
  - (2) Has been convicted of a misdemeanor or other crime involving theft (or a related crime, however denominated), the five (5) years prior to the date of application;
  - (3) For such officials and employees on the North Dakota portion of the Reservation, within the ten (10) years prior to the date of application, has been convicted of, entered a plea of guilty or no contest to, or has been released from parole, probation or incarceration, whichever is later in time, of a misdemeanor involving a gambling-related offense, any fraud offense, or any misrepresentation offense, unless:
    - i. That person has been pardoned, in which case such conviction shall not bar licensure of the individual; or
    - ii. The Commission has made a determination that the person has been sufficiently rehabilitated, in which case the timeframe in this subsection shall be reduced to a period of five (5) years provided the Commission shall notify the State in writing of the determination made;
  - (4) For such officials and employees on the South Dakota portion of the Reservation, with the five (5) years prior to the date of application, has been convicted of, entered a plea of guilty or no contest to, or has been released from parole, probation or incarceration, whichever is later in time, of a misdemeanor involving a gambling-related offense, any fraud offense, or any misrepresentation offense;
  - (5) Through the person's prior activities, criminal record, reputation, habits, and associates, is found to: (i) constitute a person not of good character, honesty and integrity; (ii) constitute a threat to the public interest of the Tribe, the State of North Dakota or the State of South Dakota; (iii) constitute a threat to the effective regulation and control of gaming; (iv) create or enhance the dangers of unsuitable, unfair or illegal practices, methods, and activities in the conduct of gaming or the carrying on of the business and financial arrangements incidental to the conduct of gambling; or (v) have participated in organized crime or unlawful gambling;
  - (6) Has an active and outstanding bench or arrest warrant issued by a state or tribe;

- (7) Has been given an "other than honorable" or dishonorable discharge from the armed services and, upon review of the Commission, it is determined the applicant's discharge is found to constitute the applicant as a person not of good character, honesty and integrity pursuant to Section 23-604(a)(4)(i) of this Title;
- (8) Has refused to take or has failed a drug test as required by the Drug Free Workplace Policy.

To the extent a person is convicted of an offense outlined in this Section after obtaining a license, that person shall immediately have his or her license suspended. If, following a revocation hearing, the Commission determines the person has been convicted of theft (or a related crime, however denominated) by a court of competent jurisdiction, such person shall have his or her license revoked.

**23-608.        Application for License.**

- (a) Each applicant with a financial interest or management responsibility in, or is a vendor for, a management agreement shall fill out an application for a tribal license to be provided by the Commission. Each such applicant must sign the application, and each such application shall have printed on it the following notices:

- (1) Privacy notice:

Solicitation of the information in this Section is authorized by 25 U.S.C. § 2701 et seq. The purpose of the requested information is to determine the suitability of individuals with a financial interest in, or having management responsibility for, a management contract. The information will be used by the National Indian Gaming Commission members and staff and Indian tribal officials who have need for the information in the performance of their official duties. The information may be disclosed to appropriate federal, tribal, state, or foreign law enforcement and regulatory agencies in connection with a background investigation or when relevant to civil, criminal or regulatory investigations or prosecutions or investigations of activities while associated with a gaming operation. Failure to consent to the disclosures indicated in this statement will mean that the Chairman of the National Indian Gaming Commission will be unable to approve the contract in which the person has a financial interest or management responsibility.

The disclosure of a person's Social Security Number (SSN) is voluntary. However, failure to supply a SSN may result in errors in processing the information provided.



(2) Notice regarding false statements or failure to disclose:

Applicant shall sign and submit the following statement:

"A false statement knowingly and willfully provided in any of the information pursuant to this section may be grounds for not approving the contract in which I have a financial interest or management responsibility, or for disapproving or voiding such contract after it is approved by the Chairman of the National Indian Gaming Commission. Also, I may be punished by fine or imprisonment (U.S. Code, title 18, section 1001)."

(b) In addition to providing any information which may be required under the Act, each person or entity seeking a license under this Chapter shall provide, on the approved application form or submitted in addition thereto, the following information:

- (1) Full name, other names used (oral or written), social security number(s), birth date, place of birth, citizenship, and gender;
- (2) A current photograph, driver's license number, and a list of all languages spoken or written;
- (3) For the previous ten (10) years: business and employment positions held, ownership interests in those businesses and the actual or estimated income derived therefrom as of the date of application, business and residence addresses, driver license numbers, and the city, state and country of residence from age 18 to the present;
- (4) The names and current addresses of at least three (3) personal references, including one (1) personal reference who was acquainted with the applicant at each different residence location over the past five (5) years;
- (5) Current business and residence telephone numbers;
- (6) A description of any previous business relationships with Indian tribes, including ownership interests in those businesses, and with the gaming industry generally, including ownership interests in those businesses;
- (7) The name and address of any licensing or regulatory agency with which the applicant has filed an application for a license or permit related to gaming, whether or not such license or permit was granted;
- (8) For each gaming offense and each felony for which there is an ongoing prosecution or a conviction: the charge, the name and address of the court involved, the date of the charge and the disposition;



- (9) For each misdemeanor or other conviction or ongoing misdemeanor or other prosecution (excluding minor traffic violations) within ten (10) years from the date of the application: the name and address of the court involved and the dates of prosecution and of the disposition;
- (10) For each criminal charge (excluding minor traffic offenses) regardless of whether or not it resulted in conviction, if such criminal charge is within ten (10) years of the date of application and is not otherwise listed pursuant to subparagraphs (8) or (9) of this subsection: the name and address of the court involved, the criminal charge, the date of the charge and the disposition;
- (11) The name and address of any licensing or regulatory agency with which the person has filed an application for an occupational license or permit, whether or not such license or permit was granted;
- (12) A photograph;
- (13) Fingerprints;
- (14) Results of a successful drug test as required by the Drug Free Workplace Policy;
- (15) A complete and current financial statement showing all sources of income for the previous three (3) years; federal and state income tax records; and costs, liabilities, and net worth as of the date of the submission of the application; and
- (16) Any other information which, in a particular case, the Commission deems relevant.

**23-609.        Determination of Eligibility.**

Based on the information received under subparagraph (b) of Section 23-608, and the background investigation conducted by the appropriate state, the NIGC and/or FBI, the Tribal Court and/or the Commission, the Commission shall consider the application for a license. Upon a vote of a majority of its members, the Commission shall make a determination of the applicant's eligibility for a license, pursuant to the standards set forth in Section 23-607. Notwithstanding any other provision, any person or entity which supplies materially false or misleading information, or who has omitted material information in connection with the requirements of this Chapter, shall be denied a license.

**23-610.        Issuance of License.**

When the Commission determines that a person or entity with a financial interest in or having a management responsibility for a management agreement is eligible for a license, it shall promptly forward its determination and the results of its investigation to the National Indian Gaming Commission. This shall include a complete and current financial statement provided by the licensee to the Commission, consistent with the requirements of Section 23-608(b), covering the most recent period before the date of the proposed license renewal.

**23-611.        Duration of License.**

Each license under this Chapter shall be effective for a period of one (1) year from the date of issuance, with the exception that the first year may be for a shorter period of time consistent with the provisions of Section 23-605. Prior to the expiration of the license, the license shall update the information produced during the original investigation. The Commission shall conduct a review to determine that each license continues to meet the standards of Section 23-607. If the Commission finds that the licensee continues to meet the standards, it shall renew the license for an additional year. Notice of any such renewals shall be forwarded to the National Indian Gaming Commission.

**23-612.        Hearings.**

Any person or entity which applies for a license under this Chapter may request a hearing before the Commission on its license application. The Commission may grant such a request for a hearing in its sole discretion, provided that, if the hearing is requested by a person or entity whose application under this Chapter has been denied by the Commission and such request is made in writing within 30 days of the denial, such request for a hearing shall be granted. The conduct of said hearing shall be such that all persons shall be accorded their rights to notice and an opportunity to be heard pursuant to the procedures set forth in Chapter 14 of this Title. The decision of the Commission shall be in writing, and shall be rendered within ten (10) days of the hearing.

**23-613.        License Suspension.**

(a) If, after issuance of a license under this Chapter:

- (1) The Commission receives reliable information from the NIGC that the licensee is not or is no longer eligible for a license under this Chapter, the Commission shall suspend the license and notify the licensee in writing of the suspension and proposed revocation. The suspension of the license shall not be deemed to be in effect until the licensee is in receipt of the notice. Receipt shall be deemed accomplished by either (i) personal

service of the written notice upon the licensee, or (ii) if the notice is mailed to the licensee, receipt shall be deemed to be in effect three (3) days after the notice has been postmarked. The notice shall inform the licensee of their right to a revocation hearing as outlined in subsection (b) of this Section, and shall state the time and place that such a hearing shall occur.

- (2) The Commission receives reliable information from a source other than the NIGC that the licensee is not or is not longer eligible for a license under this Chapter, the Commission shall suspend the license and notify the licensee in writing of the suspension and proposed revocation. The suspension of the license shall not be deemed to be in effect until the licensee is in receipt of the notice. Receipt shall be deemed accomplished by either (i) personal service of the written notice upon the licensee, or (ii) if the notice is mailed to the licensee, receipt shall be deemed to be in effect three (3) days after the notice has been postmarked. The notice shall inform the licensee of their right to request a revocation hearing as outlined in subsection (b) of this Section. Such request must be made within ten (10) days of receipt of the notice. If no request is timely made, the licensee shall have waived their right to a hearing, and his or her license shall be automatically revoked.
- (b) Whether automatically scheduled under subsection (a)(1) of this Section, or properly requested under subsection (a)(2) of this Section, a revocation hearing shall be conducted pursuant to the notice and hearing requirements of Chapter 14. If the licensee does not appear at a scheduled revocation hearing, the licensee shall have waived their right to present evidence on their behalf, and the licensee's license shall be automatically revoked.
- (c) After a revocation hearing, the Commission shall determine, based on the evidence presented at the hearing, whether to revoke or reinstate the license. If the licensee continues to meet the standards of Section 23-607, the license shall be reinstated. If not, the license shall be revoked. The Commission shall forward the decision of any license revocation to the National Indian Gaming Commission; if this matter arose under subsection (a)(1) of this Section, such results must be forwarded within 45 days of having initially received notification from the NIGC.
- (d) Any person convicted of a crime of theft (or related crime, however denominated) which arose in connection with a casino of the Tribe shall immediately have his or her license suspended. If, following a revocation hearing, the Commission determines that the person has been convicted of theft (or a related crime, however denominated) by a court of competent jurisdiction, such person shall have his or her license revoked.
- (e) If the license is revoked, the grievant may appeal the revocation to the Tribal Court, utilizing the procedures set forth in Section 23-513 of this Title.

- (f) Any person who refuses to submit to a drug test as required by the Drug Free Workplace Policy shall immediately have his or her license revoked.
- (g) If it becomes necessary to suspend a person's license for violation of the Drug Free Workplace Policy between regularly scheduled meetings of the Commission, the Chairman-Executive Secretary shall have the authority to suspend said license pending the next meeting of the Commission.

**23-614.        Conflicts of Interest.**

- (a) Except as provided in subsection (b) of this Section, no Tribal Council member, Commission member or person or entity with a financial interest in, or having management responsibility for, a management contract shall have a financial interest in any entity (other than the entity holding the management contract) that provides goods or services to any casino of the Tribe. Any violation of this Section shall be grounds for suspension or revocation of the license of both the vendor and the management contractor and such other entity that provides goods or services to a casino of the Tribe.
- (b) Subsection (a) shall not apply with respect to any contract for goods and services which has been presented to the Tribal Council in advance of execution, where the relationship between the vendor and Tribal Council member, Commission member or management contractor has been fully disclosed, and the Tribal Council has expressly approved of such contract.

**23-615.        Restrictions on Gaming by Vendors.**

Representatives of approved Class III gaming vendors shall not participate as a player within 24 hours after servicing, delivering or installing at a facility operated under this Title.

**CHAPTER 7.     CLASS I GAMING**

**23-701.        Applicability.**

This Chapter applies to Class I gaming, as defined in Section 23-201 of this Title and in 25 U.S.C. § 2703(6), which occurs on those lands within the States of North Dakota and South Dakota which are on the Standing Rock Sioux Reservation, held in trust by the United States for the Tribe or individual Indians or are otherwise subject to the jurisdiction of the Standing Rock Sioux Tribe.

**23-702.        Governing Law.**

Class I gaming under this Chapter shall be governed by and conducted in conformity with the laws of the Standing Rock Sioux Tribe. 25 U.S.C. § 2710.

**23-703.        Age Requirement.**

Any person under the age of 16 will be allowed to participate as a player in Class I gaming as long as they are accompanied by a person 18 years of age or older. Any Class I gaming open to persons under the age of 16 years shall provide public notice that said persons must be accompanied by a person 18 years of age or older.

**23-704.        Licensing and Reports to the Commission.**

All Class I gaming organizations shall follow licensing and reporting requirements as may be promulgated by the Commission and approved by Tribal Council by resolution unless and until such requirements are codified in this Title. In the absence of any such promulgated regulations, all organizations conducting Class I gaming are required to report the following on a quarterly basis to the Commission:

- (a) Amount paid in cash prizes each month; and
- (b) Calculated amount in lieu of cash prizes (e.g., televisions, DVD players, etc.).

**CHAPTER 8.    CLASS II GAMING**

**23-801.        Applicability.**

The Tribe and Districts properly designated as tribal subdivisions under Section 23-406 of this Title, when properly licensed, shall be authorized to conduct certain specified forms of Class II gaming. This Chapter imposes conditions and regulations on Class II gaming in addition to the conditions in Chapter 4 of this Title, which are applicable to all gaming on the Reservation.

## **Subchapter A. Class II and Other Games of Chance**

### **23-802.      Applicability.**

This subchapter applies to Class II gaming and other games of chance, as defined in Section 23-202 of this Title, and in 25 U.S.C. § 2703(8), that occurs on lands within the States of North Dakota and South Dakota which are on the Standing Rock Sioux Reservation, held in trust by the United States for the Tribe or individual Indians or are otherwise subject to the jurisdiction of the Standing Rock Sioux Tribe.

### **23-803.      Governing Law.**

Class II gaming under this subchapter shall be governed by and conducted in conformity with the laws of this Title, the Act, the NIGC and the laws of the United States. However, pursuant to 25 C.F.R. § 543.4 or other applicable federal regulation, the relevant minimum internal controls required by law shall not be applicable to small gaming operations or charitable gaming operations if said operation meets the standards of the applicable regulation.

### **23-804.      Types of Class II Gaming Authorized.**

The following Class II games are authorized to be operated and played within the exterior boundaries of the Standing Rock Sioux Tribe:

- (a) Bingo as defined in Section 23-202(a);
- (b) Games similar to bingo, if conducted at the same location as bingo, including: pull-tabs, lotto, punch boards, tip jars, and electronic, computer or technological aids that comport with NIGC regulations, 25 C.F.R. § 502.7;
- (c) Class II gaming devices if played at a Tribally licensed Class III facility; and
- (d) Class II poker, which means the game of poker where the house does not play as a participant in the game, and the players do not play the game against the house, but only against one another. To classify as Class II poker, the house can provide the place where the game is played, the cards and chips, and a dealer in exchange for a fee collected from the players for providing those services.

**23-805.        Minimum Age Requirement.**

- (a) Except as provided in subsection (b) of this Section, no person under the age of 21 shall participate as a player or be allowed to play any Class II gaming on either the North Dakota portion of the Reservation or the South Dakota portion of the Reservation. If any person below the age of 21 plays and qualifies to win any Class II game, the prize shall not be paid, and the amount wagered during the course of the game shall be forfeited by the player.
- (b) Notwithstanding the provisions in subsection (a) of this Section, the minimum age for a person to participate as a player or play bingo shall be 16 years of age when accompanied by a person over the age of 21.

**23-806.        Record Keeping Requirement.**

Reports shall be prepared on at least a monthly basis and shall be made available for inspection by agents of the Commission. The reports shall be maintained by the Tribe for a minimum of three (3) years.

**23-807.        Inspection.**

Agents of the Commission and the NIGC shall have the right to gain access, without notice during normal hours of operation, to all premises used for the operation of Class II games of chance, or for the storage of such games and equipment related thereto, and may inspect all premises, equipment, daily records, documents or items related to the operation of Class II and other games of chance.

**23-808.        Technical Standards.**

The organization or facility must have an approved license to conduct Class II gaming or other games of chance. The organizations are responsible for licensing their employee or volunteers with the Commission. Only tribal sub-divisions or recognized tribal charitable organizations are authorized to conduct other games of chance. All Sections of this subchapter shall apply to both the licensing of facilities and the licensing for gaming employment.

**23-809.        Licensing.**

The organization must comply with all applicable provisions of Chapter 4 of this Title. A Class II license cannot be assigned or otherwise transferred to a third party. The licensee must, on a monthly basis, report to the Commission the following information and documentation:

- (a) Receipts for each month;
- (b) Names of each employee and the salary or other compensation paid to each employee;



- (c) All expenses in the operation of the facility, specifying all payments to vendors and contractors;
- (d) The amount paid in prizes each month;
- (e) All bank deposits made from proceeds of the facility operations, including any interest received on such deposits;
- (f) All bank withdrawals, and the purpose of each;
- (g) All expenditures of net proceeds including the amount, person or organization paid, date, and purpose of such expenditures;
- (h) Copies of all IRS-required forms; and
- (i) The stated dollar value of complimentary services or items as set forth in 25 C.F.R. § 542.17 or similar federal regulation and the Tribal Internal Control Standards.

**23-810. Implemented Internal Controls.**

The organization must have developed minimum internal controls that will safeguard the assets and integrity of Class II gaming. Such controls must, at a minimum, be as stringent as those required by the NIGC and/or those promulgated by the Commission, and must be submitted to the Commission for approval.

**Subchapter B. Class II Poker**

**23-811. Governing Law.**

Class II poker shall be governed by and conducted in conformity with the requirements of regulations as promulgated by the Commission and approved by the Council through resolution, as well as all requirements imposed by this Title applicable to Class II gaming, the Act, and the laws of the United States.

**23-812. Licenses Required to Operate Class II Poker Games.**

Class II poker shall only be operated by the Tribe or a District designated as a tribal subdivision pursuant to Section 23-406 of this Title, which receives a license issued by the Commission pursuant to Section 23-407, which license shall be required even where the Tribe or District proposes to conduct the game within an existing licensed gaming facility.

The license shall state the name of the entity which is licensed to conduct Class II poker, the location where such Class II poker may be played, the date or dates on which such Class II poker will be played, and shall include, in addition to the conditions described by Section 23-410, all other reasonable conditions as the Commission may require. The licensee shall be subject to all other terms and conditions applicable to licenses as provided in Chapter 4 of this Title.

If a license applicant proposes to conduct Class II poker games at a location which the applicant does not own or lease, the applicant shall provide the Commission with written documentation showing the property owner or lessee has given the applicant permission to use that location for the Class II poker games on the date(s) and time(s) proposed. Where a license applicant seeks to conduct Class II poker games in one of the Tribe's Class III facilities, the licensee shall be required, as a condition of its Class II poker license, to coordinate its operation of Class II poker with the manager of the Class III facility.

In the event that two (2) or more eligible applicants seek to conduct Class II poker games at the same location, the Commission shall have the discretion to fairly allocate the dates and times when that location may be used by each of the eligible applicants.

All officers, directors, and managers of any operation seeking to operate Class II poker, and all employees, contractors and volunteers providing services in connection with the Class II poker games, must be licensed as required by Chapter 5 of this Title. Where the licensee is a District of the Tribe, the members of the District entity who are responsible for gaming by the District, as specified in writing under Section 23-406, in addition to any employees, contractors or volunteers providing services in connection with Class II poker, must be licensed as required by Chapter 5 of this Title.

The licensee shall provide the cards, chips or tokens used in the game and shall prohibit persons entering the location where the games are to be played from bringing in playing cards or chips other than those provided by the licensee. If the licensee does not provide the cards, chips or tokens, such supplies shall be obtained only from vendors licensed pursuant to Chapter 6 of this Title.

#### **23-813.        Insurance.**

A licensee for Class II poker shall obtain and maintain liability and crime insurance in the amount of not less than one million dollars (\$1,000,000.00) per occurrence. Where the licensee is granted a license to conduct Class II poker games within one of the Tribe's Class III facilities, the Tribe's liability insurance shall apply except for claims arising from actions of the licensee or the operation of the Class II poker game for which the licensee shall otherwise obtain and maintain insurance. Prior to the first day on which Class II poker will be offered, the licensee shall provide proof of insurance coverage to the Commission and sign an agreement, on a form provided by the Commission, to indemnify the Tribe in the event of any claims made against the Tribe.

**23-814. Minimum Age Requirement.**

No person under the age of 21 shall participate as a player or be allowed to play any Class II poker. If any person below the age of 21 plays and qualifies to win any Class II game, the prize shall not be paid, and the amount wagered during the course of the game shall be forfeited by the player.

**23-815. Use of Net Revenues from Class II Poker.**

Net revenues from Class II poker shall be used by the licensee for the purposes set out in Section 23-403 of this Title.

**23-816. Audits, Reports and Record Keeping Requirements.**

In addition to the audits and reports required by Sections 23-404 and 23-413 of this Title, the holder of a Class II poker license shall prepare and maintain for each location where Class II poker is played records which include the following for each poker event:

- (a) The starting and ending cash on hand;
- (b) The fees collected and number of players (for tournament play) or the fees collected and number of players on each table (for non-tournament play);
- (c) For a tournament, a prize register and record of win, as further detailed as follows:
  - (1) The prize register shall include: the place where – and date when – the prize was awarded; the amount of the cash prize or a description and cost of a merchandise prize; the name of player; the total amount of cash and cost of merchandise prizes awarded; and the initials of the individual who prepared the register; and
  - (2) The record of win shall include: the place where – and the date when – the win occurred; the cash prize amount, or a description of a merchandise prize and retain price; the player's full name and address (verified from a pictured driver's license or tribal, government or military identification). If the player is present but does not have one of these pictured identifications, the licensee shall record the player's full name from another form of identification and mail the prize to the player. The record of win shall also include the initials of the individual who prepared the record; the signature of the player, and the date the record of win was signed by the player; and
- (d) A summary of gross proceeds, adjusted gross proceeds, cash profit, cash long or short, and bank deposit.

All financial records shall be maintained by the licensee for a minimum of five (5) years.

**23-817.        Inspections.**

Agents of the Commission and NIGC shall have the right to gain access, without notice during normal hours of operation, to all premises used for the operation of Class II poker within the exterior boundaries of the Standing Rock Sioux Reservation, or for the storage area of such games, supplies and equipment related thereto, and may inspect all premises, equipment, daily records, documents or items related to the operation of Class II poker.

**23-818.        Penalties.**

Violations of this Chapter are subject to the criminal and civil penalties provided in Chapter 12 of this Title as well as grounds for cancellation or suspension of a license.

**23-819.        Customer Disputes.**

A licensee for Class II poker games shall follow the procedures for addressing customer disputes set forth in Chapter 13 of this Title.

**23-820.        Class II Gaming Devices.**

Rules for Class II gaming devices shall be promulgated by the Commission and approved by Tribal Council by resolution unless and/or until such requirements are codified in this Title.

**23-821.        Poker Tournaments.**

Rules for poker tournaments shall be promulgated by the Commission and approved by Tribal Council by resolution unless and/or until such requirements are codified in this Title.

## CHAPTER 9. CLASS III GAMING

### **23-901.      Applicability.**

The Tribe shall be authorized to conduct certain specified forms of Class III gaming. This Chapter imposes conditions and regulations on Class III gaming in addition to the conditions in Chapter 4, which are applicable to all gaming on the Reservation.

### **Subchapter A. Class III Gaming in North Dakota**

### **23-902.      Applicability.**

This subchapter applies to Class III gaming, as defined in Section 23-203 of this Title and in the Act that occurs on lands within the State of North Dakota which are on the Standing Rock Sioux Reservation, held in trust by the United States for the Tribe or individual Indians or are otherwise subject to the jurisdiction of the Standing Rock Sioux Tribe.

### **23-903.      Governing Law.**

Class III gaming under this subchapter shall be governed by and conducted in conformity with the laws of the Tribe, the North Dakota Compact and the laws of the United States.

### **23-904.      Adoption of Compact.**

The North Dakota Compact is hereby incorporated within and enacted as an integral part of this Title with respect to all forms of Class III gaming, and the North Dakota Compact is appended to and made a part of this Title as if set forth in full herein; provided, however, that nothing in the adoption of the North Dakota Compact herein shall be deemed to affect the operation by the Tribe of Class III gaming on the South Dakota portion of the Reservation, or the operation by the Tribe of Class II gaming on any portion of the Reservation, or to confer upon the State of North Dakota any jurisdiction over Class II gaming conducted by the Tribe on the Reservation.

**23-905.        Types of Class III Games Authorized.**

The following Class III games are authorized to be operated and played on the North Dakota Portion of the Reservation:

- (a) Electronic games of chance with video facsimile displays. Machines featuring coin drop and payout, and machines featuring printed tabulations shall both be permitted;
- (b) Electronic games of chance with 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. Machines featuring coin drop and payout, and machines featuring printed tabulations shall both be permitted;
- (c) Paddle wheel;
- (d) Blackjack and similar banking games;
- (e) Poker, including pai gai poker and Caribbean poker;
- (f) Keno;
- (g) Sports and Calcutta pools on professional sporting events as defined by North Dakota law, except that play may be conducted utilizing electronic projections or reproductions of a sports pool board;
- (h) Pari-mutuel and simulcast betting if an agreement governing such betting is made between the Tribe and the State of North Dakota;
- (i) Sports Book except as prohibited by the professional and Amateur Sports Protection Act, P.L. 102-558; 28 U.S.C. Chap. 178, Pt. VI;
- (j) Pull-tabs or break-open tickets when not played at the same location bingo is being played, subject to the relevant provisions in the North Dakota Compact;
- (k) Punchboards and jars;
- (l) Craps and Indian Dice;
- (m) All games of chance and/or skill, other than those subject to Section 3.3 of the North Dakota Compact, authorized to be conducted by any group or individual under any circumstances within the State of North Dakota, rules of play to be negotiated in good faith by the parties;

- (n) Roulette, and similar games, whether played conventionally or electronically;
- (o) Slot Tournaments, whether or not a fee is charged, in which players use designated electronic games of chance machines and as more fully set forth in the Compact; and
- (p) Such other gaming as may be authorized by the most current North Dakota Compact.

**23-906. Bet Limits.**

Class III gaming operations on the North Dakota portion of the Reservation may offer bet limits on any game consistent with the provisions of the North Dakota Compact.

**23-907. Minimum Age Requirement.**

No person under the age of 21 shall participate as a player or be allowed to play any Class III gaming on the North Dakota portion of the Reservation. If any person below the age of 21 plays and qualifies to win any Class III game, the prize shall not be paid, and the amount wagered during the course of the game shall be forfeited by the player.

**23-908. Record Keeping Requirement.**

Each location which contains video games of chance shall have an interconnected one-way reporting system which shall provide, for each machine, periodic analytic reports that record coins in and coins out, calculate actual hold, and compare actual hold to theoretical percentages. Reports shall be prepared on at least a monthly basis and shall be made available for inspection by agents of the State of North Dakota. The reports shall be maintained by the Tribe for a minimum of three (3) years.

**23-909. Inspection.**

Agents of the Commission or the State of North Dakota shall have the right to gain access, without notice during normal hours of operation, to all premises used for the operation of Class III games of chance on the North Dakota portion of the Reservation, or for the storage area of such games and equipment related thereto, and may inspect all premises, equipment, daily records, documents or items related to the operation of Class III games of chance.



**23-910.        Technical Standards.**

The provisions of Section 20 of the North Dakota Compact, "Regulation and Play of an Electronic Game" are hereby adopted and incorporated into this Title.

**Subchapter B.   Class III Gaming in South Dakota**

**23-911.        Applicability.**

This subchapter applies to Class III gaming, as defined in Section 23-203 of this Title and in the Act that occurs on lands within the State of South Dakota which are on the Standing Rock Sioux Reservation, held in trust by the United States for the Tribe or individual Indians or are otherwise subject to the jurisdiction of the Standing Rock Sioux Tribe.

**23-912.        Governing Law.**

Class III gaming under this subchapter shall be governed by and conducted in conformity with the laws of the Tribe, the South Dakota Compact and the laws of the United States.

**23-913.        Adoption of Compact.**

The South Dakota Compact is hereby incorporated within and enacted as an integral part of this Title with respect to all forms of Class III gaming, and the Compact is appended to and made a part of this Title as if set forth in full herein; provided, however, that nothing in the adoption of the South Dakota Compact herein shall be deemed to affect the operation by the Tribe of Class III gaming on the North Dakota portion of the Reservation, or the operation by the Tribe of Class II gaming on any portion of the Reservation, or to confer upon the State of South Dakota any jurisdiction over Class II gaming conducted by the Tribe on the Reservation.

**23-914.        Types of Class III Games Authorized.**

The following Class III games are authorized to be operated and played on the South Dakota portion of the Reservation:

(a) Blackjack;

(b) Pari-Mutuel Wagering, as defined in the South Dakota Compact;

- (c) Slot machines, as that term is defined in South Dakota Codified laws 42-7B-4(21); and
- (d) Such other gaming as may be authorized by South Dakota law and as provided for by the current South Dakota Compact.

**23-915.        Bet Limits.**

Class III gaming operations on the South Dakota portion of the Reservation may offer the highest bet limits on any game consistent with the laws of the State of South Dakota and the regulations of the South Dakota Gaming Commission.

**23-916.        Accounting Standards.**

The accounting standards of Chapter 20:18:22 of the South Dakota Rules and Regulations for Limited Gaming are hereby adopted and incorporated into this Title.

**23-917.        Minimum Age Requirement.**

No person under the age of 21 shall participate as a player or be allowed to play any Class III gaming device on the South Dakota portion of the Reservation. If any person below the age of 21 plays and qualifies to win any Class III game, the prize shall not be paid, and the amount wagered during the course of the game shall be forfeited by the player.

**23-918.        Technical Standards for Gaming Machines.**

The hardware and software specifications set forth by the South Dakota Gaming Commission and Section 42-7B-43 of the South Dakota Codified Laws are hereby adopted and incorporated into this Title. All Class III gaming machines on the South Dakota portion of the Reservation shall meet or exceed these standards.

**23-919.        Number of Gaming Devices.**

The Tribe shall be authorized to operate an amount of slot machines on the South Dakota portion of the Reservation which is in accordance with the South Dakota Compact. The Tribe shall further be entitled to have gaming devices in reserve as replacements for devices which are out of service as a result of

mechanical problems in an amount in accordance with the South Dakota Compact. These additional devices are only to be used in such an event, and shall meet the requirements of the Technical Standards, as set forth in the South Dakota Compact.

#### **CHAPTER 10. NO CREDIT EXTENDED**

##### **23-1001. No Credit Extended.**

All Class III gaming shall be conducted on a cash basis. No person shall be extended credit for gaming and no licensee shall be permitted to offer credit for gaming for a fee; provided, however, that this Section shall not apply to credits won by players who activate play after inserting coins or currency into the game, and provided further that this Section shall not restrict the right of the Tribe or any other person to offer check cashing or to install or accept bank or credit card transactions in the same manner as would be normally permitted at a retail business.

#### **CHAPTER 11. JURISDICTION OVER CLASS III GAMING**

##### **23-1101. Civil Jurisdiction in South Dakota.**

All civil matters arising from or related to Class III gaming shall be dealt with according to applicable Tribal, state, or federal law. Nothing in this Title or the South Dakota Compact shall deprive the Courts of the Tribe, the United States, or the State of South Dakota of such civil jurisdiction as each may enjoy under applicable law. Nothing in this provision shall be construed to be a waiver of the sovereign immunity of the Standing Rock Sioux Tribe.

##### **23-1102. Civil Jurisdiction in North Dakota.**

Nothing in this Title or the North Dakota Compact shall deprive the courts of the Tribe, the United States, or the State of North Dakota of such civil jurisdiction as each may enjoy under applicable law. Nothing in this Title or the North Dakota Compact shall be interpreted as extending the civil jurisdiction of the Tribe or the State. Nothing in this provision shall be construed to be a waiver of the sovereign immunity of the Tribe.

**23-1103. Criminal Jurisdiction in South Dakota.**

All criminal matters arising from or related to Class III gaming shall be dealt with according to applicable Tribal, state or federal law. Nothing shall deprive the courts of the Tribe, the United States, or the State of South Dakota of such criminal jurisdiction as each may enjoy under applicable law. Nothing in this Title or the South Dakota Compact shall be interpreted as extending the criminal jurisdiction of the State of South Dakota or the Tribe.

**23-1104. Criminal Jurisdiction in North Dakota.**

Nothing in this Title or the North Dakota Compact shall deprive the courts of the Tribe, the United States, or the State of North Dakota of such criminal jurisdiction as each may enjoy under applicable law. Nothing in this Title or the North Dakota Compact shall be interpreted as extending the criminal jurisdiction of the State of North Dakota or the Tribe.

**23-1105. Federal Jurisdiction.**

Nothing herein shall be construed to limit or deprive the federal courts of any civil or criminal jurisdiction which they might otherwise have.

**CHAPTER 12. PENALTIES**

**23-1201. Criminal Penalties.**

A criminal offense under Title IV of the Standing Rock Sioux Code of Justice which is committed in connection to gaming activity under this Title shall be a class A misdemeanor as defined by Title IV of the Code of Justice.

**23-1202. Civil Penalties.**

Notwithstanding criminal penalties which may be imposed, any individual who violates any provision of this Title, the Act or the Compacts shall be subject to civil penalties including:

- (a) Exclusion from employment by any Tribal gaming enterprise;
- (b) Exclusion from attendance at any Tribal gaming facility;
- (c) Exclusion from the Reservation if a non-member of the Tribe; and/or

- (d) A civil penalty of up to \$1,000.00 per violation for any primary management official or key employee who knowingly fails to report to the Commission violations of this Title, the Act or Compacts.

Two (2) or more civil penalties imposed by the Commission against a primary management official or key employee, in a calendar year, may also be grounds for license suspension, as set forth in Chapter 5 of this Title.

## **CHAPTER 13. CUSTOMER DISPUTES**

### **23-1301. Customer Disputes.**

Any person who has any dispute, disagreement or other grievance that involves currency, tokens, coins or any other thing of value, and where such dispute is between the customer or player and a tribally licensed gaming facility, may raise such dispute with the following persons and in the following order:

- (a) A member of the staff of the facility;
- (b) The supervisor in the area in which the dispute arose;
- (c) A managerial level supervisor of the facility; and
- (d) The Commission.

### **23-1302. Customer Rights Regarding Disputes.**

At each level, the complainant has the right to explain his or her side of the dispute, and to present witnesses and other relevant evidence in connection with any factual allegation. At each level, if the dispute remains unresolved, the complainant shall be informed of his or her right to take the dispute to the next higher level as set forth in Section 23-1301. Resolution of any dispute by staff of the facility shall always involve two (2) or more staff members. All disputes, at each level as set forth in Section 23-1301 and whether resolved or not, shall be the subject of a detailed report by:

- a) If made pursuant to Section 23-1301(a) or (b), all staff involved to their supervisors;
- b) If made pursuant to Section 23-1301(c), the manager to the Commission; or
- c) If made pursuant to Section 23-1301(d), the Chairman-Executive Secretary.

**23-1303.      Commission Action on Customer Disputes.**

All disputes submitted to the Commission shall be decided by the Commission based on information provided by the complainant, by any witnesses for or documents provided by the complainant, or by the licensee or manager of the facility or any other person who has relevant information to provide. The decision of the Commission shall be in writing, shall be issued within 14 days of submission of the matter to the Commission, and shall be provided to the licensee or manager of the facility and the complainant.

The decision of the Commission shall be final and cannot be appealed to the Tribal Court by either the customer or the facility.

**CHAPTER 14.    RULES OF PROCEDURE FOR HEARINGS**

**23-1401.      Scope.**

All license hearings, enforcement hearings and exclusion hearings conducted pursuant to this Title shall be governed by this Chapter.

**23-1402.      Hearings.**

- (a) The Commission shall afford an applicant an opportunity for a hearing prior to any final action by the Commission on an application, other than an unconditional grant of a license.
- (b) The Commission shall afford a licensee the opportunity for a hearing prior to taking final action resulting in the revocation of a license or the imposition of any penalties which the Commission is authorized to impose pursuant to these rules and this Title.
- (c) Nothing in this Section shall limit the Commission's authority to summarily suspend a license without a hearing pursuant to applicable provisions of this Title.

**23-1403.      Notice of Hearing.**

The Commission shall provide written notice to the applicant or licensee of the hearing at least ten (10) days prior to the date set for the hearing, unless such timeframe is knowingly waived by the applicant or licensee, and a shorter timeframe is approved by the Commission. The notice shall be sent by registered or certified mail, or may be personally served upon the applicant or licensee. The notice shall state the

date, time and place of the hearing. The notice shall specifically state the action(s) being considered by the Commission, and shall include:

- (a) Whether the Commission is holding the hearing for the purpose of obtaining further information from the applicant;
- (b) Whether the Commission will be considering the grant or denial of a license application;
- (c) Whether the Commission will be examining any alleged violations of this Title, the Compacts, the Act, the conditions of any license issued by the Commission, any order by the Commission, or any other applicable laws, regulations or agreements, or whether any other sanctions or penalties will be considered;
- (d) A short, plain statement of the reasons the Commission determines the hearing is necessary;
- (e) A recitation of certain rights and responsibilities of the applicant or licensee, including:
  - (1) That the applicant or licensee must appear in person pursuant to Section 23-1405(a);
  - (2) The right of the applicant or licensee to have an attorney at their own expense pursuant to Section 23-1405(a);
  - (3) The evidence and witness disclosure requirements provided by Section 23-1406(a)&(b); and
  - (4) The limitation on ex parte communications contained in Section 23-1404(a), and the name and contact information of any individual(s) who the applicant or licensee may properly contact pursuant to Section 23-1404(b).

**23-1404.      Ex Parte Communications.**

- (a) Once a hearing is scheduled, no ex parte communication relating to the actions being considered by the Commission, or a threat or offer or award, shall be made, before a decision is rendered, to any member of the Commission by or on behalf of the applicant or licensee, including by any legal representative or counsel of the applicant or licensee.
- (b) Nothing in this Section shall prohibit the applicant, licensee or an authorized agent of the licensee or applicant from communicating with the Commission's legal counsel, its investigators or other authorized agents.



- (c) Any member of the Commission who receives an ex parte communication shall promptly end the conversation, refer the speaker to the Commission's legal counsel, and immediately report such communication to the Chairman-Executive Secretary and the Commission's legal counsel. A Commissioner who does not follow the procedure in this subsection when they have been made a party to a prohibited ex parte communication shall be deemed to have a conflict of interest pursuant to Section 23-1409(k).
- (d) For purposes of this Section only, the actions being considered by the Commission shall be those matters identified in the written notice as provided in Section 23-1403 of this Chapter, as well as any other matters that are actually considered by the Commission during a hearing.
- (e) All matters identified in the written notice shall be subject to the prohibition against ex parte communication.
- (f) All matters not identified in the written notice that are considered by the Commission during a hearing become subject to the prohibition against ex parte communication as soon as they are discussed during the hearing.
- (g) The Commission shall have the power to impose any sanction pursuant to this Section upon its determination that an applicant or licensee has made an ex parte communication in violation of this Section.

**23-1405.      Appearance through Counsel.**

- (a) Parties to all hearings governed by this Title may appear personally or through an attorney hired at the party's own expense, except that a party must personally attend any hearing on the merits unless his attendance has been waived, in writing, by the Commission.
- (b) A party who has hired an attorney to represent them at the hearing shall provide notification to the Commission, in accordance with the provisions of Section 23-1404 of this Title, of the identity and contact information of the attorney. After the party has provided such notification, service of all notices, motions, orders, decisions and other papers shall thereafter be made upon the attorney, unless the party requests otherwise in writing.
- (c) When a party is represented by an attorney, the attorney shall sign all motions, notices, requests and other papers on behalf of the party, including a request for subpoenas.
- (d) Any attorney appearing before the Commission must be duly admitted and licensed to practice law in the state bars of North Dakota and/or South Dakota, or is licensed to practice before the

highest court of any other state or of the Supreme Court of the United States, or in the Standing Rock Sioux Tribal Court.

**23-1406.      Discovery Procedures for Enforcement Hearings.**

- (a) The Commission's legal counsel and the applicant/licensee – or the applicant/licensee's legal counsel if retained – shall exchange a list of persons that each party intends to call as witnesses at least five (5) business days before a scheduled enforcement hearing, which shall be calculated by counting the day the documents are received by not the day of the hearing. Each witness shall be identified by name, position and business address. If no business address is available, a home address for the witness shall be provided. Any witness not identified in accordance with this Section may be prohibited from testifying at a hearing at the Commission's discretion.
- (b) The Commission's legal counsel and the licensee shall exchange a copy of all documents or tangible things they intend to offer as evidence in support of the party's respective position at the hearing. This exchange shall be made to the opposing party at least five (5) business days before a scheduled enforcement hearing, which shall be calculated by counting the day the documents are received but not the day of the hearing. Failure to make available any document or tangible thing in accordance with this subsection may, at the Commission's discretion, be grounds to deny the admission into evidence of such document or tangible thing.

**23-1407.      Confidential Materials.**

- (a) Prior to making any documents available to the Commission's legal counsel or designated agent, the applicant or licensee may designate any document it believes to contain confidential information as subject to a confidentiality claim by so marking the document.
- (b) Documents provided to the Commission's legal counsel or designated agent which have been marked in accordance with subsection (a) of this Section, and any nonpublic information contained within the document, shall not be made a part of the public record of the Commission proceedings or otherwise disclosed by the Commission to any person (except as may be required under any applicable law, rule, regulation, court or administrative order, or Compact), without first providing the applicant or licensee the opportunity to seek a ruling by the Commission that the document or nonpublic information contained therein should not be made public. The request for such a ruling and any discussions relating to the document shall be heard and ruled upon by the Commission in an executive session meeting. If the request for such a ruling is made during a public hearing session, the hearing session shall be adjourned and the Commission shall conduct an executive session meeting in order to hear and rule upon the request. The applicant or licensee may present to the Commission in executive session a written

and oral argument regarding the confidentiality claim, along with any facts the applicant or licensee believes to be relevant to such argument.

- (c) In determining whether a document marked in accordance with subsection (a) of this Section should be made part of the public record of the Commission proceedings, the Commission will balance the licensee or applicant's claimed confidentiality concerns against the materiality of the information to the application, the public's right to be made aware of the information, and the Commission's need to make the information part of the public record in order to remain fully accountable for the licensing decision. In making this determination, the Commission shall consider all facts and circumstances relevant to making a proper ruling.
- (d) In the event the Commission rules during executive session that the document in question and/or information contained therein should be made part of the public record of the Commission's proceedings, the document and/or information contained therein will be made part of the public record unless the applicant or licensee withdraws the document from the Commission's possession.
- (e) In the event the applicant or licensee chooses to withdraw the document from the Commission's possession, the Commission will then weigh the withdrawal along with the other evidence in making its determination on the application. Withdrawal of documents from the application process shall be looked upon by the Commission with disfavor and, depending on the facts and circumstances, the Commission may deem the withdrawal of any document to be sufficient cause in and of itself for denial of the license.
- (f) In the event the Commission rules during executive session that the document and/or information contained therein should not be made part of the public record, the document shall be designated "Confidential" and will not be made part of the public record, and will be maintained in a separate, confidential file. The Commission may consider the document and information contained therein *in camera* when making its determination on the licensing issue.
- (g) At the conclusion of the Commission proceedings on the licensing issue, the Commission will return to the applicant or licensee all documents marked as "Subject to a Confidentiality Claim" pursuant to subsection (c) of this Section that were not (1) made part of the public record and/or (2) designated as "Confidential," considered by the Commission *in camera*, and maintained in a separate confidential file.

**23-1408.      Subpoenas.**

- (a) The Commission has the power and discretion to issue subpoenas and to impose reasonable penalties for noncompliance.

- (b) Subpoenas may be issued to compel any person to appear at the hearing on the merits of the case, to give oral testimony, or to produce documents or other tangible things.

**23-1409.      Hearing Procedures.**

- (a) The Executive-Secretary shall preside over all hearings; call the proceedings to order; and control the presentation of evidence, the appearance of witnesses, and the order of the proceedings.
- (b) The Commission may require any person – including any applicant or licensee or any agent, employee or representative of any applicant or licensee – to appear and testify before it with regard to any matter within its jurisdiction at such time and place as it may designate. Such testimony shall be made under oath and may include any matters which the Commission deems relevant to the discharge of the Commission’s official duties. Testimony shall be recorded by a duly certified court reporter and may be used by the Commission as evidence in any proceeding or matter before the Commission. Failure to appear and testify fully at the time and place designated may result in sanctions, and may constitute grounds for:
  - (1) The refusal to grant a license to the person summoned and/or that person’s principal or employer;
  - (2) The revocation or suspension of a license by the person summoned and/or that person’s principal or employer; or
  - (3) The inference that the testimony of the person summoned would have been adverse to that person and/or that person’s principal or employer.
- (c) Any party to the hearing may call and examine witnesses if properly identified under Section 23-1406 of this Title. The Commission shall exercise its discretion to limit the testimony of witnesses where that testimony is argumentative, irrelevant or repetitive.
- (d) The Commission shall have the authority to eject from the hearings any person who is disruptive, disorderly, or who shows a lack of proper respect for the Commission or the nature of the proceedings.
- (e) Persons shall be permitted to speak only when recognized by the Chairman-Executive Secretary.
- (f) Any member of the Commission may ask questions of witnesses, and may request or allow additional evidence at any time.

- (g) Any party to the hearing may conduct cross-examination reasonably required for a full and true disclosure of the facts.
- (h) All hearings held under this Chapter shall be open to the public.
- (i) The Commission, in its discretion, has the power to sequester witnesses.
- (j) The Commission may utilize a presenting officer in license suspension or revocation hearings, such as an appropriate Professional Agent, Professional Staff member, or legal counsel.
- (k) A Commissioner with a conflict of interest may not participate in the hearing or any discussion or decision of the question at issue in the hearing either prior to or subsequent to the hearing.

**23-1410.      Evidence.**

- (a) In hearings governed by this Title, the Commission shall not be bound by technical rules relating to evidence and witnesses. The Commission shall admit all testimony having reasonable probative value, but shall exclude immaterial, irrelevant or unduly repetitious testimony. The Commission shall give effect to the rules of privilege unless such privilege is waived. Basic principles of relevancy, materiality, and probative force shall govern the proof of all questions of fact. Objections to evidentiary offers and offers of proof of evidence not admitted may be made, decided upon and shall be noted in the record.
- (b) All evidence, including records and documents in the possession of the Commission or of which the Commission desires to avail itself, shall be duly offered and made a part of the record in the case. Every party shall be afforded adequate opportunity to rebut or offer countervailing evidence.
- (c) The Commission may take official notice of any generally recognized fact or any established technical or scientific fact, but parties shall be notified either before or during the hearing or by full reference in preliminary reports or otherwise, of the facts so noticed, and they shall be afforded an opportunity to contest the validity of the official notice.
- (d) Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy to the original.
- (e) The record in a hearing governed by these rules shall include:
  - (1) All applications, intermediate rulings and exhibits and appendices thereto;

- (2) Evidence received or considered, and stipulations and admissions, including confidential evidence received pursuant to this Chapter;
- (3) A statement of matters officially noticed;
- (4) Questions and offers of proof, objections, and rulings thereon;
- (5) Any decision, opinion, findings or report by the Commission; and
- (6) The transcript prepared by a duly certified court reporter.

**23-1411.      Determinations by the Commission.**

- (a) The Commission shall make all determinations of issues before it by a majority vote of the Commission members voting at a meeting with a quorum present.
- (b) All determinations made by the Commission shall be made by motion and on the record involving (1) the grant, denial, cancellation or revocation of a license; (2) a finding of a violation of this Title, the rules, the Compacts, the Act, the conditions of any license issued by the Commission, any order by the Commission, or any other applicable laws, regulations or agreements; and (3) the imposition of any sanctions or penalties shall be made by motion and on the record.
- (c) A copy of any resolution reached pursuant to Section 23-1411(b) shall be served upon the applicant or licensee by registered or certified mail, or may be served personally.
- (d) Nothing in these rules shall act as a bar to the parties reaching a settlement of the issues prior to, during or after the hearing; however, such settlement must be made prior to the Commission making its final determination pursuant to subsection (a) of this Section. The Commission shall incorporate the terms of a settlement agreement into its written order.

**23-1412.      Sanctions.**

If any party or its attorney fails to comply with any provision of this Chapter, the rules, the Compacts, the Act, the conditions of any license issued by the Commission, any order by the Commission, or any other applicable laws, regulations or agreements including any agreement regarding discovery matters and the failure to appear at a hearing at the scheduled time, the Commission - upon motion or upon its



the same extent that the Tribe would have such rights and privileges if it engaged in the activities undertaken by the Commission.

**23-1415. Limited Waiver of Sovereign Immunity of the Commission.**

The Commission hereby expressly waives its sovereign immunity from suit only in any suit against the Commission wherein relief is limited to injunctive or declaratory relief against the Commission. Jurisdiction for suit against the Commission for review of the Commission rulings shall be as set forth in Section 23-512 and Section 23-613 of this Title.

**CHAPTER 15. MISCELLANEOUS**

**23-1501. Severability.**

In the event that any Section or provision of this Title is held invalid, the remaining Sections or provisions shall continue in full force and effect.

**23-1502. Construction Consistent with the Act and the Compacts.**

This Title shall be construed in a manner which conforms with and to the Act and the Compacts in all respects, and if inconsistent with the Act and/or the Compacts in any manner, the provisions of the Act and/or Compacts shall govern.

**23-1503. Charitable Gaming.**

Charitable gaming operations shall be allowed on the Reservation to the extent the Commission promulgates rules and regulations governing such gaming which are approved by Tribal Council, and that such promulgated regulates be in accordance with, and any charitable gaming operations are conducted pursuant to, any relevant and mandatory federal laws or regulations governing tribal charitable gaming.