

Addendum to Tribal-State Gaming Compact

IGaming

This Addendum A to the Tribal-State Gaming Compact (“IGaming Addendum”) is made and entered into this [REDACTED] day of [REDACTED], 20__, by and between the [REDACTED] (Tribe) (hereinafter referred to as the “Tribe”) and the State of North Dakota (hereinafter referred to as the “State”).

WHEREAS, the Tribe and the State have agreed to provide the Tribe with the legal authority to conduct Internet Gaming statewide pursuant to the terms of this I Gaming Addendum to the Compact.

WHEREAS, the Indian Gaming Regulatory Act, 25 U.S.C. Section 2701 et seq. (“IGRA”) sets forth the federal statutory framework for the conduct of Class III gaming conducted by tribes.

WHEREAS, IGRA contains terms which are defined by the statute, and therefore cannot be amended or modified by the Tribe and the State by compact, including the definition of “Indian lands,” 25 U.S.C. 2703(4), which are lands that were in trust in 1988 or have met one of the specific exceptions.

WHEREAS, IGRA defines class III gaming: “The term “class III gaming” means all forms of gaming that are not class I gaming or class II gaming.” 25 U.S.C. 2703(8).

WHEREAS, IGRA provides that “Class III gaming activities shall be lawful on Indian lands only if such activities are (A) authorized by an ordinance or resolution that (i) is adopted by the governing body of the Indian tribe having jurisdiction over such lands, (ii) meets the requirements of subsection (b), and (iii) is approved by the Chairman, (B) located in a State that permits such gaming for any purpose by any person, organization, or entity, and (C) conducted in conformance with a Tribal-State compact entered into by the Indian tribe and the State under paragraph (3) that is in effect.” 25 U.S.C. 2710(d)(1).

WHEREAS, IGRA does not define “gaming activities,” and the definition of “gaming activities” in the tribal-state gaming compact has traditionally been within the purview of states and tribes to negotiate.

WHEREAS, the Tribe and the State agree that, pursuant to the agreed-upon definition of “gaming activities,” all “gaming “activities” are taking place on Indian lands so long as the bets are electronically received on Indian lands, and the electronic gaming platforms that must comply with all of applicable requirements and regulations are located on Indian lands. There is no applicable federal law which limits the authority of the State and the Tribe to define “gaming activities” for purposes of the Compact.

WHEREAS, IGRA supports the authority of state and tribes to make this agreement by authorizing states and tribes to allocate civil and criminal jurisdiction through the IGRA compacting process. 25 U.S.C. § 2701(d)(3)(C). Specifically, any tribal-state compact negotiated through IGRA may

contain provisions relating to “the application of the criminal and civil laws and regulations of the Indian tribe or the State that are directly related to, and necessary for, the licensing and regulation of such activity.” *Id.* It further may include provisions relating to “the allocation of criminal and civil jurisdiction between the State and the Indian tribe necessary for the enforcement of such laws and regulations.” *Id.* Thus, IGRA specifically authorizes states and tribes to negotiate jurisdictional matters as part of their compact negotiations as a matter of federal law. When developing IGRA’s framework for tribal-state compacts, Congress stressed the importance of tribes and states engaging in dialogue over how best to achieve tribal gaming’s “mutual benefits.” As the Senate Committee report stated, “[s]tates and tribes are encouraged to conduct negotiations within the context of the mutual benefits that can flow to and from tribes [sic] and States. This is a strong and serious presumption that must provide the framework for negotiations.” Sen. Rep. No. 100-446, at 13-14 (1988), reprinted in 1988 U.S.C.C.A.N. 3071, 3083 (1988).

WHEREAS, Congress also specifically addressed the issues that may be the subject of negotiations between a tribe and a state in reaching a compact. In describing the scope of negotiations in Section 11(d)(3)(C), the Senate Committee “recognize[d] that subparts of each of the broad areas may be more inclusive” and that “[a] compact may allocate most or all of the jurisdictional responsibility to the tribe, to the State or to any variation in between.” The Committee noted that states are not required to forgo any state governmental rights to engage in or regulate class III gaming except whatever they may voluntarily cede to a tribe under a compact. This understanding was ultimately reflected in the final text of IGRA at 25 U.S.C. § 2710. Sen. Rep. No. 100-446, at 13-14 (1988), reprinted in 1988 U.S.C.C.A.N. 3071, 3083 (1988).

WHEREAS, the State of North Dakota has legalized internet gaming activities within the State: online raffles may be conducted pursuant to North Dakota Century Code 53-06.1-10.1(4), and online lottery activities are legal pursuant to North Dakota Century Code 53-12.1. Internet gaming activities are consistent with the public policies of the State.

WHEREAS, the interpretation of IGRA provided for herein is analogous to the approach the State of New Jersey has taken to internet gaming. The State of New Jersey Constitution prohibits gaming outside of Atlantic City. New Jersey has legalized internet gaming statewide, provided the hardware and software running the games are located within Atlantic City. In doing so, the New Jersey Legislature has determined that the State Constitutional prohibition against gaming outside of Atlantic City is not being violated, because the “gaming activities” are only taking place where the electronic platforms for the games, where all of the regulation takes place, are located within Atlantic City.

WHEREAS, in the States of Colorado and Michigan, tribes are currently engaged in internet gaming under IGRA. The tribal-state gaming compacts in those states permitted tribes to immediately offer any games legalized by the state. When the states legalized internet gaming the tribes were able to begin offering internet gaming statewide pursuant to the terms of their compacts.

WHEREAS, the Tribe and the State acknowledge that charitable gaming in the State of North Dakota has increased dramatically in recent years, with a detrimental impact on tribal gaming revenues. This IGaming Addendum is intended to provide North Dakota tribes with authority to

conduct certain Internet Gaming activities within the State, in part to offset the gaming revenue losses tribes have suffered.

WHEREAS, in recognition of the fact that North Dakota has five federally recognized tribes with Indian lands within the State, and a total population of less than one million, and of the fact that internet gaming requires sophisticated, expensive hardware and software, it is in the interests of the State and the tribes for the tribes to cooperatively manage internet gaming websites, and share the revenues equally.

WHEREAS, the Tribe and the State affirm that this Compact, and the operation of Internet Gaming as authorized pursuant to this Compact, comply in all respects with the North Dakota Constitution.

I. DEFINITIONS

- 1.1 “Electronic Wagering Platform” means the combination of hardware, software, and data networks used to manage, administer, offer, or control Internet Gaming, wagering, or contests, including the payment and receipt of wagers.
- 1.2 “Fantasy Contests” means any online or simulated game or contest with an entry fee, conducted over the internet, including through an Internet web site or mobile device, in which (A) the value of all prizes and awards offered to a winning fantasy contest player is established and made known to the players in advance of the game or contest; (B) winning outcomes reflect the knowledge and skill of the players and are determined predominantly by accumulated statistical results of the performance of participants in events; and (C) no winning outcome is based on the score, point spread, or any performance of a single team or combination of teams or solely on a single performance of a contestant in any single event. “Fantasy contests” do not include lottery games.
- 1.3 “Internet Gaming Activities” means Internet Wagering and Internet Sports Wagering wherein the Electronic Wagering Platform is located at a Class III gaming facility within a tribal reservation within the State of North Dakota.
- 1.4 “Internet Gaming” means the conduct of Class III Internet Gaming Activities pursuant to this Addendum.
- 1.5 “Internet Wagering” means risking or accepting any money, credit, deposit or other thing of value for gain contingent in whole or in part, by any system or method of wagering, through an electronic wagering platform that does not require a bettor to be physically present at a facility that conducts class III gaming.
- 1.6 “Operator” means a tribal gaming facility, an entity thereof, or a cooperative tribal entity operating Internet Gaming.
- 1.7 “Patron” means the individual placing the wager.

- 1.8 “Sporting Event” means any (A) sporting or athletic event at which two or more persons participate, individually or on a team, and receive compensation in excess of actual expenses for such participation in such sporting or athletic event; (B) sporting or athletic event sponsored by an intercollegiate athletic program of an institution of higher education or an association of such programs; (C) Olympic or international sports competition event; or (D) e-sports event. "Sporting event" does not include horse racing, jai alai or greyhound racing.
- 1.9 “Internet Sports Wagering” means risking or accepting any money, credit, deposit or other thing of value for gain contingent in whole or in part, (A) by any system or method of wagering through an electronic wagering platform, and (B) based on (1) a live sporting event or a portion or portions of a live Sporting Event, including future or propositional events during such an event, or (2) the individual performance statistics of an athlete or athletes in a sporting event or a combination of sporting events. “Sports Wagering” does not include the payment of an entry fee to play a fantasy contest or an entry fee to participate in e-sports.

II. PERMITTED INTERNET GAMING

The Tribe and the State agree that the Tribe is authorized to conduct only the Internet Sports Wagering component of Internet Gaming for two years from the effective date of the compact, and thereafter the Tribe is authorized to conduct Internet Gaming, provided:

- 2.1 The Electronic Gaming Platform is located on Indian lands which are within the Geographical Scope of Article XXXIII of the Compact, and within a Class III gaming facility;
- 2.2 The Patron is at least twenty-one (21) years old;
- 2.3 The Patron is physically located within the exterior boundaries of the State of North Dakota.
- 2.4 Internet Gaming shall only be engaged in by Patrons who have established an Internet Gaming account.
- 2.5 All games offered through Internet Gaming must be tested and certified by a reputable testing lab, approved and licensed by the Tribal Gaming Commission. The Tribal Gaming Commission is not required to license the testing lab if the lab already carries a gaming license issued by the Gaming Commission from the State of Nevada or the State of New Jersey.
- 2.6 The message "If you or someone you know has a gambling problem and wants help, call 800-_____" shall be displayed prominently within the internet log-in screen and a command to display this message on the log-off screen shall be transmitted whenever the system detects a log off.

- 2.7 When a patron logs on to an Internet or mobile gaming system, the system shall display the date and time of the patron's previous log on.
- 2.8 Patrons shall be able to suspend accounts at their request for specific periods of time. If a patron has suspended his or her account, the casino shall not send gaming-related electronic mail to such patron while the account is suspended.
- 2.9 The Internet Gaming system shall employ a mechanism to detect the physical location of the Patron upon logging into the gaming system, and at least once per hour thereafter. If the system detects that the physical location of the patron is in an area unauthorized for Internet Gaming, the system shall not accept wagers until such time that the patron is in an authorized location. Internet Gaming shall only occur within the exterior boundaries of the State of North Dakota, unless the conduct of such gaming is not inconsistent with Federal law, or the law of the jurisdiction, including any foreign nation, in which the Patron is located, or such gaming activity is conducted pursuant to a reciprocal agreement to which this State is a party that is not inconsistent with Federal law.
- 2.10 Software utilized for Internet Gaming shall either:
- 2.10.1 Continuously display the current time in the time zone where the game server is physically located and the time elapsed while in the current Patron session; or
 - 2.10.2 Cause a pop-up notification, at least once per hour, to be prominently displayed on the client terminal advising the Patron of the current time and the amount of time elapsed since his or her log on.
 - 2.10.3 The gaming facility shall have an Internet Gaming manager responsible for the operation and integrity of Internet Gaming and reviewing all reports of suspicious behavior. The Internet Gaming manager shall be a key employee. The Internet Gaming manager shall immediately notify the Tribal Gaming Commission upon detecting any person participating in Internet Wagering or Internet Sports Wagering who is:
 - 2.10.3.1 Engaging in or attempting to engage in, or who is reasonably suspected of cheating, theft, embezzlement, collusion, money laundering, or any other illegal activities;
 - 2.10.3.2 Required to be excluded from gaming by the Tribal Gaming Commission; or
 - 2.10.3.3 Prohibited from gaming by the Tribe.

III INTERNAL CONTROLS

- 3.1 The Operator shall file with the Tribal Gaming Commission internal controls for all aspects of Internet Gaming operations prior to implementation and any time a change is made thereafter. The internal controls shall include detailed procedures for system security, operations, accounting, and reporting of problem gamblers.
- 3.2 The Operator offering Internet Gaming shall describe in its internal controls the method for securely issuing, modifying, and resetting a Patron's account password, Personal Identification Number (PIN), or other approved security feature, where applicable. Any method shall include notification to the Patron following any modification via electronic or regular mail, text message, or other manner approved by the Tribal Gaming Commission. Each log-in to the Patron's account shall require two-factor authentication or facial recognition.
- 3.3 All terms and conditions for Internet Gaming shall be included as an appendix to the internal controls of the Operator addressing all aspects of the operation, including the following:
 - 3.3.1 Patron's consent to have the gaming facility confirm the Patron's age and identity;
 - 3.3.2 Rules and obligations applicable to the Patron other than rules of the game including, but not limited to:
 - 3.3.2.1 Prohibition from allowing any other person to access or use his or her Internet Gaming account;
 - 3.3.2.2 Prohibition from engaging in Internet Gaming, unless they are physically present in North Dakota;
 - 3.3.2.3 Consent to the monitoring and recording by the gaming operator and/or the Division of any wagering communications and geographic location information;
 - 3.3.2.4 Consent to the jurisdiction of the Tribe to resolve any disputes arising out of Internet Gaming; and
 - 3.3.2.5 Prohibition against utilizing automated computerized software or other equivalent mechanism, such as a "bot," to engage in play.
 - 3.3.3 Full explanation of all fees and charges imposed upon a Patron related to gaming transactions;
 - 3.3.4 Availability of account statements detailing Patron account

activity;

- 3.3.5 Privacy policies, including information access;
- 3.3.6 Legal age policy, including a statement that it is a criminal offense in North Dakota to allow a person who is under the age of 21 to participate in Internet Wagering;
- 3.3.7 Full explanation of all rules applicable to dormant Internet Gaming accounts;
- 3.3.8 Patron's right to set responsible gaming limits and to self-exclude;
- 3.3.9 Patron's right to suspend his or her account for a period of no less than 72 hours;
- 3.3.10 Actions that will be taken in the event a Patron becomes disconnected from the Internet or mobile gaming system during game play;
- 3.3.11 Notice that a malfunction voids all pays;
- 3.3.12 Estimated time period for withdrawal of funds from Internet Gaming account; and
- 3.3.13 Information to be displayed on a Patron protection page. The Patron protection page shall be accessible to a Patron during a Patron session. The Patron protection page shall contain, at a minimum, the following:
 - 3.3.13.1 Method for changing or retrieving a password or other approved access security feature;
 - 3.3.13.2 Method for filing a complaint with the Operator;
 - 3.3.13.3 Method for filing with the Tribal Gaming Commission an unresolved complaint after a reasonable attempt to resolve the complaint with the Operator utilizing the Internet Gaming Dispute Form on the Operator's website;
 - 3.3.13.4 Method for obtaining a copy of the terms and conditions agreed to when establishing an Internet Gaming account;

- 3.3.13.5 Method for the patron to obtain account and game history from the Operator;
 - 3.3.13.6 Notification that underage gambling is a criminal offense and that anyone who facilitates someone under the age of 21 to gamble has committed a criminal offense and shall be prohibited from Internet Gaming in North Dakota;
 - 3.3.13.7 Notification that the patron is responsible to configure his or her client terminal's auto-lock feature to protect the client terminal from unauthorized use;
 - 3.3.13.8 Notification that a patron is prohibited from allowing any other person to access or use his or her Internet or mobile gaming account; and
 - 3.3.13.9 Notification of Federal prohibitions and restrictions regarding Internet gaming, specifically, any limitations upon Internet gaming as set forth in 18 U.S.C. §§ 1084 et seq. (The Wire Act) and 31 U.S.C. §§ 3163 through 3167 (UIEGA). The notice shall explicitly state that it is a Federal offense for persons physically located outside of North Dakota to engage in Internet wagering through a gaming facility located within North Dakota, unless explicitly authorized by the Tribal Gaming Commission.
- 3.4 Whenever the terms and conditions that apply to Internet Gaming are changed, the Operator shall require a Patron to acknowledge acceptance of such change. Unless otherwise authorized by the Tribal Gaming Commission, the Patron's acknowledgement shall be date and time stamped by the Internet Gaming system.
- 3.5 An Operator's gaming equipment used to conduct Internet Gaming shall be located, with the prior approval of the Tribal Gaming Commission, as set forth below:
- 3.5.1 Primary gaming equipment and backup gaming equipment used to conduct Internet Gaming, and backup gaming equipment that is not used to conduct Internet Gaming but which is only used to store data for primary gaming equipment, shall be located:
 - 3.5.1.1 In a restricted area on the premises of a Class III gaming facility, within the Geographical Scope of Article XXXIII of the Compact, within the exterior boundaries of the State of

North Dakota; or

3.5.1.2 In another facility owned or leased by the Operator that is secure, inaccessible to the public, and specifically designed to house that equipment, and where the equipment shall be under the complete control of the Operator, accessible to the Tribal Gaming Commission, and within the Geographical Scope of Article XXXIII of the Compact, within the exterior boundaries of the State of North Dakota.

3.6 Internet Gaming systems shall require a Patron after fifteen minutes of user inactivity, as measured by the Internet Gaming system, to re-verify his or her identity.

3.7 An Operator offering Internet Gaming shall comply with all Federal requirements including, but not limited to, suspicious activity reporting and W2-G reporting.

3.8 Each Operator offering Internet Gaming shall perform an annual system integrity and security assessment conducted by an independent professional selected by the Operator, subject to the approval of the Tribal Gaming Commission. The independent professional's report on the assessment shall be submitted to the Tribal Gaming Commission annually and shall include:

3.8.1 Scope of review and testing, which shall include, at a minimum:

3.8.1.1 Wagers are accepted in a fair and secure manner;

3.8.1.2 Betting outcomes are in accordance with pre-specified rules;

3.8.1.3 Wagers placed are correctly resolved and paid based on the correct odds and rules corresponding to the game or event;

3.8.1.4 Mechanisms and controls are in place for adherence to technical requirements associated with the handling of wager disruptions and cancellations, abandoned events, and refunds; and

3.8.1.5 Cybersecurity and strength of infrastructure;

3.8.2 Name and company affiliation of the individual(s) who conducted the assessment;

3.8.3 Date of the assessment;

- 3.8.4 Findings;
 - 3.8.5 Recommended corrective action, if applicable; and
 - 3.8.6 Operator's response to the findings and recommended corrective action.
- 3.9 An Operator shall investigate each Patron complaint related to Internet Gaming and provide a response to the Patron within five calendar days. For complaints that cannot be resolved to the satisfaction of the Patron related to patron accounts, game outcomes, and/or illegal activity, a copy of the complaint and Operator's response, including all relevant documentation, shall be provided to the Tribal Gaming Commission. All other complaints and responses related to Internet Gaming (for example, password problems, online chat disputes and technical matters) shall be provided to the Tribal Gaming Commission biweekly or with such frequency as approved by the Tribal Gaming Commission.
- 3.10 An Internet Gaming system shall not induce a Patron to continue placing wagers when the Patron attempts to end a session.
- 3.11 An Internet Gaming system shall allow Patrons to access a Patron protection page at all times while logged into their Internet Gaming account.
- 3.12 Internet Gaming third-party operators and related vendors shall be prohibited from retaining Patron account information without the expressed written consent of the Tribal Gaming Commission.
- 3.13 Operators with employees who have direct contact with Patrons via phone, e-mail, electronic chat, or other means, shall implement training for those employees, at the start of their employment and at regular intervals thereafter, addressing the following areas:
- 3.13.1 Recognizing the nature and symptoms of problem gambling behavior and how to assist players in obtaining information regarding help for a gambling problem and self-exclusion programs;
 - 3.13.2 Responding to Patrons who may disclose that they have a gambling problem; and
 - 3.13.3 Responding to reports from third parties, such as family members, about Patrons who may have a gambling problem.
- 3.14 Operators shall promptly notify all affected Internet Gaming managers of any issues impacting the integrity of Internet gaming operations.

3.15 Each Internet Gaming site shall display a responsible gaming logo in a manner approved by the Tribal Gaming Commission to direct a Patron to the site's responsible gaming page. The responsible gaming page shall be accessible to a Patron during a Patron session and shall contain, at a minimum, the following:

3.15.1 A prominent message, which states "If you or someone you know has a gambling problem and wants help, call 1-800-_____";

3.15.2 A direct link to _____, and one other organization based in the United States dedicated to helping people with potential gambling problems;

3.15.3 A clear statement of the Operator's policy and commitment to responsible gaming;

3.15.4 Information regarding the following:

3.15.4.1 Practical tips to stay within safe limits;

3.15.4.2 Myths associated with gambling;

3.15.4.3 Information regarding the risks associated with gambling; and

3.15.4.4 The potential signs of a gambling problem; and

3.15.4.5 Rules governing self-imposed responsible gaming limits, and the ability for the Patron to establish those limits.

IV COOPERATIVE TRIBAL INTERNET GAMING

4.1 If two or more tribes approve this IGaming Addendum and the Addendum goes into effect, all the tribes in the State who have approved this IGaming Addendum shall establish a joint business entity, cooperatively operate the Internet Gaming operation and share the net revenues of the Internet Gaming operation equally. The joint business entity shall be managed by a person or entity who has experience in the operation of Internet Gaming facilities or gaming management experience. The manager shall be hired by consensus of the Tribes and shall be subject to the supervision of the joint business entity.

4.2 The Tribes shall enter into a cooperative agreement to regulate the Internet Gaming operation.

4.3 If any tribe approves this IGaming Addendum at a later date, that tribe shall also enter into the joint business entity, cooperatively operate the Internet Gaming operation, and share the net revenues of the Internet Gaming operation equally.

- 4.4 If the cooperative operation and revenue sharing provisions of this Addendum are found to be in violation of the law, for violating the proprietary interest rule or any other reason, this Article shall be severed from the Addendum and shall not restrict the Internet Gaming operations of the tribes on their separate reservations.

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