



**MASSACHUSETTS GAMING COMMISSION'S
RIGHTS AND RESPONSIBILITIES PURSUANT TO THE
MASHPEE WAMPANOAG
TRIBAL-STATE COMPACT**



Massachusetts Gaming Commission

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Pursuant to the Mashpee Wampanoag (“Tribe”) Tribal-State Compact, the Massachusetts Gaming Commission (“MGC”) has a number of rights and responsibilities related to regulating the Enterprise and the Facility. These rights and responsibilities are outlined below.

I. Regulatory Role of Commonwealth

A. Regulatory Role of MGC

Summary: The Commonwealth has the authority and responsibility to regulate the gaming operation under the Compact, and may exercise its regulatory role through the MGC or other state entities upon written notice from the Governor to the Tribe.

Comments: These provisions implicitly recognize the sovereignty of the Tribe and that by entering into this Compact the Tribe has voluntarily subjected itself to state oversight according to the terms of the agreement. See also Part 6.6.6.

Compact Language:

6.2. State Duty to Regulate. The Commonwealth shall have the authority and responsibility to regulate the Gaming Operation as provided in this Compact.

6.6.1. Regulatory Role. The Commonwealth may exercise its regulatory role under this Compact through the MGC or one or more other State agencies as the Commonwealth may designate by written notice from the Governor to the Tribe.

B. Regulatory Contractors

Summary: The MGC has the authority to contract with private entities to perform certain regulatory functions, but must maintain a single point of contact with the Tribal Gaming Commission (“TGC”) or its Executive Director.

Comments: Pursuant to M.G.L. c. 23K, § 4, the MGC has the authority to enter into contracts. If it were to contract with a private entity to perform any regulatory functions under this Compact, though, that entity would have to obtain licensure from the Tribe.

Compact Language:

6.6.4. Outsourcing. The MGC may contract with private persons, firms or other entities for the purpose of performing certain of its regulatory functions, but the MGC will maintain a single point of contact with the TGC or its Executive Director. Any such private persons, firms or entities shall be required to be licensed by the TGC and subject to a background investigation as rigorous as that required of a

Key Gaming Employee.

II. MGC's Enforcement Power

A. No Interference with Operations

Summary: MGC personnel and contractors must not interfere with the gaming operation except as required to perform regulatory functions permitted by the Compact.

Comments: The Tribe is a federally-recognized Indian tribe and possesses sovereign powers and rights of self-government. Unless a function is specifically included in the Compact, the MGC may not interfere. Those areas in which the MGC has authority are listed throughout this document. See also Part 6.2.

Compact Language:

6.6.6. Non-Interference with Operations. Personnel employed by or under contract with the MGC shall not interfere with the Gaming Operation or the general operations of the Facility, except as may be required to perform the regulatory functions permitted under this Compact.

B. Cooperation with TGC

Summary: The TGC and MGC must cooperate to ensure that the facility is operated in accordance with the provisions of the Compact and all applicable laws and regulations and is subject to adequate public safety and security controls.

Comments: While Part 6.6.6 of the Compact prevents the MGC from interfering with the gaming operation unless it must do so to perform its regulatory functions permitted by the Compact, this provision provides a general catch-all for cooperative oversight in instances where public safety and physical security related issues may not adequately be addressed by the specific provisions of the Compact.

Compact Language:

15.1. The TGC and the MGC shall cooperate to ensure that the Facility is operated in compliance with the provisions of this Compact and all applicable laws and regulations and is subject to controls fully adequate to provide for the public safety and the physical security of all Patrons.

C. Investigation of Reports of Failure to Comply with Compact

Summary: The MGC may investigate any report of a failure to comply with the provisions of the Compact and may require the TGC to correct any failures upon such terms and conditions as the MGC may determine are reasonably necessary after consultation with the TGC. The MGC must forward written reports to the TGC.

If the MGC determines that the Enterprise is not in compliance with the provisions of the Compact, the MGC shall deliver written notice of non-compliance to the Enterprise, the TGC, and the Tribe that describes in detail the nature of the non-compliance and the action required to remedy it. If corrective action is not taken within ten days of receipt of notice, the MGC may initiate the dispute resolution process or exercise its rights in District Court. If the MGC determines that an emergency exists, it may bring an immediate action in District Court. The MGC may also petition the National Indian Gaming Commission to impose penalties for violations of the Compact.

MGC investigators must obtain Key Gaming Employee licenses from the TGC and carry proper identification at all times.

Comments: The powers and duties of the MGC with respect to gaming licensees are identified in M.G.L. c. 23K, § 4 and are codified throughout 205 CMR. Pursuant to M.G.L. c. 23K, §§ 35 and 36 and 205 CMR 101 *Adjudicatory Proceedings*, the Investigations and Enforcement Bureau may issue orders and fines for violations of M.G.L. c. 23K and 205 CMR.

With respect to the Compact, if the MGC determines that a Tribal Enterprise has violated any provision of the Compact, it will need to follow the procedure outlined in this section.

Compact Language:

15.2. The MGC shall have the authority to investigate any report of a failure to comply with the provisions of this Compact, and may require the TGC to correct any such failure upon such terms and conditions as the MGC may determine are reasonably necessary after consultation with the TGC. All reports of a failure to comply with the provisions of this Compact or any applicable law shall be reduced to writing, and a copy shall be forwarded to the TGC, along with a written report of the outcome of any investigation that was conducted in connection therewith. Investigators employed by the MGC for the purposes set forth in this Part 15 shall be required to obtain Key Gaming Employee licenses as defined in Part 7 and shall carry proper identification at all times.

15.3. If the MGC determines that the Enterprise is not in compliance with the provisions of this Compact, the MGC shall deliver a written notice of non-compliance to the Enterprise, the TGC, and the Tribe that describes in detail the nature of the non-compliance and the action required to remedy it. In the event that corrective action is not undertaken by the Tribe, the TGC or the Enterprise within ten (10) days after receipt of a valid notice from the MGC, the MGC may initiate the dispute resolution procedures in Part 21 or may exercise its rights in the United States District Court for the District of Massachusetts pursuant to 25 U.S.C. § 2710(d)(7)(A)(ii). In the event that the MGC determines that an emergency exists, the MGC may bring an action in the United States District Court for the District of Massachusetts immediately upon a finding by the MGC of non-compliance with the provisions of this Compact. In addition to the remedies provided hereunder, the MGC may exercise its right to petition the NIGC to impose penalties, which may include civil fines and temporary or permanent closure of the Facility, for violation of the provisions of this Compact.

D. Insurance Coverage and Claims

Summary: The Tribe must consult with the MGC and establish procedures governing the adjudication and compensation for commercial general liability claims arising in connection with the Facility.

Comments: Typically, commercial general liability claims involve incidents of bodily injury and/or property damage. This provision ensures that there is compensation and recourse available to anyone who suffers such harm despite the Tribal casino being located on sovereign land.

Compact Language:

20.1. The Tribe shall, after consultation with the MGC, establish procedures governing the adjudication and compensation for commercial general liability claims arising in connection with the Facility. Such claims shall be covered by commercial general liability insurance consistent with industry standards for non-tribal casinos in the United States underwritten by an insurer with an A.M. Best rating of A or higher and at the limits set forth [in 20.2].

III. Construction, Inspections, and MGC Access

A. Building, Fire, Health and Safety Codes

Summary: The Tribe must adopt an ordinance setting forth its building, fire, health and safety codes, and those codes must be at least as stringent as the codes that would apply if the Tribe were an entity otherwise subject to the civil oversight of the municipal or state government. In cases where such an entity would require a permit, the Tribe must retain inspectors licensed by the Commonwealth to review all plans and specifications for the facility. The Tribe may, at its discretion, contract with municipal or state officials to perform the required inspections. The inspectors shall certify to the MGC and the Tribe that the design and construction of the facility comply with the building, fire, health and safety codes adopted by the Tribe. The inspectors shall be required by the Tribe to report to it in writing any failure to comply with the Tribal building, fire, health and safety codes, and to provide a copy of each report to the MGC.

Comments: Pursuant to M.G.L. c. 23K, § 15(12), gaming licensees are required to comply with the State Building Code (780 CMR)) as a criteria for receiving a gaming license. Pursuant to 205 CMR 151.01 *Issuance and Posting of Operation Certificate*, a gaming licensee must obtain an operations certificate before beginning gaming at their establishment, and the operations certificate will not be issued by the MGC until the licensee demonstrates, among other things, that it has (1) provided a copy of the certificate of occupancy issued by a building commissioner or inspector of buildings of the host community that includes an approval under the Architectural Access Board regulations (521 CMR) regarding disability access; and (2) provided a copy of the elevator certificate(s) issued pursuant to M.G.L. c. 143, § 63, indicating compliance with the Elevator regulations (524 CMR).

Pursuant to the Compact, the Tribe's building, fire, health and safety codes must be at least as stringent as the codes followed by gaming licensees, and an inspector must certify that the facility is compliant with all necessary codes. Essentially, these provisions of the Compact are designed to ensure that the Tribal casino meets at least the same minimum life safety requirements that all similar buildings in the Commonwealth are required to meet.

Compact Language:

5.4.1. In order to protect the health and safety of all persons entering the Facility, all Facility construction, expansion and modification work shall meet the building, fire, health and safety codes of the Tribe. The Tribe shall adopt an ordinance setting forth codes for building, fire, health and safety which are consistent with and no less stringent than the provisions of any and all such codes that would be otherwise applicable if the Facility were constructed on land subject to the civil

jurisdiction of the Commonwealth in the same location. In all cases where these otherwise applicable codes would require a permit, the Tribe shall hire or retain inspectors who are architects, engineers or similar experts licensed by the Commonwealth. These inspectors shall have demonstrated experience with building, fire, health and safety codes in the context of commercial projects and shall review all plans and specifications for the Facility and shall certify to the MGC and the Tribe that both the design and the construction of the Facility meet the standards set forth in, and otherwise comply with, the building, fire, health and safety codes of the Tribe.

5.4.2. The Tribe shall require the inspectors to maintain contemporaneous Records of all inspections and report to it in writing any failure to comply with the Tribal building, fire, health and safety codes, and simultaneously provide a copy of each report to the MGC. The Tribal building, fire, health and safety codes may provide that in lieu of hiring experts and inspectors, the Tribe may contract with local or Commonwealth officials to perform the required inspections, however nothing in this subpart 5.4 shall be deemed to confer jurisdiction upon any local government or the Commonwealth with respect to any Tribal building, fire, health and safety codes. Any dispute between the Tribe and the Commonwealth relating to the enforcement of the Tribal building, fire, health and safety code shall be resolved pursuant to the dispute resolution process set forth in Part 21.

B. Pre-Construction Documents

Summary: Before construction related to the facility begins, the Tribe must provide the MGC with a copy of all available plans, specifications, and designs for the facility, including plans for infrastructure improvements and traffic mitigation measures; completed studies and reports examining the facility's local and regional social, environmental, traffic, and infrastructure impacts required in satisfaction of the Tribe's NEPA obligations; and a timeline for construction.

Comments: Pursuant to 205 CMR 135.03 *Design Review Process*, the MGC established detailed procedures for oversight of the construction projects to be undertaken by gaming licensees. The regulations includes such things as participation in the design review process including development of the initial project, development of the schematic design, completion of the final site plan and architectural design, and development of the construction design package. 205 CMR 135.04 *Inspection of Construction and Related Records* also provides that the MGC may request and inspect construction-related plans and materials at any time. Additionally, the State Building Code, 780 CMR 105 *Permits*, requires anyone performing construction to file an application with the building official and obtain a permit. The application includes construction documents noting specifications and designs for the facility (780 CMR 107 *Submittal Documents and Construction Control*).

While the Compact does not require the project oversight by the MGC that is contained in 205 CMR 135.00, the process would still be subject to construction control, building official review, and final review of a certificate of occupancy by the MGC prior to commencement of operations. See below (Part 5.4.9 of the Compact) for the MGC's ability to object to the Tribe's issuance of a certificate of occupancy.

Compact Language:

5.4.5. Prior to commencement of any construction directly related to the Facility, the Tribe shall furnish to the MGC: (a) a copy of all available plans, specifications and designs for the proposed Facility, including plans for all infrastructure improvements and traffic mitigation measures on site and immediately serving the Facility, the names and addresses of the architects, engineers and designers, and information demonstrating that there are no design elements in the proposed Facility that are likely to impede the effective regulation of the Gaming Operation; (b) completed studies and reports required in connection with the Tribe's fee-to-trust application for the Approved Gaming Site which examine the Facility's local and regional social, environmental, traffic and infrastructure impacts, including but not limited to any studies completed in fulfillment of the Tribe's obligations under the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321 et seq.; the National Historic Preservation Act, 16 U.S.C. §§ 470 et seq.; and the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq.; and (c) a timeline for construction that includes the detailed stages of construction for the Facility, the deadline by which stages and overall construction and all infrastructure improvements and traffic mitigation measures will be completed, a good faith estimate of the number of construction hours that will be required to complete the project, the general hours of construction, and the efforts that will be made to minimize noise, dust and other impacts from the construction.

C. Pre-Gaming Safety and Emergency Certification

Summary: Before gaming begins at the facility, the TGC must certify to the MGC, and provide documentation supporting that certification if requested, that the Enterprise has developed adequate emergency egress and ingress plans, installed appropriate equipment to ensure safe and secure movement of cash to and from the cage, developed adequate sight lines for supervision and surveillance of the gaming operation and employees; installed adequate monitoring and recording equipment, and made rooms available for use by MGC agents and employees.

Comments: 205 CMR 141: *Surveillance of the Gaming Establishment* and 205 CMR 138 *Uniform Standards of Accounting Procedures and Internal Controls* are the regulations

that govern the overall surveillance and monitoring of gaming establishments. By the terms of the Compact, the standards utilized by the Tribe in this regard would have to be at least comparable. Further, pursuant to the State Building Code, 780 CMR 107: *Submittal Documents and Construction Control*, the construction documents submitted to the building official as part of the permit application must include construction documents showing in sufficient detail the location, construction, size, and character of all means of egress. Additionally, 780 CMR 10 *Means of Egress* codifies the requirements for compliant means of egress.

Given that the TGC is required to utilize building codes at least as stringent as the State Building Code the Tribal facility will be subject to similar requirements as the gaming licensee with respect to means of egress.

Compact Language:

5.4.6. Prior to the commencement of Gaming at the Facility, the TGC will certify to the MGC, and provide documentation that supports the certification if requested by the MGC, that, with respect to the Facility, the Enterprise has: (a) developed adequate emergency egress and ingress plans, which include identification of the location of all appropriate fire alarm and fire suppression equipment; (b) installed appropriate hardware and other equipment to ensure the safe and secure movement of cash to and from the cage; (c) developed adequate sight lines for supervision and surveillance of the Gaming Operation and Compact Game Employees; (d) installed adequate monitoring and recording equipment that promotes the security of the Gaming Operation and meets or exceeds standards comparable to those applicable to Category 1 Licensees regulated by the MGC, including but not limited to a closed circuit television system that meets all specifications promulgated by the TGC, with access on the premises to the system or its signal provided to the MGC; and (e) made available rooms or locations approved by the TGC and the MGC for use by MGC agents and employees when in the Facility.

D. Certificate of Occupancy

Summary: The Tribe must provide the MGC with a copy of the inspector's initial Certificate of Occupancy as well as biennial renewals. The MGC has the right to object to the certification, in response to which the Tribe must make a good faith effort to address the MGC's concerns. If the MGC does not withdraw its objection, the matter shall be resolved in accordance with the Compact's dispute resolution process.

Comments: Pursuant to 205 CMR 151.01 *Issuance and Posting of Operation Certificate*, a gaming licensee is required to submit a Certificate of Occupancy issued by a building commissioner or inspector of buildings of the host community as a condition of licensure. Pursuant to the State Building Code, 780 CMR 111 *Certificate of Occupancy*, a building

may not be used or occupied until the building commissioner or inspector of buildings has issued a Certificate of Occupancy. Further, 780 CMR 110 generally governs periodic inspections of existing buildings.

Compact Language:

5.4.8. Upon completion of construction and receipt of a final inspection certification, and subject to the requirements of 5.4.9, 5.4.10 and 5.4J 1, the Tribe shall issue a Certificate of Occupancy for the Facility. A current Certificate of Occupancy shall be a prerequisite to public occupancy of, and commercial activity within, the Facility. The Facility shall be inspected for continuing compliance with the Tribal building, fire, health and safety codes every two (2) years and if such compliance exists, the Certificate of Occupancy may be renewed. The review shall be based on inspections by qualified inspectors as described in subpart 5.4.1.

5.4.9. Prior to the issuance or renewal of a Certificate of Occupancy, the TGC shall forward the inspector's certification to the MGC. If the MGC objects to that certification, the Tribe shall make a good faith effort to address the MGC's concerns, but if the MGC does not withdraw its objection, the matter shall be resolved in accordance with the dispute resolution process in Part 21.

E. Prohibiting Occupancy due to Material Deficiency

Summary: If the Tribe does not remedy within a reasonable period of time any material deficiency in the facility that poses a serious or significant risk to health or safety, the MGC may seek and obtain a court order to prohibit occupancy of the affected portion of the facility until the deficiency is corrected.

Comments: The companion provisions for a commercial facility include 205 CMR 135.06 *Determination that Gaming Establishment May Open for Business*, which allows the MGC to condition, suspend, or revoke a gaming license if it finds that the licensee failed to comply with an approved design or construction project schedule, and 780 CMR 116 *et seq.*, which, as a general matter, allows a building official to take action in the event a structure is deemed unsafe.

Compact Language:

5.4.10. Failure by the Tribe to remedy within a reasonable period of time any material deficiency in the Facility that poses a serious or significant risk to the health or safety of any Person shall be deemed a violation of this Compact and shall be grounds for the MGC to seek and obtain a court order pursuant to subpart 21.8 to prohibit occupancy of the affected portion of the Facility until the deficiency is corrected.

F. Post-Construction Certification

Summary: At least 15 days before the facility opens, the Tribe must certify to the MGC and provide supporting documentation if requested that the facility has been built in accordance with previously submitted plans and specifications and that the infrastructure improvements and traffic mitigation projects are complete. If the Tribe does not comply, the MGC may obtain a court order to prohibit occupancy until the Tribe does comply with this requirement.

Comments: Pursuant to 205 CMR 135.06 *Determination that Gaming Establishment May Open for Business*, the MGC will not make a determination that a commercial Category I casino may open for business until it determines that the licensee has (1) complied with all requirements of 205 CMR 135.00; (2) completed all infrastructure and off-site improvements, including traffic mitigation; and (3) complied with the terms of the license, host and surrounding community agreements, impacted live entertainment venue agreements, and certificates of occupancy permits and approvals. Additionally, pursuant to the Building Code, 780 CMR 111 *Certificate of Occupancy*, a building may not be used or occupied until the building commissioner or inspection of buildings has issued a Certificate of Occupancy.

With respect to the Compact, although the MGC does not play a role in determining that a facility may open for business, the Tribe is required to provide certification and supporting documentation to the MGC regarding the facility's compliance with submitted plans at least 15 days before it opens.

Compact Language:

5.4.11. Not less than fifteen (15) days before the Facility is to open for business, the Tribe shall certify to the MGC, and provide such documentation to support the certification as the MGC requests, that: (a) the Facility has been built in accordance with the plans and specifications previously submitted to the MGC pursuant to subpart 5.4.5; and (b) the infrastructure improvements and traffic mitigation projects onsite and immediately serving the Facility are complete in accordance with the plans previously submitted to the MGC pursuant to subpart 5.4.5. Failure by the Tribe to provide the certification or documentation required by this subpart shall be grounds for the MGC to seek and obtain a court order under subpart 21.8 to prohibit occupancy of the Facility until the requirements of this subpart have been met.

G. Deficiencies in Fire or Life Safety Protection

Summary: Before beginning gaming operations and at least every two years thereafter, the facility must be inspected and at least ten days' notice must be

provided to the MGC. Within 15 days of the inspection, the Tribe or independent expert must provide the MGC with a copy of the report identifying any deficiencies in fire or life safety protection. Within three days of completion of a plan prepared by the Tribe for correcting the deficiencies, the Tribe must provide the MGC with a copy of that plan. Following correction of all deficiencies, the Tribe or independent expert shall certify in writing to the MGC that all previously identified issues have been corrected.

Comments: Pursuant to 205 CMR 135.06 *Determination that Gaming Establishment May Open for Business*, the MGC will not make a determination that a commercial Category 1 gaming establishment may open for business until the MGC has inspected the completed gaming establishment and related infrastructure, as well as relevant plans, contracts, and other records. Additionally, the Building Code, 780 CMR 110 *Inspections*, requires a preliminary inspection before a permit will be issued as well as periodic inspections of existing buildings ranging from annual to every five years depending on the building's classification.

With respect to the Compact, although the MGC is not responsible for inspection of the facility prior to opening, the Tribe is required to notify the MGC and provide relevant documents related to inspections, deficiencies, and plans for correction of those deficiencies.

Compact Language:

5.6.2. Prior to the commencement of Gaming Operations in the Facility and not less than every two (2) years thereafter, and upon at least ten (10) days' notice to the MGC, the Facility shall be inspected, at the Tribe's expense, by a qualified Tribal official who shall be responsible for fire and life safety protection at the Facility, or by an independent expert if no such official has been engaged, for purposes of certifying that the Facility meets the Tribe's Fire and Life Safety Code.

5.6.3. Within fifteen (15) days of the inspection, the Tribal official or independent expert shall provide the Tribe and the MGC with a report identifying any deficiency in fire or life safety protection at the Facility or any inability of the Tribe to meet reasonably expected fire suppression needs at the Facility. Within fifteen (15) days after provision of the report, the Tribe shall prepare a specific plan for correcting the deficiencies, whether in fire or life safety at the Facility or in the Tribe's ability to meet the reasonably expected fire suppression needs of the Facility, including those identified by the State's representative(s). The plan shall also contain a date, within thirty (30) days, by which all identified deficiencies will be corrected. A copy of the plan shall be provided to the MGC within three (3) days of its completion. Immediately upon correction of all deficiencies identified in the report, the Tribal official or independent expert shall certify in writing to the Tribe and to the MGC

that all previously identified deficiencies have been corrected. Any failure by the Tribe to follow the procedures set forth in this subpart

5.6.3 and to correct all deficiencies identified in the report within the timeframes identified in the plan may be deemed by the Commonwealth to be a violation of the Compact, and any failure by the Tribe to promptly correct a material deficiency that poses a serious or significant risk to the health or safety of any occupants shall be grounds for the Commonwealth to obtain a court order pursuant to subpart 21.8. to prohibit occupancy of the affected portion of the Facility until the deficiency is corrected.

H. Construction-Related Records

Summary: The MGC may inspect and copy, if it requests, documents related to facility construction including design and construction calculations, plans and specifications, and contract change orders.

Comments: Pursuant to 205 CMR 135.04 *Inspection of Construction and Related Records*, the MGC may request and inspect construction-related plans and materials from a gaming licensee at any time. Further, building officials are required to retain approved construction documents in accordance with 780 CMR 107.5 and G.L. c.66, § 8. This provision of the compact is similar in nature.

Compact Language:

5.7.1. The Tribe shall require each Person with whom it contracts for the construction, expansion or modification of any portion of the Facility to maintain for inspection and copying by the TGC, and the MGC if the MGC so requests, the Documents set forth below:

(a) the design and construction calculations, and plans and specifications that form the basis for the planned construction of the Facility (the "Facility Design and Building Plans");

(b) all contract change orders, and other Documents that are related to any material changes to a structural detail of the Facility Design and Building Plans or any other changes in the Facility Design and Building Plans; and

(c) all other contract change orders.

5.7.2. The Tribe shall maintain the Documents required by subpart 5.7.1 until the termination of this Compact or until expiration of twenty-four (24) months following permanent cessation of occupancy of the portion of the Facility to which

such plans and other documents apply, whichever last occurs.

I. Inspection Agent

Summary: The MGC may designate an agent to be given advance notice of each facility inspection. The agent(s) may accompany an inspector on an inspection and may identify deficient conditions.

Comments: Pursuant to 205 CMR 135.04 *Inspection of Construction and Related Records*, the MGC may physically inspect the progress of a gaming licensee's construction at any time. Further, the Compact essentially requires the Tribe to designate or retain an individual to serve as the role of building official. C.f. G.L. c.143, § 3. This section of the Compact provides the MGC with the ability to review the work of the Tribal building official.

Compact Language:

5.8. MGC Inspection Agent. The MGC may designate an agent or agents to be given reasonable advance notice by the Tribe of each inspection of the Facility required under Part 5 and such agent(s) may accompany the Tribally appointed inspector on any such inspection. The MGC agents may identify any condition that should reasonably preclude certification of the Facility pursuant to Part 5.

J. Issuance of Facility License

Summary: In addition to the certificate of occupancy for the building itself, the TGC must issue what is essentially an operation certificate for the gaming and other amenities. The TGC must provide the MGC within 10 days of the issuance of a license to operate or renewal with verification that an initial license has been granted and, thereafter, that a license has been reviewed and approved within ten days of the issuance or renewal.

Comments: Pursuant to 205 CMR 151 *Requirements for the Operation and Conduct of a Gaming Establishment*, a gaming establishment may not operate until it has obtained an operations certificate from the MGC certifying that it is in compliance with M.G.L. c. 23K and 205 CMR. As part of that review, the MGC must ensure that the gaming establishment has been issued a certificate of occupancy in accordance with the State Building Code.

With respect to the Compact, although the MGC is not responsible for providing an operations certificate, the Tribe is required to notify the MGC of any license issuance or renewal.

Compact Language:

5.9. Facility License. Separate and apart from its obligation to obtain a Certificate of Occupancy, the Facility shall be licensed by the TGC only upon certification by the Enterprise to the TGC that the Facility is in full compliance with the regulatory and other requirements of this Compact, the Gaming Ordinance, the Tribe's codes for building, fire, health and life safety, and IGRA.

5.9.1. The Facility license shall be reviewed and renewed by the TGC, if appropriate, every two years after its initial issuance. Verification that an initial license has been granted and, thereafter, that a license has been reviewed and approved, shall be provided by the TGC to the MGC within ten (10) days of its issuance or renewal.

IV. Licensing of Employees and Vendors

A. Background Investigations¹

Summary: The TGC may contract with the MGC to conduct background investigations in lieu of completing its own background investigation, or may rely of a license or registration previously issued to the applicant by the TGC or the MGC that is currently in effect.

Comments: The MGC's background investigation process with respect to gaming licensees is codified in 205 CMR 134 *Licensing and Registration of Employees, Vendors,*

¹ Although there are no provisions in the Compact regarding Qualifiers, Section 18.9 does require that the Tribe make various representations.

18.9. The parties acknowledge that the Tribe's right to engage in Gaming is as a Tribal government pursuant to the terms of this Compact and in compliance with IGRA, and not pursuant to a gaming license issued by the Commonwealth as that term is used under the Act. Section 91(d) of the Act requires that the compact "include a statement of the financial investment rights of any individual or entity which has made an investment to the tribe, its affiliates or predecessor applicants of the tribe for the purpose of securing a gaming license for that tribe under its name or any subsidiary or affiliate since 2005." In compliance therewith, the Tribe represents that since 2005 no individual or entity has made an investment to the Tribe, its affiliates or predecessor, for the purpose of securing a gaming license under its name or any subsidiary or affiliate. However, in keeping with the spirit of section 91(d), the Tribe discloses and represents that it has received financial assistance and funding because the Tribe is pursuing the conduct of gaming operations within the Commonwealth. Since 2005, the entities or individuals who have contributed or advanced funds to the Tribe, its Affiliates or any predecessor for such purposes are set forth in Appendix D, along with a description of the various instruments and agreements that reflect such assistance or funding, to which the Tribe or its Affiliates or predecessor is a party. The Tribe represents that it has received no other material third party financial assistance or investment connected to Gaming in the Commonwealth.

Junket Enterprises and Representatives, and Labor Organizations. The requirements under the Compact follow the same basic principles.

Compact Language:

7.11.1. Before issuing a license to or registering any Applicant under this Part, the TGC shall conduct, or cause to be conducted, all necessary background investigations to determine that the Applicant is qualified for a license or registration under the standards set forth in this Part 7.

7.11.2. The TGC shall not issue a license or registration until the TGC determines that the Applicant meets all of the qualifications under this Part 7.

7.11.3. In lieu of completing its own background investigation, the TGC may contract with the MGC for the conduct of some or all of its background investigations, or may rely on a license or registration previously issued to the Applicant by the TGC or the MGC that is currently in effect.

B. Exchange of Background Information

Summary: Applicants for licensure or registration must provide a release to the TGC and MGC to make available and provide for the exchange of background information, and the TGC and MGC must cooperate with each other in furnishing that information.

Comments: Pursuant to M.G.L. c. 23K, § 6, the IEB may obtain or provide applicant background information from or to law enforce entities or gaming authorities and other domestic, federal or foreign jurisdictions. Furthermore, it is not uncommon for the MGC to enter into MOUs with other jurisdictions for the sharing of investigatory materials. Finally, 205 CMR 134.07 *Forms* requires applicants for licensure or registration to sign a release form similar to that provided in the Compact.

Compact Language:

7.13. Releases. An Applicant for a license or registration shall be required to provide releases to the TGC and to the MGC to make available and to provide for the exchange of background information regarding the Applicant. The TGC and the MGC shall cooperate with each other in furnishing that information, unless doing so would violate any agreement either agency has with a source of the information other than the Applicant, would impair or impede a criminal investigation, would violate Commonwealth law, or would not assure that the information will remain confidential.

C. Notice of Intent to Issue License or Registration

Summary: Following a determination that an applicant is suitable for licensure or registration, the TGC must transmit a notice of intent to issue a license or registration, along with the supporting documentation outlined below, to the MGC, unless the MGC waives such transmittal.

Compact Language:

7.14.1. Notice to MGC. Once the TGC has received a completed application for a license or a registration, conducted a background investigation as required by subpart 7.11, and made a determination that the Applicant is suitable for a license or registration, the TGC shall transmit to the MGC, unless such transmittal is waived by the MGC, a notice of intent to license or register the Applicant.

7.14.2. Applicant Information. For Applicants subject to licensing, the TGC shall transmit, along with the notice of intent to license, all of the following information, where applicable, for the past ten (10) years:

- 1. the name of the Applicant, including all other names by which the Applicant has been known;*
- 2. the residential address of the Applicant;*
- 3. an employment history for the Applicant;*
- 4. fingerprints for the Applicant;*
- 5. any criminal and arrest records for the Applicant;*
- 6. any civil or criminal actions in which the Applicant has been involved together with any judgments, settlements or other outcomes of such matters;*
- 7. the Applicant's credit and banking history;*
- 8. a copy of all other application materials and information received by the TGC from the Applicant;*
- 9. a current photograph; and*
- 10. except to the extent waived by the MGC, such releases of information, waivers, and other completed and executed forms as have been obtained by the TGC.*

7.14.3. For Applicants subject to registration, the TGC shall transmit to the MGC unless waived by the MGC, along with the notice of intent to issue a registration:

- (a) a copy of all the application materials and information received by the TGC from the Applicant; and*
- (b) a release of information and waiver form, and any other completed and executed forms obtained by the TGC.*

7.15. Other Information and Documents. The TGC may require an Applicant to

provide such other information or Documents as it considers appropriate including, but not limited to, information or Documents related to the financial integrity of the Applicant, bank accounts and Records, bank references, business and personal income and disbursement schedules, tax returns and reports filed by government agencies, and business and personal accounting check Records and ledgers. Upon receipt, the TGC immediately shall forward to the MGC a copy of all information it receives under this subpart 7.15.

1. MGC Review/Objection

Summary: Within 30 days of receipt of the notice of intent, the MGC must notify the TGC of any objection to the issuance. The MGC may extend the time to notify the TGC for an additional 30 days if additional time is needed to complete a background investigation or evaluation. The TGC may not issue the license or registration unless and until the MGC withdraws its objection. Within 15 days of the MGC's notice of objection, the MGC and TGC must meet and attempt to resolve the objection(s) informally. If they are unable to do so within 15 days of the meeting, either party may invoke the dispute resolution process afforded by the Compact.

Comments: The MGC's background investigation process for gaming licensees is codified in 205 CMR 134 *Licensing and Registration of Employees, Vendors, Junket Enterprises and Representatives, and Labor Organizations*.

Compact Language:

7.16.1. Within thirty (30) days of its receipt of a notice of intent to issue a license or registration, the MGC must notify the TGC in writing of its objection, if any, to the issuance of the license or registration. If additional time is required by the MGC to complete any necessary background investigation or evaluation of the Applicant, the MGC may extend the time to notify the TGC for an additional thirty (30) days, unless the TGC agrees to a longer extension.

7.16.2. If the MGC timely objects to the issuance of a license or registration, the TGC may not issue the license or registration unless and until the MGC withdraws its objection. In the event the TGC does not receive timely notice of an objection by the MGC, the TGC may approve the license or registration application.

7.16.3. The TGC and the MGC shall work cooperatively to resolve any MGC objections to an application. Within fifteen (15) days of the MGC's notice of objection, the TGC and the MGC shall meet and attempt to

resolve their differences informally. If the parties are unable to resolve their differences within fifteen (15) days of the meeting, either party may invoke the dispute resolution process in Part 21.

2. Notice of Intent to Issue Temporary License

Summary: During the MGC review period, the TGC may issue a temporary license or registration and must provide to the MGC a notice of intent at least ten days before the issuance. If a temporary license or registration is issued, the TGC must include in the notice of intent any conditions required by the MGC to be imposed on the temporary license or registration.

Comments: Pursuant to 205 CMR 134.12 *Temporary Licenses*, the MGC may issue a temporary license to an applicant for a key gaming employee license, a gaming employee license, or a gaming vendor license if the applicant has filed a complete application, the issuance of a temporary license is necessary for the operation of the establishment and is not designed to circumvent the normal licensing procedures, and the license is reasonably likely to be issued upon completion of the investigation.

There are no standards in the Compact with respect to when the TGC may issue a temporary license.

Compact Language:

7.17. Temporary Licenses or Registrations. During the pendency of the MGC review under subpart 7.16, the TGC may issue a temporary license or temporary registration to an Applicant and impose specific conditions thereon. The TGC must provide to the MGC at least ten (10) days' advance notice of its intent to issue a temporary license or registration and if a temporary license or registration is issued, the TGC must include any and all conditions required by the MGC to be imposed on the temporary license or registration.

3. Issuance of License or Registration Following Arbitration

Summary: If the dispute resolution process fails to uphold the MGC's objection to the issuance of a license or registration, the TGC may issue a license or registration following entry of a final determination.

Compact Language:

7.22. Issuance of License or Registration Following Arbitration. The

TGC may, in its discretion, issue a license or registration to a Person following entry of a final order or other final determination in an arbitration proceeding conducted under the dispute resolution process in Part 21 which fails to uphold the objection of the MGC to the issuance of a license or registration by the TGC.

D. Notice of Issuance of Emergency Registration

Summary: The TGC may issue an emergency registration for non-gaming suppliers (vendors) under circumstances outlined below and must notify the MGC of the issuance of an emergency registration within 24 hours of the issuance.

Comments: The MGC does not have an emergency registration for non-gaming vendors. However, the MGC does have a temporary license provision for gaming vendors pursuant to 205 CMR 132.12 *Temporary Licenses* (discussed above). This provision of the Compact is made necessary by the ten-day notice that the TGC must provide to the MGC prior to issuing a temporary license.

Compact Language:

7.18. Emergency Registration. Notwithstanding the requirements of this Part 7, the TGC may issue an emergency registration to a Non-Gaming Supplier to permit the Non-Gaming Supplier to provide immediate emergency services to the Enterprise that are necessary to protect the health and safety of the employees and Patrons or the continued operation of the Facility. An emergency registration shall be valid for not more than ten (10) days and no emergency registration may be issued to the same Non-Gaming Supplier more than twice in any year. The TGC shall notify the MGC of the issuance of an emergency registration within twenty-four (24) hours of the issuance.

E. Denial, Suspension, and Revocation

Summary: An application for a license or registration *shall* be denied or license or registration *shall* be revoked if, among other things, the TGC or MGC determines that the application is incomplete or deficient; if the applicant is determined to be unsuitable or unqualified; if an applicant has been arrested for or convicted of a felony or crime involving fraud, embezzlement, theft, perjury, or a gaming-related offense. An applicant for a license or registration *may* be denied or registration *may* be revoked, suspended, or conditioned if the TGC or MGC determines that the applicant, licensee, or registrant has failed to comply with any provision of the Compact, has violated any provision of the Compact, or has engaged in any conduct that would constitute a finding a unsuitability; or for any other reason that the MGC deems necessary or appropriate.

Comments: For gaming licenses, M.G.L. c. 23K, § 12 includes the factors to be considered in determining suitability, and M.G.L. c. 23K, § 16 includes grounds for the denial of a license or registration. Additionally, 205 CMR 134.10 *Affirmative License Standards for the Licensing of Employees and Vendors of the Gaming Establishment* and 205 CMR 134.11 *Affirmative Registration Standards for the Registration of Employees and Vendors of the Gaming Establishment and Labor Organizations* codify the factors to be considered in licensing and registration decisions.

With respect to the Compact, there is an automatic denial or revocation if the MGC determines that an application is incomplete or deficient, as well as for an applicant found to be unsuitable. Although this section of the Compact does not explicitly state that the MGC may participate in a determination of unsuitability, Part 7.16.1 through 7.16.3 (discussed above) provide the MGC with authority to object to the TGC's notice of intent to license.

Additionally, there is an automatic disqualifier in the Compact for an applicant who has been arrested or convicted of a felony or crime involving fraud, embezzlement, theft, perjury, or a gaming-related offense. Pursuant to M.G.L. c. 23K, § 16, the Commission has a similar automatic disqualifier for key gaming employee applicants who have been convicted of a felony or other crime involving embezzlement, theft, fraud or perjury, or who have committed prior acts which, although not prosecuted or convicted, form a pattern of misconduct that make the applicant unsuitable. For license applicants other than key gaming employees, the same disqualifiers apply with the exception that for convictions occurring before the ten year period immediately preceding application for licensure, the MGC shall consider the applicant's rehabilitation and whether such conviction should not be an automatic disqualifier.

Compact Language:

7.19 Denial, Suspension and Revocation. An application for a license or registration shall be denied and a license or registration shall be revoked: (a) if at any time the TGC or the MGC determines that the application is incomplete or deficient; (b) if the Applicant, licensee, or registrant is determined to be unsuitable or otherwise unqualified for a license or registration; or (c) if an Applicant, licensee or registrant, or any officer, director, member, partner or Person with a financial interest of five percent (5%) or more of an Applicant, licensee or registrant, or any employee of an Applicant, licensee or registrant whose responsibilities include any activity related to the operation, maintenance or management of Compact Games, has been arrested for or convicted of a felony or crime involving fraud, embezzlement, theft, perjury or a Gaming-related offense. The TGC may deny, revoke, suspend or condition an application, license or registration if the TGC or the MGC determines that the Applicant, licensee or registrant has failed to comply with any provision of this

Compact pertaining to Applicants, licensees or registrants, as applicable; has violated any other provision of this Compact, or engaged in any conduct that would constitute a finding of unsuitability under this Part; or for any other reason the TGC or the MGC deems necessary or appropriate in order to protect the Enterprise and uphold the integrity of the Gaming Operation.

1. Notification by MGC

Summary: If the MGC determines that an application should be denied or a license or registration should be revoked, suspended, or conditioned, it must notify the TGC and provide a detailed explanation along with supporting evidence.

Comments: M.G.L. c. 23K, § 12 includes the factors to be considered in determining suitability for gaming licensees, and M.G.L. c. 23K, § 16 includes grounds for the denial of a license or registration. Additionally, 205 CMR 134.10 *Affirmative License Standards for the Licensing of Employees and Vendors of the Gaming Establishment* and 205 CMR 134.11 *Affirmative Registration Standards for the Registration of Employees and Vendors of the Gaming Establishment and Labor Organizations* codify the factors to be considered in licensing and registration decisions for gaming licensees.

Compact Language:

7.19.1. If the MGC makes a determination that an application should be denied or a license or registration revoked, suspended, or conditioned, it shall immediately notify the TGC and provide the TGC with a detailed explanation and evidence supporting its determination. The Applicant, licensee or registrant shall be notified by the TGC of the intent to deny, suspend or revoke the application, license or registration. All rights to notice and hearing shall be governed by applicable law, as to which the Applicant, licensee or registrant shall be notified by the TGC in writing along with the notice of an intent to deny, suspend or revoke the application, license or registration.

F. MGC Requests for Information

Summary: An applicant, licensee, or registration must provide assistance or information required by the TGC or MGC and must cooperate in any inquiry or investigation conducted by the TGC or MGC.

Comments: As with the Compact, pursuant to M.G.L. c. 23K, § 13, and 205 CMR 112 *Obligation to Cooperate*, an applicant for a gaming license or registration has a continuing

duty to provide assistance or information required by the MGC and to cooperate in any inquiry or investigation conducted by the MGC.

Compact Language:

7.20. Continuing Duty to Supply Information. An Applicant, licensee or registrant shall have the continuing duty to provide any assistance or information required by the TGC or the MGC and to cooperate in any inquiry or investigation conducted by the TGC or the MGC. Refusal to answer or produce information, evidence or testimony by an Applicant, licensee or registrant is grounds for the denial of the application or the suspension or revocation of the license or registration.

G. Withholding or Falsifying Application Information

Summary: If the TGC or MGC determines that an applicant, licensee, or registration has intentionally provided false or misleading information, the TGC shall deny the application or revoke the license or registration.

Comments: Similar to the Compact, pursuant to M.G.L. c. 23K, § 13, and 205 CMR 112 *Obligation to Cooperate*, if the MGC determines that an applicant or licensee has willfully provided false or misleading information, the applicant shall be ineligible for licensure and that licensee shall have its license conditioned, suspended, or revoked by the MGC.

Compact Language:

7.21. Withholding or Falsifying Application Information. No Applicant, licensee or registrant shall withhold material information from, or give false or misleading information to, the TGC or the MGC. If the TGC or MGC determines that an Applicant, licensee or registrant, or a close associate therewith, has intentionally provided false or misleading information, the TGC shall deny the application or revoke the license or registration.

H. No Recourse

Summary: No applicant, licensee, or registrant shall have any recourse against the TGC, the Tribe, the Enterprise, the Commonwealth or the MGC with respect to the denial, suspension, or revocation of a license or revocation.

Comments: Pursuant to M.G.L. c. 23K, § 30(g) and 205 CMR 134.09 *Investigation, Determination, and Appeals for Gaming Establishment Employees and Vendors*, the decision of the MGC on appeal is final and the applicant/licensee is not entitled to any further review. Under Section 7.19.1 of the Compact, the right to a hearing following a

denial, suspension, or revocation is governed by “applicable law.”

Compact Language:

7.23. No Recourse. Under no circumstances shall any Applicant, licensee or registrant have any right to seek recourse against the TGC, the Tribe or the Enterprise, including any Management Contractor associated therewith, or the Commonwealth, including the MGC, with respect to the denial, suspension or revocation of a license or registration. A license or registration is a privilege, not a property right.

I. Labor Relations

Summary: The Tribe must provide written notice to the MGC before commencing operations that it has adopted an ordinance identical to the Tribal Labor Relations Ordinance appended to the Compact, and must notify the MGC within ten days of any amendment to or repeal of that ordinance.

Comments: The Compact ensures that the Tribe’s employees will have adequate protection and recourse relative to labor activities (e.g., the Tribal Labor Relations Ordinance provides that, “It shall be an unfair labor practice for the Tribe and/or employer or their agents...to interfere with, restrain, or coerce Eligible Employees in the exercise of their rights granted herein.”).

Compact Language:

18.6. Labor Relations. The parties agree that an important objective of this Compact is to assure that employee rights are protected. Notwithstanding any other provision of this Compact, the Gaming Operation authorized by this Compact may only commence after the Tribe has adopted an ordinance identical to the Tribal Labor Relations Ordinance attached hereto as Appendix C and may only continue as long as the Tribe maintains in legal effect said Ordinance. The Tribe shall provide written notice to the MGC that it has adopted said Ordinance before commencing the Gaming Operation authorized by this Compact, and shall notify the MGC within ten (10) days of any amendment to or repeal of said Ordinance.

V. Gaming Operations

A. Facility Access and Right to Inspect

Summary: MGC agents shall have access to designated areas of the facility and MGC representatives shall have the right to inspect the facility, the gaming operation, and all records directly related to the gaming operation with certain specified conditions.

Comments: The MGC's right under the Compact with respect to inspection of the premises and records are similar to those rights afforded with respect to gaming licensees. For example, pursuant to M.G.L. c. 23K, § 4, the MGC has access to all equipment and supplies in a gaming establishment. Additionally, 205 CMR 138.16(3) provides that MGC employees and agents are authorized to access restricted areas in performance of their official duties. Additionally, pursuant to M.G.L. c. 23K and 205 CMR 142.02 *Administrative Monitoring Inspections*, the MGC may inspect the premises and records related to a gaming license.

Compact Language:

6.5.14. *providing that agents of the TGC and the MGC shall have access to designated areas of the Facility as provided for in this Compact and requiring the agents to report immediately to the TGC any suspected violation of law, this Compact, or the regulations of the TGC.*

6.6.2. *State Inspections. MGC representatives shall have the right to inspect the Facility, the Gaming Operation and all Records directly relating to the Gaming Operation, subject to the following conditions:*

(a) with respect to public areas of the Facility, at any time during which the Facility is open for business;

(b) with respect to private areas of the Facility not accessible to the public, at any time during which the Facility is open for business, upon notice and the presentation of proper identification to the TGC and to a designated representative of the Enterprise. The TGC, in its sole discretion, may require an employee of the TGC to accompany the MGC representative at all times that the representative is in the non-public areas of the Facility, but if the TGC imposes such a requirement, the TGC shall ensure that such employee is available at all times for such purpose; and

(c) with respect to inspection and copying of books and Records

relating to

the Gaming Operation activity, at any time with 24 hours prior notice between the hours of 9:00 a.m. and 5:00p.m. Monday through Friday, excluding official holidays. The reasonable costs of copying shall be borne by the MGC.

6.6.3. Inspection Protocol. Whenever an MGC representative enters the Facility for any inspection, he or she shall identify him or herself to security and if possible, contact the TGC Executive Director or his or her designated representative.

B. ID Badges

Summary: MGC representatives must wear ID badges issued by the TGC while at the facility.

Comments: Similar to the Compact, 205 CMR 138.15 *Internal Control Procedures for Access Badge System and Issuance of Temporary License Credentials, and Restricted Areas* requires MGC employees and representatives to carry their agency credentials while in the performance of their duties.

Compact Language:

6.6.7. Identification Badges. Identification badges issued by the TGC shall be worn by MGC representatives while at the Facility and shall be prominently displayed on the MGC representative's outer garment. Such identification badges will be of a distinctive color identifying its wearer as a representative of the MGC. Upon issuance of each badge, the name of its recipient, employment position and badge number shall immediately be forwarded to the MGC.

C. Internal Controls and Facility's Security System

Summary: The Tribe must have written internal controls that provide a level of control equaling or exceeding similar regulations promulgated by the MGC. The internal controls and a complete description of the facility must be forwarded to the MGC for review and comment at least 60 days before beginning operations. The TGC may grant variances from its controls, but process for granting variances must be consistent with the minimum standards for granting variance prescribed by the MGC and are subject to MGC review and comment.

Comments: The MGC's internal controls are codified at 205 CMR 138 *Uniform Standards of Accounting Procedures and Internal Controls*, with its variance procedure at

205 CMR 138.02(6)(a) *Licensee's System of Internal Controls*. The MGC's variance procedure allows a gaming licensee to request to incorporate a provision that is inconsistent with 205 CMR 138 upon petition to the MGC.

The National Indian Gaming Commission Minimum Internal Control Standards can be found [here](#).

Compact Language:

6.4. Specific Duties of the TGC. The TGC shall, through the exercise of its regulatory powers, assure that the Tribe and the Enterprise will:

6.4.7. require written internal controls that provide a level of control that equals or exceeds that set forth in the NIGC's Minimum Internal Control Standards in 25 C.P.R. Part 542 ("MICS") as published on June 27, 2002 and updated from time to time, or similar regulations promulgated by the MGC for general application to all Gaming activities within the Commonwealth. The internal controls and a complete description of the Facility's security systems shall be forwarded to the MGC for review and comment at least sixty (60) days prior to commencement of Compact Game operations. The TGC may grant a variance from the internal controls for technological and other advances that may not have been addressed in the MICS or the MGC's rules, or to meet extenuating financial circumstances in complying with such requirements. The TGC's process for the granting of variances shall be consistent with the minimum standards for the granting of variances as prescribed by the MGC or the NIGC, whichever standards are more rigorous, and provided the variance, and the reasons given therefore, are forwarded to the MGC for review and comment at least thirty (30) days prior to the effective date of the variance.

D. Electronic Access to Gaming Device Activity

Summary: The Compact requires the property to have a casino management system and to provide access to the system to the MGC. The MGC may access and download electronically the activity of each gaming device on a read-only basis upon entry of appropriate security codes, provided that the MGC must provide immediate notice to the TGC when it has accessed the system if its access is not automatically recorded.

Comments: The MGC incorporates the GLI-13 standards for online monitoring and controls into its regulations at 205 CMR 143.03 *On-line Monitoring and Control Systems (MCS) and Validation System*. The Compact seems to allow the MGC to require the facility's devices to be connected to the MGC's central monitoring system.

Compact Language:

6.5. Promulgation of Regulations. Without affecting the generality of the foregoing, the TGC shall promulgate and administer regulations for the implementation of this Compact:

6.5.8.providing that all Gaming Devices on the premises of the Facility are connected to a central computerized reporting and auditing system on the Facility premises, which shall collect and record on a continual basis the unaltered activity of each Gaming Device in use at the Facility, and require that the activity of each Gaming Device may be accessed and downloaded electronically by the MGC by a dedicated communications connection, on a "read-only" basis upon entry of appropriate security codes, provided that if the system does not automatically record each instance of MGC access, the MGC provides immediate notice to the TGC when it has accessed the system.

E. Patron Winnings

Summary: Before paying patron winnings in excess of \$600, the Enterprise must verify the patron's ID to determine whether the patron owes any past-due child support or tax liability, and shall then disburse the winnings according to certain procedures.

Comments: M.G.L. c. 23K, § 51(a) imposes the same requirement on gaming licensees. However, M.G.L. c. 62B, § 2, which was amended by Section 14 of Chapter 10 of the Acts of 2011, states that a gaming licensee paying winnings of \$1200 or more from a slot machine shall file a form W-2G reporting the winnings. In addition, M.G.L. c. 62B, § 2 reads:

Notwithstanding any general or special law to the contrary, any review or transmission of information required to be done by a gaming licensee relative to the disbursement of cash or prize winnings shall be administered consistent with this paragraph and based upon real-time information.

The effect of Section 51(a) and Section 2 read in combination is that the gaming licensees only need to verify whether a player has outstanding tax or child support obligations upon winning \$1200 rather than \$600. This updated amount is inconsistent with the Compact, which has a \$600 trigger.

Compact Language:

18.10. Before paying a Patron winnings in excess of \$600, the Enterprise will verify the Patron's identification and determine from information provided to it by the Commonwealth's child support enforcement agency ("IV-D agency") or

department of revenue whether the Patron owes past-due child support or any tax liability to the Commonwealth. Subsequent to statutory state and federal tax withholding, the Enterprise shall first disburse to the IV-D agency the full amount of the cash or prize or such portion of the cash or prize that satisfies the Patron's past-due child support obligation. If funds remain available after the disbursement to the IV-D agency or if no such obligation to the IV-D agency is owed, the Enterprise shall disburse to the department of revenue the full amount of the cash or prize or such portion of the cash prize that satisfies any past-due tax liability of the Patron. The Enterprise shall disburse to the Patron only that portion of the prize, if any, remaining after the Patron's past-due child support obligation or tax liability has been satisfied. Nothing in this Section 18.10 shall operate to waive the Tribe's sovereign immunity from a suit by a Patron whose winnings are paid to the IV-D agency or to the department of revenue as required by this Subpart 18.10.

F. Office Space

Summary: The MGC is entitled to office space at the facility if so requested.

Comments: As with the Compact, M.G.L. c. 23K, § 21(11) requires the gaming licensee to provide the MGC with office space at the facility.

Compact Language:

6.6.5. Office Space. The Enterprise shall provide the MGC with access to reasonable office space for the purposes of its regulatory activities if requested to do so by the MGC.

G. Complimentary Distribution Program

Summary: The TGC must provide the MGC with a copy of its approval of the facility's complimentary distribution program.

Comments: Consistent with the Compact, pursuant to M.G.L. c. 23K, § 26(c) and Section 107 of Chapter 194 of the Acts of 2011, a gaming licensee may distribute complimentary alcohol to patrons for on-premises consumption in the gaming area only. M.G.L. c. 23K, § 28 governs a gaming licensee's ability to provide other complimentary items of value to patrons, including lodging, food, beverage, transportation, and entertainment. 205 CMR 138.13 *Complimentary Services or Items and Promotional Gaming Credits* requires a gaming licensee to have a system of internal controls which includes a detailed complimentary distribution program consistent with M.G.L. c. 23K, § 28. See also 205 CMR 136 *Sale and Distribution of Alcoholic Beverages at Gaming Establishments*.

Compact Language:

6.5. Promulgation of Regulations. Without affecting the generality of the foregoing, the TGC shall promulgate and administer regulations for the implementation of this Compact:

6.5.10. prohibiting the Gaming Operation from providing complimentary alcoholic beverages except in the Gaming Area, or any complimentary services, gifts, cash or other items of value to any Patron unless the complimentary item consists of a room, food, beverage, transportation or entertainment expenses provided directly to the Patron and the Patron's guests by the Enterprise, or consists of coins, tokens, cash or other items or services provided through a complimentary distribution program which shall be filed with and approved by the TGC upon the implementation of the program, which approval shall be immediately transmitted to the MGC.

H. Persons Barred from the Facility

Summary: The TGC must share with the MGC a list of persons barred from the facility because of their criminal histories, associations, reputation, or habits.

Comments: This provision of the Compact is similar to the involuntary exclusion list overseen by the MGC. Pursuant to M.G.L. c. 23K, § 45, and 205 CMR 152 *Individuals Excluded from a Gaming Establishment*, the MGC establishes and maintains a list of excluded persons.

Compact Language:

18.3. Persons Barred From the Facility. The TGC shall establish, maintain and share with the MGC a list of persons barred from the Facility because their criminal histories, associations, reputation or habits pose a threat to the integrity of Gaming or enhance the chances of unsuitable, unfair or illegal activities or pose a threat to the safety of the Patrons or employees. The TGC shall exclude persons on such a list from entry into the Facility. The TGC shall also exclude persons engaging in disorderly conduct or other conduct jeopardizing public safety, and those persons who have either placed themselves on a self-exclusion list or who have been placed on an exclusion list in accordance with the Enterprise's policies.

I. Patron Disputes

Summary: The TGC shall consult with the MGC in establishing procedures for the resolution of patron gaming disputes.

Comments: The MGC does not have procedures regarding patron gaming disputes.

Compact Language:

19.1. Patron Disputes. The TGC shall, after consultation with the MGC, establish procedures for the resolution of Patron disputes involving the play of Compact Games.

VI. Gaming Activity

A. Compact Game Reports

Summary: The TGC must notify the MGC monthly of the number and type of compact games which are anticipated to be played in the following 30 days.

Comments: Pursuant to 205 CMR 145.01 *Possession of Slot Machines*, a gaming licensee must file a list of slot machines and locations with the MGC prior to commencing gaming and every 30 days thereafter. This is similar to the Compact requirement of monthly notification. With respect to table games, the MGC has not yet written the internal controls requirements, though they will likely have a similar notice provision.

Compact Language:

4.1.1. Compact Game Reports. Prior to commencing the operation of any Compact Games in the Facility, the TGC shall notify the MGC of the number and type of Compact Games which are anticipated to be played over the next thirty (30) days, and thereafter report to the MGC by the 5th day of each month any changes anticipated for the coming month, and any changes made in the previous month which were not on the report covering anticipated games for the previous month.

B. New Class III Gaming Activity

Summary: The TGC must provide to the MGC at least 45 days advance written notice of its intention to offer any new class III gaming activity, a description of the gaming activity, the regulations governing the gaming activity, and the manner in which the gaming activity will be regulated under the Compact. The MGC shall notify the TGC of any objection within 30 days of its receipt of notice. If the MGC objects, the Tribe may not conduct the proposed gaming activity unless and until the MGC withdraws its objection, approves the new gaming activity, or is unsuccessful in a completed arbitration pursuant to the agreed-upon dispute resolution process. Within 15 days of the MGC's

objection, the parties must meet and attempt to resolve their differences. If they are unable to do so within 30 days of their initial meeting, either party may invoke the dispute resolution process.

Comments: The MGC has not yet developed its table game regulations, though they are likely to contain some similar form of notice and approval requirement for new games.

Compact Language:

4.4. New Class III Gaming Activity. Except for Internet Gaming described in subpart 4.3.2(a) or Lottery Games the Tribe agrees it will not offer under subpart 4.3.3, any new class III gaming activity authorized by the Commonwealth to be conducted by any Category 1 Licensee for any purpose within the Commonwealth after the Effective Date of this Compact may be offered by the Tribe, provided that before offering any such Gaming activity the TGC shall provide at least forty-five (45) days advance written notice to the MGC of its intention to offer such class III gaming activity, and a description of the Gaming activity, the regulations governing the Gaming activity, and the manner in which the Gaming activity will be regulated under this Compact.

4.4.1. Within thirty (30) days of its receipt of a notice under this subpart 4.4, the MGC shall notify the TGC in writing of its objection, if any, to the proposed new Gaming activity or the manner in which the TGC proposes to regulate it.

4.4.2. If the MGC objects, the Tribe may not conduct the proposed Gaming activity unless and until the MGC withdraws its objection, approves the new Gaming activity, or does not prevail in a completed arbitration pursuant to the dispute resolution process set forth in Part 21. In the event the Tribe does not receive timely notice under subpart 4.4.1 of an objection by the MGC, such new Gaming activity shall be deemed approved.

4.4.3. The Tribe and the MGC shall work cooperatively to resolve any MGC objections to the proposed additional Gaming activity and shall be guided by IGRA in any such discussions and resolution. Within fifteen (15) days of an MGC objection, the TGC and the MGC shall meet and attempt to resolve their differences informally. If the parties are unable to resolve their differences within thirty (30) days of their initial meeting, either party may invoke the dispute resolution process set forth in Part 21.

C. Certification of Game Software

Summary: All electronic gaming devices must be certified by an independent testing lab registered with the MGC prior to use.

Comments: For gaming licensees, 205 CMR 143 *Gaming Devices and Electronic Equipment* and 205 CMR 144 *Approval of Slot Machines and Electronic Gaming Equipment and Testing Laboratories* govern the standards and certification of gaming devices, which by and large adopt the relevant GLI standards. The Compact envisions a similar testing process to that required for gaming licensees.

Compact Language:

4.6. *Authorizations Specific to Gaming Devices. No Gaming Device may be offered for play by the Enterprise unless:*

4.6.2. *the software for the game authorized for play on the Gaming Device has been tested, approved and certified by a Gaming Test Laboratory as operating in accordance with any published standards for Gaming Devices by the NIGC, the published standards of Gaming Laboratories International, Inc. (known as GLI-11 and GLI-12), or such other comparable or more rigorous technical standards as the MGC and TGC shall agree upon, which agreement shall not be unreasonably withheld, and a copy of the certification is provided to the MGC;*²

VII. Financial Rights and Responsibilities

A. Annual Oversight Assessment

Summary: The Tribe must reimburse the MGC for costs incurred in carrying out its regulatory functions under the Compact, and must pay its share of the MGC's actual costs of operation (based on estimates by the MGC derived from the actual costs incurred in prior years) directly related to the MGC's responsibilities under the Compact in accordance with the procedures set out in the Compact. No funds under this section will be due until 120 days after the Tribal land is taken into trust, after which time the Tribe must pay the MGC an amount estimated by the MGC to be necessary to cover its Compact responsibilities for the remainder of the first fiscal year.

Comments: Pursuant to M.G.L. c. 23K, § 56, a gaming licensee is responsible annually for costs incurred by the MGC necessary to maintain regulatory control over the gaming establishment.

² 3.24. "Gaming Test Laboratory" means an independent gaming test laboratory recognized in the gaming industry as competent and qualified to conduct scientific tests and evaluations of Gaming Devices.

Under the Compact, the Tribe is responsible for reimbursing the MGC for costs that the Commonwealth incurs in carrying out the regulatory functions authorized by the Compact, but is only required to pay its share of the MGC's actual costs of operation which *directly relate* to the MGC's responsibilities under the Compact. Pursuant to the Compact, funds can't be due to the MGC until 120 days after the land was taken into trust,³ which is January 16, 2016. After that date, the Tribe may be required to pay an amount estimated by the MGC to be necessary to cover its Compact responsibilities for the remainder of the first fiscal year.

Compact Language:

8.1. The Tribe shall reimburse the MGC for the costs the Commonwealth incurs in carrying out the regulatory functions authorized by the terms of this Compact. The Tribe will pay its share of the MGC's actual costs of operation which directly relate to the MGC's responsibilities under this Compact. The costs shall be based on estimates by the MGC derived from the actual costs incurred in prior years and shall be included in a budget the MGC shall provide to the TGC for its approval, which approval shall not be unreasonably withheld or delayed. Payments for such costs shall be made to the MGC in advance and prior to the beginning of each fiscal year, or on such other payment schedule as the MGC and the Tribe shall agree. At the close of each fiscal year, the MGC shall reconcile the payments made by the Tribe under this Part with the actual costs incurred in carrying out its regulatory responsibilities under this Compact. Within thirty (30) days of the close of the fiscal year, the MGC shall either refund to the Tribe any amount paid in excess of the actual costs or bill the Tribe with a detailed invoice for the actual costs incurred in excess of the amounts paid, which amount due shall be paid by the Tribe as an addition to the next quarterly payment made under Part 9. At the Tribe's expense, the Tribe shall have the right to conduct a reasonable audit with respect to such costs.

8.2 Notwithstanding subpart 8.1, no funds shall be due under subpart 8.1 until one hundred twenty (120) days after the date the land comprising the Approved Gaming Site is accepted into trust by the United States as eligible for the conduct of Gaming under IGRA, on which date the Tribe shall pay to the MGC an amount estimated by the MGC to be necessary to cover the MGC's oversight responsibilities for the remaining portion of that first fiscal year of regulatory activity. The MGC estimate required under this subpart shall be included in a budget the MGC shall provide to the TGC for its approval, which approval shall not be unreasonably withheld or delayed.

³ September 18, 2015.

B. Quarterly Payments of Gross Gaming Revenue

Summary: The Tribe must pay to the MGC on a quarterly basis an amount of its gross gaming revenue per day at the applicable percentage determined by the following conditions (based on whether the Tribe has exclusivity in the Region):

Statewide Exclusivity: 21%

Region C Exclusivity only for Category 1: 17%

Existence of Category 2 Gaming Establishment in Region C: 2%

Existence of Category 1 Gaming Establishment in Region C: 0%

If a Category 1 License is awarded in Region C, whether it be before⁴ or after⁵ the opening of a Tribal casino, the Tribe will not have to pay any of its gross gaming revenue to the MGC.

Comments: Pursuant to M.G.L. c. 23K, § 55, a gaming licensee is responsible for daily tax assessments as opposed to quarterly under the Compact.

If a license is awarded in Region C and the Tribe's payment is reduced to 0%, the Tribe will still be responsible for reimbursing the MGC for costs incurred in performing its regulatory functions under the Compact (Part 8, discussed above).

Compact Language:

9.2.1. The Tribe shall pay an amount of its Gross Gaming Revenue per day (the "Allocation Percentage") on a quarterly basis to the MGC at the applicable percentage determined by the conditions set forth in subparts 9.2.1.1-4:

9.2.1.1. Statewide Exclusivity. If no Category 1 Licensed gaming establishment has ever commenced operations anywhere in the Commonwealth, the Allocation Percentage shall be twenty-one percent (21%).

9.2.1.2. Region C Exclusivity Only for Category 1. If a Category 1 Licensed gaming establishment has commenced operations in either Region A or Region B, the Allocation Percentage shall be seventeen percent (17%).

9.2.1.3. Effect of Category 2 Gaming Establishment in Region C. If a Category 2 Licensed gaming establishment has commenced operations in Region C, the Allocation Percentage in the applicable subpart 9.2.1.1 or 9.2.1.2 shall be reduced by two percent (2%).

⁴ Part 9.2.1.

⁵ Part 9.2.4.

9.2.1.4. Effect of Category 1 Gaming Establishment in Region C. If a Category 1 Licensed gaming establishment has commenced operations in Region C, the Allocation Percentage shall be zero percent (0%) so long as the only forms of Wager games offered by the Tribe on the Approved Gaming Site are:

- (a) Compact Games;*
- (b) Internet Gaming for games that are not subject to regulation under IGRA as class III games; and*
- (c) class II games under IGRA (other than Internet Gaming) not played using an electronic aid that includes a video spinning reel and/or mechanical spinning reel display.*

9.2.4. If the Tribe's exclusive right to operate a casino within Region C is abrogated by the lawful issuance of a Category 1 License or any other commercial gaming license (other than a Category 2 License) for the operation of a gaming establishment in Region C, then upon commencement of operations under such license in Region C the Tribe can elect to either: (a) cease operations of its casino within sixty (60) days and terminate this Compact at the end of such period, in which case the Tribe will lose its right to conduct class III gaming within Region C, provided that payment of the Allocation shall be made for any Gaming conducted within the Facility; or (b) continue under this Compact but reduce the Allocation to zero percent (0%) of Gross Gaming Revenues so long as the conditions set forth in subpart 9.2.1.4 are met. If the Commonwealth lawfully issues a Category 2 License to operate a slot parlor in Region C, then upon commencement of operations of such Category 2 slot parlor in Region C the Allocation shall be reduced as set forth in subpart 9.2.1.3. Notwithstanding the other provisions in Subpart 9.2, if a Category 1 or 2 license is issued to the Enterprise, or any affiliate thereof, no corresponding reduction in Allocation shall be made because of the issuance of such a license or the conduct of gaming thereunder. Nothing within Subpart 9.2 shall relieve the Tribe of its obligation to pay the regulatory costs and fees required under Part 8.

C. Gross Gaming Revenue Calculation

Summary: The amount of quarterly allocation payments shall be based on the gross gaming revenues generated during the immediately preceding quarter and shall be due by the 30th day following the end of each calendar quarter. The quarterly allocation payments must be accompanied by a certification of the gross gaming revenue calculation reflecting the total of all gross gaming revenues during the quarter and the total amount of the allocations due.

Comments: “Gross Gaming Revenue” is defined in the Compact (below). 205 CMR 140 *Gross Gaming Revenue Tax Remittance and Reporting* governs calculations of gross gaming revenue for gaming licensees. The calculations are similar in principal to those contained in the MGC regulatory calculation, but contain far less detail. For example, the Compact does not discuss the treatment of uncollectible credit.

Compact Language:

9.3. *The amount of quarterly Allocation payments shall be based on the Gross Gaming Revenues generated during the immediately preceding quarter, due by the thirtieth (30th) day following the end of each calendar quarter (i.e., by April 30 for the first quarter, July 30 for the second quarter, October 30 for the third quarter, and January 30 for the fourth quarter of the preceding year). If Gaming in the Facility commences during a calendar quarter, the first payment shall be made within thirty (30) days of the end of the first full quarter of such operations and shall cover the period from the commencement of operations to the end of the first full calendar quarter.*

9.4. *Any quarterly Allocation payment not paid on or before the date on which it is due shall be deemed overdue. If any quarterly Allocation payment is overdue, the Tribe shall pay, in addition to the overdue quarterly payment, all interest accrued thereon from the date such quarterly payment was due at the rate of one percent (1.0%) per month or the maximum rate permitted by law for delinquent payments owed to the Commonwealth, whichever is less. Entitlement to such interest shall be in addition to any other remedies the Commonwealth may have under this Compact.*

9.5. *The quarterly Allocation payments shall be accompanied by a certification of the Gross Gaming Revenue calculation prepared by an authorized representative of the Tribe reflecting the total of all Gross Gaming Revenues during the quarter and the total amount of the Allocation amounts due and payable. A copy of the certification shall also be sent to the MGC.*

3.28. *"Gross Gaming Revenue" means the total of all sums generated from the operation of Compact Games, less the total paid out as winnings to Patrons from the operation of such games. Gross Gaming Revenue shall include all sums generated from the operation of Internet Gaming. Gross Gaming Revenue shall not include as sums generated the cash equivalent value of any merchandise or thing of value included in a jackpot or payout or any amount received by the Gaming Operation from credit extended or collected by the Enterprise for purposes other than the operation of Gambling games. Gross Gaming Revenue shall also not include sums generated by a Patron's wagering*

of any promotional gaming credit issued by the Gaming Operation.

D. Tribe in Arrears

Summary: If the Tribe is in arrears of any allocation payment, the MGC must give the Tribe at least 15 days written notice to cure. If the Tribe fails to pay within 30 days of the receipt of notice to cure, the Compact may terminate (subject to dispute resolution procedures discussed below).

Comments: While the MGC does not have a comparable provision for providing gaming licensees with notice to cure a late payment, M.G.L. c. 23K, § 37(g) provides that willful failure to pay or evasion of a license fee or tax imposed by Chapter 23K will be punished by possible imprisonment and/or fine.

Compact Language:

9.6. The Tribe shall not conduct any Gaming at the Facility, directly or indirectly, if the Tribe is in arrears in any Allocation payment due under this Part for more than thirty (30) days and the MGC or the Governor has given the Tribe at least fifteen (15) days' written notice to cure such arrearage, and regardless of whether or not a dispute is pending over whether or not such Allocation payment is due. It is the intent of the parties that disputes over such payments shall not cause delays in the payments while a dispute is pending. Such disputes shall not be grounds for seeking or obtaining any equitable relief from the requirement that Gaming be suspended while the amount in such notice remains unpaid and uncured.

25.1 Subject to Part 24, this Compact shall remain in effect until such time as:

25.1.5. The Tribe fails to comply with its payment obligations to the Commonwealth under Part 9, and persists in such failure for a period of thirty (30) days after receipt of a written notice from the Commonwealth that specifies the amount due and the provision of this Compact under which such payment obligation is required. The Tribe may dispute the payment obligation or the amount of the obligation by invoking the dispute resolution process in Part 21. If the Tribe invokes the dispute resolution process in Part 21, the Tribe shall simultaneously place into escrow, in a financial institution that is not affiliated with either the Tribe or the Commonwealth, a sum of money equal to the amount claimed due by the Commonwealth. Within thirty (30) days of the entry of a final, non-appealable order by the arbitrators or by a court of competent jurisdiction, this Compact shall terminate and the Tribe shall cease the operation of Gaming governed by this Compact, unless the Tribe has paid

the full amount due, if any, as determined by the arbitrators or the Court or made arrangements satisfactory to the Commonwealth to make the payment. If the Tribe fails to make the payment to the Commonwealth, or fails to make an arrangement with the Commonwealth for payment, the Compact shall terminate and the Tribe shall cease the operation of all Gaming governed by this Compact.

E. Tax Agreement

Summary: The Tribe and the Commonwealth agree to enter into discussions for an inter-governmental agreement addressing measures the Tribe will use for the imposition, accounting, collection and remission to the Commonwealth of state taxes applicable to activities, goods, and services directly related to gaming and take place at the facility.

Compact Language:

18.5.1. Tax Agreement. Given that it is in their mutual benefit, the Tribe and the Commonwealth agree to enter into separate, good faith discussions for an inter- governmental agreement which addresses measures the Tribe will use for the imposition, accounting, collection and remission to the Commonwealth of state taxes that, pursuant to federal law, are applicable to activities and goods and services which are directly related to Gaming and take place upon, or are provided, received or consumed upon, the Approved Gaming Site. Such an inter-governmental agreement shall adhere to all federal statutory and case law pertaining to the application of state taxes on Indian Lands, and shall establish a mutually acceptable formula for the apportionment, between the Tribe and the Commonwealth, of the taxes collected under such agreement. Nothing herein is intended to authorize the imposition of any state or local tax on the Tribe or a Tribal member that is not otherwise authorized under federal law.

F. Administration of Mashpee Tribal Gaming Fund

Summary: The MGC is responsible for administration of the Mashpee Tribal Gaming Fund, into which all payments made under the Compact shall be paid. Within three business days of its receipt of the allocation, the MGC must transfer the monies in the Mashpee Tribal Gaming Fund to the funds identified in M.G.L. c. 23K, s. 59(2) in the appropriate proportions.

Comments: Pursuant to M.G.L. c. 23K, § 59, the MGC is responsible for administration of the Gaming Control Fund, which receives all tax on gross gaming revenues paid by gaming licensees. Section 59 identifies the funds to which monies are to be transferred and the appropriate proportions, and the Compact follows the disbursements and

proportions identified therein.

Compact Language:

9.2.2. *In order to distribute the Allocation in a manner that is consistent with the intent of the parties under this Compact, IGRA, and applicable law, there shall be set up on the books of the Commonwealth a "Mashpee Tribal Gaming Fund," into which all payments under this Compact shall be paid and which shall be administered by the MGC.*

9.2.3. *Within three (3) business days of its receipt of the Allocation, the MGC shall transfer the monies in the Mashpee Tribal Gaming Fund to the funds identified in Massachusetts General Laws, Chapter 23K, Section 59(2), and in the proportions set forth therein. An amount equal to fifty percent (50%) of the monies transferred under this subpart 9.2.3 to the Transportation Infrastructure and Development Fund established in Massachusetts General Laws Chapter 23K, Section 62 shall be segregated and utilized for the purpose of transportation and related infrastructure projects in Region C, including but not limited to, transit expansion and maintenance, other than those infrastructure improvements and traffic mitigation measures identified in subpart 5.4.5 and required to be completed by the Tribe pursuant to subpart 5.4.11.*

G. Administration of Public Health Trust Fund

Summary: The Tribe will contribute at least \$1.5 million annually to the Public Health Trust Fund, which the MGC co-administers.

Comments: The Public Health Trust Fund is established pursuant to M.G.L. c. 23K, § 58, and the MGC has signed an MOU with the Executive Office of Health and Human Services related to the co-administration of the Fund. This requirement is likely designed to parallel the provision in G.L. c.23K, §56(e) that requires the MGC to “assess an annual fee of not less than \$5,000,000 in proportional shares against each gaming licensee in proportion to the number of gaming positions at each gaming establishment”

Compact Language:

14.1. *The Tribe acknowledges that the conduct of Gaming activities on its Tribal land may adversely impact individuals who suffer from problem gambling. The Tribe is committed to supporting problem gambling education, awareness and treatment for such individuals. The Tribe agrees to contribute an amount that is no less than \$1.5 million annually to the Public Trust Health Fund established under Massachusetts General Laws chapter 23K, section 58, as added by section 16 of the Act. The annual payments agreed to under this*

Part 14 shall commence on the fifteenth (15th) day of the month following the one-year anniversary of the date the Facility opens and shall be paid on the same date each year thereafter for the duration of this Compact.

H. Surrounding Communities

Summary: The MGC shall expend monies from the Community Mitigation Fund to assist surrounding communities to the facility in offsetting costs related to the construction and operation of the facility.

Comments: “Surrounding Communities” is defined by the Compact (below). In contrast to the Compact, M.G.L. c. 23K, § 15(9) and 205 CMR 125.01(3) *Determination of Surrounding Communities and Execution of Mitigation Agreements* require a gaming licensee to submit negotiated agreements with surrounding communities as a prerequisite to licensure and establish guidelines for determining surrounding communities. Here, there is no process requiring the Tribe to negotiate such agreements or for the MGC or others to determine whether a community is a surrounding community.

Compact Language:

12.2. Surrounding Communities. The funding to mitigate impacts with respect to Surrounding Communities shall be in accordance with section 61 of Massachusetts General Laws chapter 23K, as added by section 16 of the Act. Pursuant to section 61 the MGC will expend monies from its Community Mitigation Fund to assist communities to offset costs related to the construction and operation of a gaming establishment including, but not limited to, the impacts on communities and water and sewer districts in the vicinity of the Facility, local and regional education, transportation, infrastructure, housing, environmental issues and public safety, including the office of the county district attorney, police, fire and emergency services. The MGC may, at its discretion, distribute funds to a governmental entity or district other than a single municipality in order to implement a mitigation measure that affects more than one (1) municipality. In addition, in conjunction with its application to the Secretary of the Interior to have the Approved Gaming Site accepted into trust for gaming purposes, and in accordance with its obligations under the NEPA, the Tribe is required to commission and pay for environmental impact studies prior to the Approved Gaming Site being accepted into trust, a process that necessitates public hearings and other obligations to take into account the input and views of surrounding communities. This process will give communities in the vicinity an opportunity, to the extent consistent with federal law, to shape the scope and content of the public studies made on the impacts on the human environment, which NEPA broadly defines to include among

other things education, housing, public safety, infrastructure, transportation and traffic, air, land, water, wildlife and all other social and physical considerations, and the alternative proposals and costs to mitigate all impacts that are the reasonably foreseeable consequences of any proposed decision to take land in trust for the purpose of Gaming conducted under this Compact. Under the Act, Region C may establish a local community mitigation advisory committee, which shall include not fewer than six (6) members, one of whom shall be appointed by each of the Host and Surrounding Communities, and one of whom shall be appointed by each regional planning agency to which at least one of the Host or Surrounding Communities belongs. At least one (1) member of that committee shall be appointed by the Tribe, and the Tribal appointee shall also be eligible to serve as a representative to the subcommittee on community mitigation formed under chapter 23K, section 68(b), as added by section 16 of the Act. The local community mitigation advisory committee may provide information to and develop recommendations for the subcommittee on community mitigation of the impact of the Facility on the Host Community and Surrounding Communities. The rules and processes governing the committee and subcommittee, including those providing guidance as to which communities shall be eligible for benefits and which applications for such benefits shall be granted, shall be as governed by the Act.⁶

3.46. "Surrounding Communities" means municipalities in proximity to a Host Community that experience, or are likely to experience, impacts from the development or operation of the Facility, including municipalities with transportation infrastructure providing ready access to the Facility.

⁶ Section 61. (a) There shall be established and set up on the books of the commonwealth a separate fund to be known as the Community Mitigation Fund. The fund shall consist of monies transferred under section 59 and all other monies credited or transferred to the fund from any other fund or source.

(b) The commission shall administer the fund and, without further appropriation, shall expend monies in the fund to assist the host community and surrounding communities in offsetting costs related to the construction and operation of a gaming establishment including, but not limited to, communities and water and sewer districts in the vicinity of a gaming establishment, local and regional education, transportation, infrastructure, housing, environmental issues and public safety, including the office of the county district attorney, police, fire and emergency services. The commission may, at its discretion, distribute funds to a governmental entity or district other than a single municipality in order to implement a mitigation measure that affects more than 1 municipality; provided, however, that such entity or district shall submit a written request for funding in the same manner as a municipality would be required to submit such a request under subsection (c).

(c) Parties requesting appropriations from the fund shall submit a written request for funding to the commission before February 1 of each year. The commission may hold a public hearing in the region of a gaming establishment to provide parties with the opportunity to provide further information about their request for funds and shall distribute funds to requesting parties based on demonstrated need.

I. Audits

1. Copies of Audit Reports

Summary: The Tribe must provide annually to the MGC a copy of the audited financial statement at least 120 days following the end of the accounting period under review. The TGC must also provide the MGC with copies of all audit reports within 120 days of receipt of the audit. MGC auditors shall have access to the facility and to all records related to the gaming operation during ordinary hours of operation. The Tribe shall provide secure storage in the facility for the MGC to store any copies of enterprise records that are the subject of MGC review.

Comments: Pursuant to M.G.L. c. 23K, § 5(a)(8) and 520 CMR 139.07 *Annual Audit and Other Reports*, a gaming licensee must annually conduct an audit of its financial statements relative to the operation of its gaming establishment and must file the annual audit and associated statements with the MGC within three months following the end of the quarter following the end of the licensee's fiscal year. In addition, pursuant to M.G.L. c. 23K, § 65 and 205 CMR 139.09 *Audit of Gaming Licensee Operations by Commission*, the MGC must audit as often as it determines necessary, but not less than annually, the accounts, programs, activities, and functions of gaming licensees.

Compact Language:

6.5. *Promulgation of Regulations. Without affecting the generality of the foregoing, the TGC shall promulgate and administer regulations for the implementation of this Compact:*

6.5.13. *requiring the Enterprise to obtain, at least annually, a certified audit covering all financial activities of the Enterprise conducted by an independent certified public accountant licensed by the Commonwealth. The audit shall be prepared in accordance with generally accepted accounting principles and auditing standards and shall specify the total amount wagered in the Facility for purposes of calculating Gross Gaming Revenue. The certified audit report shall be submitted to the TGC and the MGC within one hundred twenty (120) days of the close of the Enterprise's fiscal year. Such documents shall be subject to the confidentiality provisions of Part 11. The Tribe will maintain a copy of the certified audit report for not less than five (5) years.*

16.1. *The Tribe shall cause, at its own expense, the annual financial statements of its Gaming Operation to be audited by an independent certified public accountant in accordance with generally accepted*

auditing principles as applied to audits for the gaming industry. A copy of the current audited financial statement for the Gaming Operation shall be submitted on an annual basis to the MGC no later than one hundred twenty (120) days following the end of the accounting period under review. The TGC shall also transmit a copy of all audit reports to the MGC within twenty (20) days of receipt of the audit by the TGC, and shall also provide a copy of the audit to other Commonwealth agencies upon request. Auditors employed by the MGC shall have access to the Facility and to all Records of the Enterprise related to the Gaming Operation during ordinary hours of operation in accordance with Part 6. All Records of the Enterprise and any MGC Records related to the Enterprise shall be deemed confidential and proprietary financial information pursuant to Part 11 and shall be protected from public disclosure by the MGC to the extent permitted by law. The Tribe shall provide secure storage in the Facility for the MGC to store any copies of Enterprise Records that are the subject of MGC review.

2. Copy of Audit Report of Independent Auditor

Summary: The TGC must provide the MGC with a copy of the audit report of the independent auditor. The MGC may review, at the TGC offices, the draft audit report and supporting documentation.

Comments: 205 CMR 139 *Continuing Disclosure and Reporting Obligations of Gaming Licensee* governs all audit requirements of a gaming licensee.

Compact Language:

16.3. The TGC shall provide to the MGC a copy of the audit report of the independent auditor at the same time the final audit is supplied to the NIGC under IGRA. Prior to issuance of the final audit report, the MGC may review, at the TGC offices, the draft audit report, engagement letter, management's representation letter, lawyer's contingency letter and other work-papers and make copies as the MGC deems necessary.

3. MGC or Commonwealth Audit of Revenue Payments

Summary: The MGC may cause, at its own expense, an audit to be made of the quarterly allocation payment report. The Tribe is responsible for payment for differences in the quarterly allocation payment reports according to the conditions below.

Comments: A similar provision applicable to gaming licensees governing the verification of gross gaming revenues is included in the MGC regulations at 205 CMR 140.05: *Examination of Accounts and Records for Verification of Gross Gaming Revenues*.

Compact Language:

16.4. The MGC or other Commonwealth agency may cause at its own expense an audit to be made by or on behalf of the Commonwealth of the quarterly Allocation payment report submitted pursuant to subpart 9.5. The audit shall be conducted by a certified public accountant in accordance with generally accepted accounting principles. If the audit finds that there is a material understatement in the quarterly Allocation payment for any quarter as reflected on such quarter's quarterly Allocation payment report, the Commonwealth will promptly notify the Tribe, and the Tribe will either accept the difference or provide reconciliation satisfactory to the Commonwealth. If the Tribe accepts the difference or fails to provide a reconciliation satisfactory to the Commonwealth within thirty (30) days of receipt of the notice, the Tribe must immediately pay the amount of any resulting deficiency in the quarterly Allocation payment plus interest on such amounts from the date they were due at the rate of one percent (1.0%) per month, or at the maximum rate permitted by state law for delinquent payments owed to the Commonwealth, whichever is less. The Tribe shall reimburse the Commonwealth or the MGC, as the case may be, for the cost of the audit if the audit finds a material understatement in the quarterly Allocation payment for any quarter as reflected on such quarterly payment report.

VIII. Records

A. Inspection of Records

Summary: The Enterprise must maintain the records listed below for at least five years from the date generated and must make them available for inspection by the MGC.

Comments: 205 CMR 138.09 *Retention, Storage, and Destruction of Records* requires a gaming licensee to include a records retention schedule within its system of internal controls, and codifies minimum standards for retention of various types of documents.

Compact Language:

10.1. In addition to other Records required to be maintained by this Compact,

the Enterprise shall maintain the following Records related to the implementation of this Compact, in permanent form and as written or entered, whether manually or by computer. The following Records shall be maintained by the Enterprise and made available for inspection by the MGC for not less than five (5) years from the date generated:

10.1.1. A log recording all surveillance activities in the monitoring room of the Facility, including, but not limited to, surveillance Records kept in the normal course of Enterprise operations and in accordance with industry standards; provided, notwithstanding anything to the contrary herein, surveillance Records may, at the discretion of the Enterprise, be destroyed if no incident has been reported within one (1) year following the date such Records were made and neither the TGC nor the MGC has requested that the Enterprise retain such Records and the Enterprise did not know or should not reasonably have been expected to have known that the Records should be retained;

10.1.2. Payouts from the conduct of all Compact Games;

10.1.3. Maintenance logs for all equipment used in the operation of Compact Games by the Enterprise;

10.1.4. Security logs as kept in the normal course of conducting and maintaining security at the Facility and in all aspects of the Gaming Operation, which at a minimum shall conform to industry practices for such reports. The security logs shall document any unusual or nonstandard activities, occurrences or events at or related to the Facility or Gaming Operation. Each incident, without regard to materiality, shall be assigned a sequential number for each such report. At a minimum, the security logs shall consist of the following information for each incident, which shall be recorded in a reasonable format: (a) the assigned sequential number; (b) the date, time and specific location of the incident; (c) a description of the incident; (d) the identity, including any identification information, of any persons involved in the incident and any known witnesses to the incident; and (e) the identity of the person making the report and any other persons contributing to its preparation;

10.1.5. Books and Records on all Compact Games operated by the Enterprise, which shall be maintained in accordance with generally accepted accounting principles; and

10.1.6. All other documents generated in accordance with this Compact.

B. Confidentiality of Records

Summary: To the extent permitted by law, all documents received by the MGC in connection with any investigation or confidential matter under the Compact are deemed to be confidential. Documents marked “confidential” may only be disclosed with prior written consent of the party providing the document or pursuant to a court order. If the MGC receives a third party request for the Tribe’s confidential documents, the MGC must notify the Tribe and give the Tribe the opportunity to assert its sovereignty before any release occurs.

Comments: The Compact raises the issue of whether the Public Records Law applies to the documents noted above and, if so, whether this provision creates a quasi-statutory exemption pursuant to M.G.L. c. 4, § 7(26)(a). The MGC will have to determine whether documents deemed “confidential” under the Compact can be handled in a similar respect to confidential documents submitted by gaming licensees, which may become the subject of non-disclosure agreements pursuant to 205 CMR 139.02 *Non-disclosure Agreements*.

Compact Language:

11.1. The parties agree that, to the extent permitted by law, any Documents, communications, or information provided to or received from the TGC, the Enterprise, the MGC or any other official, agency or entity of the Commonwealth, the Tribe, or the United States, in connection with any investigation or confidential matter under the provisions of this Compact, are confidential. Any party that has received any information, Document or communication from the other that is marked or deemed "Confidential" may release or disclose the information, Document or communication only with the prior written consent of the other party or pursuant to a lawful court order after timely notice of the proceeding has been given to the other party, unless such release or disclosure is required pursuant to State or federal law. Such Documents, communications or information shall be maintained in a secure place accessible only to authorized officials and employees of the party that has received the same, and shall be treated in accordance with the party's procedures and regulations to protect the confidentiality of the information, Documents and communications. Consistent with IGRA, nothing in this Part may be construed to diminish or override the privacy, sovereignty or governmental rights of the TGC, the Enterprise, or the Tribe as recognized in federal law. In order to protect the Tribe's rights under federal law, the Commonwealth hereby agrees that in the event either the Commonwealth or the MGC are in receipt of a request from a third party for the Tribe's Confidential Documents, communications or information, they shall timely notify the Tribe of the request and shall give the Tribe the opportunity to assert its sovereignty before any release of any such Confidential Documents, communications or

information occurs, and shall not release such materials unless and until a court of competent jurisdiction has determined finally that the Tribe's sovereignty is not a bar to the release of the Documents, communications or information.

IX. Dispute Resolution

Summary: Either the Tribe or the MGC may invoke the dispute resolution procedure if either believes that the other party has failed to comply with the Compact or in the event of a dispute over the interpretation and terms of the Compact.

Compact Language:

21.1. In the event the Tribe or the Commonwealth believe that the other party has failed to comply with any requirement of this Compact, or in the event of a dispute over the interpretation of the terms and conditions of this Compact, the aggrieved party may invoke the dispute resolution procedure in this Part 21.⁷

X. Internet Gaming

Summary: Although this does not affect the current status of the MGC's rights and responsibilities, there are three situations that are worth noting in which the Tribe may be permitted to conduct internet gaming in the future.

1. If internet gaming becomes authorized by the Commonwealth and only the State Lottery or other governmental agency is permitted to conduct internet gaming, then the Tribe will be permitted under IGRA to conduct internet gaming pursuant to a compact, the parties will negotiate for a new compact or an amendment to this Compact, and the Tribe may conduct internet gaming only in accordance with such compact.
2. If internet gaming becomes authorized by the Commonwealth and is permitted to be conducted by any Category 1 Licensee or other licensed commercial entity, the tribe may conduct internet gaming in the same manner and to the same extent that internet gaming is permitted to be conducted by the Category I or other commercial entity.
3. If in the future, federal law provides the Tribe with the right to engage in and implement internet gaming independent of any approval or consent of the

⁷ Complete Dispute Resolution Procedure is outlined in Part 21 of the Compact.

Commonwealth, the Tribe may conduct internet gaming and no revenue from internet gaming shall be included within gross gaming revenues without the future consent of the Tribe and the Commonwealth.

Comments: State law does not currently permit gaming licensees to conduct internet gaming.

Compact Language:

4.3.2. Internet Gaming. The Tribe will not offer any form of Internet Gaming regulated by the Commonwealth unless Internet Gaming is authorized under Commonwealth and federal law, and provided that in such case:

- (a) If Internet Gaming is authorized by the Commonwealth, and only the Massachusetts State Lottery or any other governmental agency of the Commonwealth is permitted to conduct Internet Gaming, the parties recognize and agree that: (i) the Tribe is permitted under IGRA to conduct Internet Gaming pursuant to a tribal state compact; (ii) the parties will negotiate in good faith for a tribal state compact, or amendment to this Compact, to implement the Tribe's conduct of Internet Gaming; and (iii) the Tribe may conduct Internet Gaming only in accordance with such compact or amendment.*
- (b) If Internet Gaming is authorized by the Commonwealth and permitted to be conducted by any Category 1 Licensee or other commercial entity licensed by the Commonwealth, the Tribe may conduct Internet Gaming in the same manner and to the same extent that Internet Gaming is permitted to be conducted in the Commonwealth by any Category 1 Licensee or other licensed commercial entity, provided the Tribe first complies with subpart 4.4 of this Compact.*

If at any time in the future federal law provides the Tribe with the right to engage in and implement Internet Gaming independent of any approval or consent of the Commonwealth, and the Tribe chooses to exercise that right, none of the foregoing provisions of this Subpart 4.3.2 shall apply and no Internet Gaming revenues shall be included within Gross Gaming Revenues without the future consent of the Tribe and the Commonwealth.