TAX AGREEMENT BETWEEN THE MATCH-E-BE-NASH-SHE-WISH BAND OF POTTAWATOMI INDIANS AND THE STATE OF MICHIGAN

This Tax Agreement ("Agreement") is made and entered into this 17th day of September, 2008, by and between the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians ("Tribe") and the State of Michigan ("State") by and through its Department of Treasury ("Department").

Recitals

Whereas, the State of Michigan is a sovereign State of the United States of America, having been admitted to the Union pursuant to the Act of January 26, 1837, ch. 6, 5 Stat. 144;

Whereas the Michigan Department of Treasury has been authorized by the State Legislature to enter into this Agreement. 2002 PA 616;

Whereas, the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians, a sovereign government, is a federally recognized Indian Tribe located within the State of Michigan;

Whereas the State and the Tribe, acting on a government to government basis, seek to develop a fair and workable understanding regarding the application and administration of the State taxes that are subject to this Agreement and to provide certainty as to issues that may arise between the Tribe and the State regarding those taxes by explicitly addressing and agreeing upon the imposition of and exemptions from those taxes;

Whereas, the State and the Tribe, each recognizing the sovereign rights of the other, have engaged in good faith negotiations in a spirit of cooperation, and in the interests of their respective citizens and members, and have voluntarily reached this Agreement;

Now, therefore, the Tribe and the State by its Department of Treasury, Robert J. Kleine, State Treasurer, agree as follows:

I. GENERAL PROVISIONS

A. Purpose and Intent of this Agreement.

1. Purpose and Intent of Agreement. By entering into this Agreement the State and the Tribe indicate their intention and willingness to be bound by its terms so long as this Agreement is in effect. While this Agreement is in effect between the Tribe and the State it is agreed that (i) their respective rights will be determined by this Agreement with respect to the taxes that are the subject of this Agreement, (ii) neither party will seek additional entitlement or seek to deny entitlement on any federal ground (including federal preemption) whether statutorily provided for or otherwise with respect to the taxes that are the subject of this Agreement, (iii) neither party will contest the legality of the Agreement or the legal authority

of any of its provisions, and (iv) both parties will defend this Agreement from attack by third parties.

2. Application of State Law. References in this Agreement to "State law" or specific tax acts shall refer to State law or the act as presently enacted and subsequently amended. Except as modified in this Agreement, the provisions of State law relating to the taxes that are subject of this Agreement shall apply to the Tribe, Tribal Members, and Tribal Entities.

3. Scope. The subject matter of this Agreement is limited exclusively to the taxes that are the subject of this Agreement. Nothing in this Agreement is intended to be used for any other purpose or bear in any manner whatsoever on any other subject, including jurisdiction, affecting the Tribe and the State.

B. Taxes Subject to This Agreement

The taxes that are the subject of this Agreement are:

1. Sales Tax pursuant to the General Sales Tax Act as amended, MCL 205.51 et. seq.;
2. Use Tax pursuant to the Use Tax Act as amended, MCL 205.91 et. seq.;
3. Motor Fuel Tax pursuant to the Motor Fuel Tax Act as amended, MCL 207.1001 et. seq. and the Motor Carrier Fuel Tax Act as amended, MCL 207.211 et. seq.;
4. Income Tax pursuant to the Income Tax Act of 1967 as amended, MCL 206.1 et. seq.;
5. Tobacco Products Tax pursuant to the Tobacco Products Tax Act as amended, MCL 205.421 et. seq., as amended; and
6. The Single Business Tax pursuant to the Single Business Tax Act as amended, MCL 208.1 et. seq.
7. The Michigan Business Tax pursuant to the Michigan Business Tax Act as enacted, MCL 208.1101 et. seq.

C. State Law Amendments. The State shall give notice to the Tribes of enrolled bills that amend the taxes that are the subject of this Agreement or the Revenue Act. MCL 205.1, et. seq. Upon receipt of the notice the Tribe may request a meeting to discuss the bill and its impact. Notice of any such meeting shall be provided to other tribes which are signatories to an agreement with the State substantially similar to this Agreement and their representatives shall be permitted to attend.

D. Effect of Termination of Agreement. Except as provided in **§ I(E)(3), § I(G)(1), § XII(F), § XIV(C),** and **§ XV(C),** upon termination of this Agreement, the Tribe and the State may assert any claim or defense for any period subsequent to the date of termination and nothing in this Agreement shall be construed as a concession, a statement of controlling law, or an admission, nor shall anything contained in this Agreement be used affirmatively, or as a bar or defense to any claim asserted by either party to this Agreement for any such subsequent period.

E. Confidentiality

1. The terms and provisions of this Agreement shall be a public document.

2. All information received by the State in the administration of a tax under this Agreement is subject to the confidentiality provisions of MCL 205.28(1)(f) and may be disclosed only in the manner and for the purposes specified in that provision; provided, however, that despite the provisions of MCL 205.28(1)(f) authorizing the Treasurer to disclose such information upon the written request of or pursuant to a reciprocal agreement with the United States Department of Treasury or any other state, the Treasurer agrees not to make such disclosure with respect to tax information set forth in a tax return or report received from the Tribe or as a result of any investigation or audit of the Tribe pursuant to this Agreement.

3. In the course of the administration and enforcement of the taxes that are the subject of this Agreement, the State may make certain taxpayer information relating to Tribal Members or Tribal Entities available to the Tribe. All such information shall be retained in the strictest confidence and shall only be revealed to persons other than the taxpayer as required for the proper administration and enforcement of the terms of this Agreement. The Tribal obligation to keep information received confidential shall be a continuing obligation and shall survive the termination of this Agreement.

4. The State and the Tribe will enter into a written protocol for the exchange, retention, and destruction of taxpayer information consistent with the terms of this Agreement.

F. Ongoing Relationship

The Tribe and the State recognize the need to foster a continuing relationship and maintain communication on issues as they arise.

1. Representatives of the Tribe and the State shall attend an annual summit together with representatives of other tribes that are signatories to an agreement with the State substantially similar to this Agreement. The purpose of this summit is to provide a forum to discuss matters relating to this Agreement. The State and the tribes will endeavor to give notice of agenda items in advance of the meeting. Prior to adjourning a summit the tribes and the State shall set the time and place for the next summit which shall be approximately one year later.

2. Prior to the summit the State may conduct a public session devoted to a presentation by State representatives on changes in tax law that have occurred over the last year and other matters deemed worthy of presentation by the State.

G. Sovereign Immunity

1. Tribe's Waiver of Immunity

a. The Tribe agrees to submit to arbitration as provided in **§ XIV** and **§ XV(C)** for the purpose of the administration, enforcement and resolution of disputes arising under this Agreement.

b. The Tribe waives its sovereign immunity and consents to suit by the State in Tribal court with respect to compelling arbitration as provided in **§ XIV** and **§ XV(C)** of this Agreement and enforcement of any award(s) made by the arbitrators under those sections of this Agreement. If the Tribal court has not compelled arbitration, or enforced the arbitration award(s), as the case may be, within 14 business days of initiation of the State's suit in Tribal court, the Tribe agrees that the State may withdraw such suit from Tribal Court and the Tribe hereby waives its sovereign immunity and consents to suit by the State in State court with respect to compelling such arbitration as provided in **§ XV(C)** of this Agreement or enforcement of any award(s) made by the arbitrators under those sections of this Agreement. The waiver provided for in this **§ I(G)(1)(b)** with respect to compelling arbitration as provided in **§ XIV** and **§ XV(C)** and enforcement of any award(s) made by the arbitrator(s) under these sections shall survive the termination of this Agreement.

c. If the Tribe elects to use *Tribal Certificates of Exemption* under **§ XII** of this Agreement, the Tribe waives its sovereign immunity and consents to suit by the State in State court with respect to the determination and collection of liability for sales tax and use tax and interest resulting from the use of *Tribal Certificates of Exemption* as provided at **§ XII(F)** of this Agreement. Prior to commencing suit against the Tribe in state court, the State shall provide no less than ten business days notice to the Tribe of its intention to bring suit. During said ten business day period, the State shall afford the Tribe an opportunity to meet with representatives of the State for the purpose of resolving the matter at a place designated in the notice, which notice shall offer the Tribe no less than two alternative meeting dates during such period. If, however, the state fails to afford the Tribe the opportunities to meet as described above, this consent shall be ineffective. The waiver provided for in this **§ I(G)(1)(c)** with respect to determination and collection of liability for sales tax and use tax and interest resulting from the use of *Tribal Certificates of Exemption* as provided in **§ XII(F)** shall survive termination of this Agreement.

d. The Tribe's waivers of immunity set forth in **§ I(G)(1)(b)** and **§ I(G)(1)(c)** are limited to the purposes set forth herein.

2. State's Waiver of Immunity

The State hereby acknowledges that: (i) pursuant to 2002 PA 616 the State is authorized to contractually bind itself to the dispute resolution provisions contained in this Agreement, and agrees to submit to arbitration as provided in **§ XIV** and **§ XV(C)** for the purposes of the administration, enforcement and resolution of disputes arising under this Agreement, and (ii) pursuant to the legislative waiver of immunity contained in the Court of Claims Act, MCL 600.6401, et. seq. and Section 22 of the Revenue Act, MCL 205.22, the State has consented to suit in State court sufficient for the purposes of the administration and enforcement of the terms of this Agreement including compelling such arbitration as provided in **§ XIV** and **§ XV(C)** of this Agreement, or enforcement of any award(s) made by the arbitrators under those sections of this Agreement. In the absence of legislative modification, this waiver shall survive the termination of this Agreement.

II. GENERAL DEFINITIONS

For purposes of this Agreement, the following definitions pertain:

A. "Agreement Area" means the area designated as such in Appendix A. The Agreement Area is negotiated exclusively for purposes of this Agreement. Neither party makes any admissions, representations or concessions whatsoever regarding the extent of Indian Country and either the Tribe's or State's jurisdiction, and this negotiated Agreement Area can serve absolutely no precedential purpose in any administrative or judicial proceeding not directly related to the administration or enforcement of this Agreement.

B. "Department" means the Michigan Department of Treasury.

C. "Governmental Function" means those activities or functions by the Tribe identified in **§ III(A)(1)(b)** of this Agreement.

D. "Indian Country" means those lands considered "Indian Country" under federal law.

E. "Non-Tribal Member" means an individual who is not an enrolled member of the Tribe.

F. "Resident Tribal Member" means a Tribal Member whose principal place of residence is located within the Agreement Area.

G. "State" means the State of Michigan.

H. "Tax Year" or "Taxable Year" or "Tax Period" means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which a tax subject to this Agreement is computed.

I. "Taxable Sale" means a sale that is not exempt under State law as modified by this Agreement.

J. "Tribe" means Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians, a sovereign, federally recognized tribe, that is a signatory to this Agreement. The term Tribe shall include entities wholly owned by the Tribe.

K. "Tribal and Trust Lands" means:

1. all lands held in trust by the federal government for the benefit of the Tribe which are listed on Appendix A (K-1) and designated as Tribal and Trust Lands at the time this Agreement is executed,

2. all fee lands owned by the Tribe which are listed on Appendix A (K-2) and designated as Tribal and Trust Lands at the time this Agreement is executed,

3. all Tribal lands acquired after execution of this Agreement within an area identified for automatic Tribal and Trust Land status on Appendix A (K-3) so long as they are used for a Governmental Function,

4. all Tribal lands accepted into federal trust after execution of this Agreement which are located within the area identified in Appendix A (K-4), regardless of the use of such Tribal lands, and

5. all other lands acquired after execution of this Agreement by the Tribe that are mutually agreed upon in writing by the parties to this Agreement and identified in Appendix A (K-5).

6. all lands listed on Appendix A (K-2) that have been subsequently taken into trust by the federal government for the benefit of the Tribe, which do not meet the criteria of Appendix A (K-4).

L. "Tribal Chairperson" means the duly elected Chairperson of the Board of Directors of the Tribe.

M. "Tribal Entity" means an entity, other than a single Resident Tribal Member or an entity wholly owned by the Tribe, that is wholly owned by any combination of the Tribe and its Resident Tribal Members, or is wholly owned by its Resident Tribal Members.

N. "Tribal Member" means an individual who is an enrolled member of the Tribe.

III. SALES TAX AND USE TAX

A. Exemptions

1. Tribe

a. Purchases by the Tribe or a Tribal Entity of tangible personal property for its use, including but not limited to Governmental Functions identified in **§ III(A)(1)(b),** below, and commercial activities are exempt from both the sales tax and use tax if the transaction takes place and the property is used exclusively within the Tribal and Trust Lands.

b. Purchases by the Tribe of tangible personal property that is primarily used (95% or more) in performing one of the following Tribal Governmental Functions is exempt from both the sales tax and use tax if the transaction takes place within the Agreement Area regardless of where the tangible personal property is used:

i. Public Safety and Conservation;
ii. Environmental Services;
iii. Tribal Government;
- Tribal Judiciary
- Tribal Legislature
- Tribal Executive Administrative Activity;

iv. Public Welfare and Other Social Services;
v. Education;
vi. Health Services;
vii. Housing and Housing Services;
viii. Casino Gaming (limited to actual gaming activities); and
ix. Other similar functions customarily performed by State or local units of government.

c. For the purpose of application of **§ III(A)(1)(b),** the term "Tribe" means the Tribe acting alone or in combination with one or more other tribes that have entered into a tax agreement with the State that is substantially similar to this Agreement.

d. Purchases of vans and buses by the Tribe for use in transporting passengers to and from a Tribal gaming facility shall be exempt from both sales tax and use tax if used exclusively within the Agreement Area or within a 25 mile radius of a Tribal gaming facility provided that an occasional use (5% or less) for other Governmental Functions shall not preclude entitlement to this exemption.

2. Resident Tribal Member

a. Tangible personal property, other than motor vehicles, purchased or acquired by a Resident Tribal Member for his or her commercial use is exempt from both sales tax and use tax if the transaction takes place in the Tribal and Trust Lands and the property is used exclusively within the Tribal and Trust Lands.

b. Purchases by a Resident Tribal Member of tangible personal property for personal use are exempt from both the sales tax and use tax if the transaction takes place in the Agreement Area and the property is used exclusively within the Agreement Area.

c. Resident Tribal Members are exempt from both the sales tax and use tax on the following items regardless of where purchased or used provided they are purchased for non-commercial use, used primarily by the Resident Tribal Member and principally garaged, berthed, or stored within the Agreement Area:

   i. Passenger vehicles including automobiles, pick-up trucks, recreational vehicles and motorcycles;
   ii. Recreational watercraft;
   iii. Snowmobiles; and
   iv. Off road vehicles.

Where an item is purchased under this subsection and subsequently transferred to a non-Resident Tribal Member relative and the transfer would be exempt under MCL 205.93(3)(a), the Resident Tribal Member shall reimburse the State an amount equal to the current sales or use tax rate times the retail dollar value of the item at the time of the transfer. The reimbursement shall be paid to the Department within 30 days of the date of transfer. Such reimbursement will not be required where the retail dollar value at the time of transfer is below $2,000 for a passenger vehicle or is below $1,000 for other enumerated items.

d. Resident Tribal Members are exempt from both the sales tax and use tax on modular homes and mobile homes used as their principal residence. Where a mobile home purchased under this subsection is subsequently transferred to a non-Resident Tribal Member relative and the transfer would be exempt under MCL 205.93(3)(a), the Resident Tribal Member shall reimburse the State an amount equal to the current sales or use tax rate times the retail dollar value of the mobile home at the time of the transfer. The reimbursement shall be paid to the Department within 30 days of the date of transfer. Such reimbursement shall not be required where the retail dollar value of the mobile home at the time of transfer is below $2,000.

e. The exemptions in **§ III(A)(2)(c)**, **§ III(A)(2)(d)**, and **§ III(A)(3)(b)** shall apply in full to 1) purchases made solely by a Resident Tribal Member where the items are solely titled in the name of the Resident Tribal Member, 2) purchases made jointly by a Resident Tribal Member and his or her Resident

Tribal Member spouse where the item is titled exclusively in one or both names, or 3) purchases made exclusively by multiple Resident Tribal Members where the item is titled exclusively in one or more of the Resident Tribal Member purchasers' names. With regards to **§ III(A)(2)(b)** (only for purchase and affixation of materials for construction, renovation, or improvement of the Resident Tribal Member's principal residence), **§ III(A)(2)(c)**, § **III(A)(2)(d)**, and **§ III(A)(3)(b)**, the Resident Tribal Member shall qualify for a 50 percent exemption on purchases that are made by the Resident Tribal Member, or their non-Resident Tribal Member spouse, and exclusively titled in both their names. This subsection does not otherwise alter any of the other requirements identified in **§ III(A)(2)(b)**, **§ III(A)(2)(c)**, **§ III(A)(2)(d)**, and **§ III(A)(3)(b)**.

3. Affixation to Real Estate

   a. Materials that are purchased, used or acquired in the performance of a contract entered into by the Resident Tribal Member, Tribe, or Tribal Entity for construction, renovation or improvement of real property owned by the Tribe or the federal government in trust for the Tribe are exempt from both sales tax and use tax if the real property is located within the Tribal and Trust Lands and there is no contractual entitlement for a non-Resident Tribal Member or non-Tribal Entity to remove the improvement.

   b. Materials that are purchased, used or acquired in the performance of a contract for construction, renovation or improvement to the principal residence of a Resident Tribal Member are exempt from both the sales tax and use tax.

   Where a Resident Tribal Member seeks exemption claimed under either **§ III(A)(2)(b)**, **§ III(A)(2)(d)** or **§ III(A)(3)(b)**, for the purchase, construction, renovation, or improvement of a new principal residence, the Resident Tribal Member shall repay to the Department any previously received exemption claimed under **§ III(A)(2)(b)**, **§ III(A)(2)(d)** or **§ III(A)(3)(b)**, for the purchase, construction, renovation, or improvement of his or her previous principal residence(s) for a period of two years immediately preceding the purchase of the item(s) on which the exemption is to be claimed. Repayment will not be required where the cumulative cost of the previously purchased items for which exemption was received does not exceed $2,000 for the two-year period.

   A Resident Tribal Member cannot have more than one principal residence at a time. For purposes of **§ III(A)(3)(b)**, where the Resident Tribal Member has not yet relocated into the new residence, a Resident Tribal Member's Principal Residence changes from the old residence to the new residence as of the date of the purchase for which exemption is sought regarding the new residence.

4. Treaty Fishing

a. Tangible personal property purchased or acquired by a Resident Tribal Member within the Agreement Area for use in exercising a treaty fishing right is exempt from both the sales tax and use tax regardless of where the property is used.

b. Tangible personal property purchased or acquired by the Tribe, a Tribal Entity or any Tribal Member for use in exercising a commercial treaty fishing right is exempt from both the sales tax and use tax regardless of where the property is purchased or acquired.

5. Rental Rooms

Rental rooms owned by the Tribe that are within Tribal and Trust Lands and within a one-quarter mile radius of a Tribal gaming facility also located within the Tribal and Trust Lands are exempt from the lodging use tax and are not subject to tax sharing, as provided in **§ III(B)**, below.

6. Restaurant Food and Beverage Sales

Restaurant food and beverage sales at casino operations located within the Tribal and Trust Lands are exempt from both the sales tax and use tax and are not subject to tax sharing as provided in **§ III(B),** below.

7. Sale of Electricity, Natural or Artificial Gas, Home Heating Fuels, and Telecommunications and Internet Services

Sales of electricity, natural gas or artificial gas, home heating fuels and all transmission and distribution charges are exempt from both the sales tax and use tax if the product is delivered to: (i) land owned by the Tribe or held in trust by the federal government for the benefit of the Tribe, to the extent that the land is occupied by the Tribe, a Tribal Entity or a Tribal Member and is within Tribal and Trust Lands; (ii) land occupied by the Tribe within the Agreement Area that is primarily used (95% or more) in performing a Governmental Function; or (iii) a Resident Tribal Member's principal residence located within the Agreement Area.

In addition, telephone (intrastate and interstate), telegraph leased wire, internet, cable, and other similar communications rendered to and paid for by the Tribe, a Tribal Entity, or Resident Tribal Member are exempt from both the sales tax and use tax if the service is rendered to: (i) land owned by the Tribe or held in trust by the federal government for the benefit of the Tribe, to the extent that the land is occupied by the Tribe, a Tribal Entity or a Tribal Member and is within the Tribal and Trust Lands; (ii) land occupied by the Tribe within the Agreement Area that is primarily used (95% or more) in performing a Governmental Function; or (iii) a Resident Tribal Member's principal residence located within the Agreement Area.

8. Sourcing of Transactions

The determination of where a transaction occurs will be made in accordance with the Streamline Sales Tax Project sourcing rules as follows:

a. When the product is received by the purchaser at a business location of the seller, the sale is sourced to that business location.

b. When the product is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser (or the purchaser's donee, designated as such by the purchaser) occurs, including the location indicated by instructions for delivery to the purchaser (or donee), known to the seller.

c. When a and b do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith.

d. When a, b, and c do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith

e. When none of the previous rules of a, b, c, or d apply, including the circumstance where the seller is without sufficient information to apply the previous rules, then the location will be determined by the address from which tangible personal property was shipped, from which the digital good was first available for transmission by the seller or from which the service was provided (disregarding for these purposes any location that merely provided the digital transfer of the product sold).

f. The terms "receive" and "receipt" mean:
   i. taking possession of tangible personal property;
   ii. making first use of services; or
   iii. taking possession or making first use of digital goods whichever comes first.

   The terms "receive" and "receipt" do not include possession by a shipping company on behalf of the purchaser.

g. It is understood that if the rules adopted are different than those set forth above there will be further discussion on the sourcing issue by the Tribe and the State and those further discussions may result in changes to this section, if mutually agreed upon in writing by the parties.

B. Tax Sharing

Sales tax and use tax will be collected, remitted, and shared between the State and the Tribe as provided in this section.

1. Outside of the Tribal and Trust Lands. Tribal, Tribal Member, and Tribal Entity retailers shall collect the State sales tax or use tax as applicable on all sales to Non-Tribal Members, non-Resident Tribal Members and on all other Taxable Sales that occur within the State and outside of the Tribal and Trust Lands. All tax collected shall be remitted to the State and shall not be subject to tax sharing as provided in this **§ III(B)**.

2. Inside the Tribal and Trust Lands. Tribal, Tribal Member, and Tribal Entity retailers shall collect and remit to the State the State sales tax or use tax, as applicable, on all sales to Non-Tribal Members and non-Resident Tribal Members and on all other Taxable Sales that occur within the Tribal and Trust Lands. The State shall share the tax collected and remitted as follows:

    a. On the first $5,000,000 of annual gross receipts from Non-Tribal Members, non-Resident Tribal Members and all other Taxable Sales, 2/3 of the tax collected shall be paid to the Tribe and 1/3 to the State.

    b. On annual gross receipts from Non-Tribal Members, non-Resident Tribal Members and all other Taxable Sales in excess of $5,000,000, 1/2 of the tax collected shall be paid to the Tribe and 1/2 to the State.

3. If the Tribe enacts a sales tax on transactions occurring within its Tribal and Trust Lands on sales made by the Tribe, Tribal Members, or Tribal Entities which (i)utilizes a base at least as inclusive as that provided under State law, and (ii)applies a rate at least as high as that imposed by State law, **§ III(B)(2)** above shall not apply. Rather, the State agrees to exempt those transactions from the State use tax and the Tribe agrees to collect its sales tax from all Tribal, Tribal Member, and Tribal Entity retailers engaging in Taxable Sales within the Tribal and Trust Lands. The Tribe shall share the tax collected as follows:

    a. On the first $5,000,000 of annual gross receipts from Taxable Sales, 2/3 of the tax collected shall be retained by the Tribe and 1/3 paid to the State (but not to exceed the amount payable to the State if the State tax rate were applied).

    b. On annual gross receipts from Taxable Sales in excess of $5,000,000, 1/2 of the tax collected shall be retained by the Tribe and 1/2 paid to the State (but not to exceed the amount payable to the State if the State tax rate were applied).

C. General

1. The State will impose a sales tax on all non-Tribal retailers, non-Tribal Member retailers, and non-Tribal Entity Retailers within the Agreement Area including Tribal and Trust Lands on all sales including those to the Tribe, Tribal Members, or Tribal Entities unless a valid exemption certificate is presented at time of sale. Imposition of the tax at the retail level shall not preclude the Tribe, a Resident Tribal Member, or a Tribal Entity from obtaining the benefit of an exemption provided in this Agreement by use of the Tax Table or other refund mechanism provided in **§ XII** of this Agreement.

2. Tribal, Tribal Member, and Tribal Entity retailers will not be eligible for the vendor's prepayment discount at MCL 205.54 and MCL 205.94f on sales that occur within the Tribal and Trust Lands.

IV. INDIVIDUAL INCOME TAX

A. Non Business Income

Resident Tribal Members are exempt from State income tax on all Non Business income including but not limited to:

1. All income derived from wages are exempt whether the wages are earned within the Agreement Area or outside of the Agreement Area;

2. All interest and passive dividends are exempt;

3. All rents and royalties derived from real property located within the Agreement Area are exempt;

4. All rents and royalties derived from tangible personal property, to the extent the personal property is utilized within the Agreement Area, are exempt;

5. Capital gains from the sale or exchange of real property located within the Agreement Area are exempt;

6. Capital gains from the sale or exchange of tangible personal property which is located within the Agreement Area at the time of sale are exempt;

7. Capital gains from the sale or exchange of intangible personal property are exempt;

8. All pension income and benefits including, but not limited to, 401(k), IRA, defined contribution plan, and defined benefit plan payments are exempt;

9. All per capita payments by the Tribe to Resident Tribal Members are exempt without regard to the source of payment; and

10. All gaming winnings are exempt.

B. Business Income

Resident Tribal Members are exempt from the State income tax on business income as follows:

Business income shall be apportioned in the manner provided in the State Income Tax Act by application of the property, payroll and sales factors. In arriving at the portion to be taxed, the numerators provided in those sections shall include the property, payroll or sales in the State and shall exclude property, payroll or sales which are outside of the State or within the Tribal and Trust Lands. The denominator shall consist of all property, payroll or sales everywhere. Business income includes income derived from a flow-through entity.

C. Treaty Fishing

All income derived from Treaty Fishing is exempt from the State income tax to the extent excluded from federal income.

D. Spouses

Spouses who are not Resident Tribal Members are subject to the State income tax.

E. Withholding and Reporting

1. Tribal, Tribal Member, and Tribal Entity employers located within the Agreement Area will withhold and remit to the State income tax from all employees who are not Resident Tribal Members.

2. The Tribe will report to the State gaming winnings in the same manner as reported to the federal government.

3. The Tribe's casino operators and/or entertainment facility operators will report gross receipts and contact information regarding each professional performer in a manner consistent with reporting practices required by the State for non-Tribal casino operators and/or entertainment facilities.

V. MOTOR FUEL TAX

A. The Tribe may purchase a quantity of tax exempt motor fuel. The exempt motor fuel will be administered by either the quota method or the refund method. The Tribe shall select which method it will use to acquire tax exempt motor fuel, consistent with the provisions of this Agreement.

B. Implementation: Refund Method

1. The Tribe will prepay the State motor fuel and sales taxes on all motor fuel purchases and seek a refund on exempt sales.

2. All motor fuel for resale shall be purchased in accordance with State law from any State licensed wholesaler and shall be tax prepaid. All Taxable Sales of such motor fuel shall include the tax in the retail price.

3. The Tribe shall determine which retailers within the Agreement Area will be entitled to seek refunds on exempt sales.

4. The total amount of refunds obtainable by the Tribe or its designated retailers shall be limited by a ceiling determined jointly by the Tribe and the State in the same manner as a quota. The entitlement shall be prospective and shall be reviewed periodically. There shall be no retroactive reconciliation.

5. Tribes that engage in interstate transportation activities shall be subject to the International Fuel Tax Agreement (IFTA). No refund under this Agreement shall be requested by the Tribe or its designated retailers and no tax exempt fuel shall be used for interstate activities subject to IFTA.

6. The Tribe shall not engage in commercial intrastate transportation activities, other than those associated with its casino gaming operations as provided at **§ (III)(A)(l)(d),** with fuel that is not taxed.

7. All refunds shall be issued within 45 days of the receipt of the claim for refund, after which interest shall accrue at the statutory rate.

C. Implementation: Quota Method

1. The Tribe may purchase an annual quota of motor fuel per the agreed schedule without the imposition of the State motor fuel and sales taxes. The entitlement shall be prospective and shall be reviewed periodically. There shall be no retroactive reconciliation.

2. The Tribe shall acquire its tax-free quota of motor fuel from a single pre-identified State licensed wholesaler.

3. All motor fuel acquired for resale in excess of the quota shall be purchased in accordance with State law from any State licensed wholesaler with State motor fuel taxes prepaid. All retail sales of such motor fuel shall include the tax in the retail price.

4. The Tribe shall determine which retailers within the Agreement Area will receive tax-free quota motor fuel.

5. All tax free diesel fuel acquired under the quota will be clear diesel fuel.

6. Tribes that engage in interstate transportation activities shall be subject to the IFTA. No tax-free quota motor fuel shall be used for interstate activities subject to IFTA.

7. The Tribe shall not engage in commercial intrastate transportation activities other than those associated with its casino gaming operations as provided at § **III(A)(l)(d),** with fuel that is not taxed.

D. The Tribe shall ensure that Tribal Member and Tribal Entity retailers only purchase motor fuel from State licensed wholesalers. The Tribe shall also ensure that Tribal Member and Tribal Entity retailers prepay all taxes on motor fuel purchases except for quota exempt purchases authorized by the Tribe.

E. All sales of motor fuel by the Tribe, Tribal Members, or Tribal Entities to Non-Tribal Members shall be with all taxes paid and included in the price.

F. The Tribe, Tribal Members, and Tribal Entities shall not act as importers, wholesalers, or suppliers of motor fuel unless licensed by the State.

VI. TOBACCO TAX

The Tribe and the State agree that all tobacco products sold within the Agreement Area shall be subject to the provisions of the Tobacco Products Tax Act, except as provided in this Agreement.

A. The Tribe may purchase a quantity of tax exempt tobacco products. The exempt purchases of cigarettes and other tobacco products shall be administered by either the quota method or the refund method set forth in this Agreement.

B. Implementation: Refund Method

1. All tobacco products for resale shall be purchased in accordance with State law from any State licensed wholesaler and shall be tax prepaid. Taxable Sales of such tobacco products shall include the tax in the retail price.

2. The Tribe shall determine which retailers within the Agreement Area will be entitled to seek refunds on exempt sales.

3. The total amount of refunds obtainable by the Tribe or its designated retailers shall be limited by a ceiling determined jointly by the Tribe and the State in the same manner as a quota described in the quota option set forth below. The entitlement shall be prospective and shall be reviewed periodically. There shall be no retroactive reconciliation.

4. All refunds shall be issued within 45 days of the receipt of the claim for refund, after which interest shall accrue at the statutory rate.

C. Implementation: Quota Method

1. The Tribe may purchase an annual quota of tobacco products without the imposition of the State tobacco products tax. The entitlement shall be prospective and shall be reviewed periodically. There shall be no retroactive reconciliation.

2. The Tribe shall acquire its tax-free quota of tobacco products from a single pre-identified State licensed wholesaler.

3. All tobacco products acquired for resale in excess of the quota shall be purchased in accordance with State law from any State licensed wholesaler with State tobacco products tax prepaid. All retail sales of such tobacco products shall include the tax in the retail price.

4. The Tribe shall determine which retailers within the Agreement Area will receive tax-free quota tobacco products.

5. All tobacco products purchased by the Tribe shall bear the State tribal stamp.

D. The Tribe shall ensure that Tribal Member and Tribal Entity retailers only purchase tobacco products bearing the State Tribal stamp and only purchase from State licensed wholesalers. The Tribe shall also ensure that Tribal Member and Tribal Entity retailers prepay all taxes on tobacco product purchases, except for quota exempt purchases authorized by the Tribe.

E. All sales of tobacco products by the Tribe, Tribal Members, or Tribal Entities to Non-Tribal Members shall be with all taxes paid and included in the price.

F. The Tribe, Tribal Members, and Tribal Entities shall not act as wholesalers, secondary wholesalers, or unclassified acquirers of tobacco products unless licensed by the State.

VII. SINGLE BUSINESS TAX

A. For purposes of application of the Single Business Tax section only, the following definitions shall apply:

1. "Tribe (SBT)" means any Tribe that has entered into a tax agreement with the State that is substantially similar to this Agreement.

2. "Expanded Tribal Agreement Area" means the lands within the combined Agreement Areas of each Tribe (SBT).

3. "Tribal Member (SBT)" means an individual who is an enrolled member of a Tribe (SBT).

4. "Resident Tribal Member (SBT)" means a Tribal Member (SBT) whose principal place of residence is located within his or her Tribe's Agreement Area.

5. "Tribal Entity (SBT)" means an entity other than a single Tribe (SBT) acting alone or single Resident Tribal Member (SBT) acting alone, that is wholly comprised of any combination of the Tribe (SBT) and Resident Tribal Members (SBT), or is wholly owned by Resident Tribal Members (SBT).

B. The Single Business Tax Act (SBTA) exemptions provided by this Agreement will be applied without regard to the law under which an entity is organized. Publicly traded entities shall be subject to the SBTA without regard to Tribe (SBT) or Tribal Member (SBT) ownership and without regard to the Expanded Tribal Agreement Area.

C. Entities in which the ownership interests are entirely comprised of one or more Tribes (SBT), Tribal Members (SBT) or Tribal Entities (SBT) that engage in business activity within the State will apportion their tax base by application of the three statutory factors (property, payroll and sales) to determine the portion of the tax base attributable, if any, to the State but outside the Expanded Tribal Agreement Area. The portion of the tax base attributable to the Expanded Tribal Agreement Area will be exempt from the SBTA.

D. Entities which are not wholly owned by any combination of Tribes (SBT), Tribal Members (SBT) or Tribal Entities (SBT) will apportion their tax base by application of the three statutory factors (property, payroll and sales) to determine the portion of the tax base attributable to the State and to the Expanded Tribal Agreement Area. The portion of the tax base attributable to the Expanded Tribal Agreement Area which is equal to the percentage of ownership interests held in combination of Tribes (SBT), Tribal Members (SBT) or Tribal Entities (SBT) will be exempt. The portion of the tax base attributable to non Tribes (SBT), non Tribal Members (SBT) or non Tribal Entities (SBT) is subject to the SBTA for activity within the State both within and outside of the Expanded Tribal Agreement Area. In calculating the State sales factor of the apportionment formula the numerator shall only exclude sales that are destined to:

1. The Tribe (SBT);
2. Resident Tribal Members (SBT); and
3. Sales shipped to destinations outside of the State.

E. To the extent a tax base or portion of a tax base is attributable to the State under this Agreement and a tax is due, a credit against the tax may be claimed to the extent the business is conducted in an area designated as a Renaissance Zone under State law. See MCL 125.2681, et seq. The credit shall be determined in accordance with State law using the payroll and property factors. The

denominator of the respective factors is calculated in accordance with State law except that payroll and property within the Expanded Tribal Agreement Area must be excluded. The numerators of the respective factors will be the property located within a designated Renaissance Zone excluding property within the Expanded Tribal Agreement Area and the payroll for services performed in a designated Renaissance Zone excluding payroll within the Expanded Tribal Agreement Area. The credit is otherwise allowed in accordance with State law.

VII.1 MICHIGAN BUSINESS TAX

A. For purposes of application of the Michigan Business Tax section only, the following definitions shall apply:

1. "Tribe (MBT)" means any Tribe that has entered into a tax agreement with the State that is substantially similar to this Agreement.

2. "Expanded Tribal Agreement Area" means the lands within the combined Agreement Areas of each Tribe (MBT).

3. "Tribal Member (MBT)" means an individual who is an enrolled member of a Tribe (MBT).

4. "Resident Tribal Member (MBT)" means a Tribal Member (MBT) whose principal place of residence is located within his or her Tribe's Agreement Area.

5. "Tribal Entity (MBT)" means an entity other than a single Tribe (MBT) acting alone or single Resident Tribal Member (MBT) acting alone, that is wholly comprised of any combination of the Tribe (MBT) and Resident Tribal Members (MBT), or is wholly owned by Resident Tribal Members (MBT).

B. The Michigan Business Tax Act (MBTA) exemptions provided by this Agreement will be applied without regard to the law under which an entity is organized. Publicly traded entities shall be subject to the MBTA without regard to Tribe (MBT) or Tribal Member (MBT) ownership and without regard to the Expanded Tribal Agreement Area.

C. Entities in which the ownership interests are entirely comprised of one or more Tribes (MBT), Tribal Members (MBT) or Tribal Entities (MBT) that engage in business activity within the State will apportion their tax base by application of the statutory sales factor to determine the portion of the tax base attributable, if any, to the State but outside the Expanded Tribal Agreement Area. The portion of the tax base attributable to the Expanded Tribal Agreement Area will be exempt from the MBTA.

D. Entities which are not wholly owned by any combination of Tribes (MBT), Tribal Members (MBT) or Tribal Entities (MBT) will apportion their tax base by application of the statutory sales factor to determine the portion of the tax base attributable to the

State and to the Expanded Tribal Agreement Area. The portion of the tax base attributable to the Expanded Tribal Agreement Area which is equal to the percentage of ownership interests held in combination of Tribes (MBT), Tribal Members (MBT) or Tribal Entities (MBT) will be exempt. The portion of the tax base attributable to non Tribes (MBT), non Tribal Members (MBT) or non Tribal Entities (MBT) is subject to the MBTA for activity within the State both within and outside of the Expanded Tribal Agreement Area. In calculating the State sales factor of the apportionment formula the numerator shall only exclude sales that are destined to:

1. The Tribe (MBT);
2. Resident Tribal Members (MBT); and

3. Sales shipped to destinations outside of the State.

E. To the extent a tax base or portion of a tax base is attributable to the State under this Agreement and a tax is due, a credit against the tax may be claimed to the extent the business is conducted in an area designated as a Renaissance Zone under State law. See MCL 125.2681, et seq. The credit shall be determined in accordance with State law using the payroll and property factors. The denominator of the respective factors is calculated in accordance with State law except that payroll and property within the Expanded Tribal Agreement Area must be excluded. The numerators of the respective factors will be the property located within a designated Renaissance Zone excluding property within the Expanded Tribal Agreement Area and the payroll for services performed in a designated Renaissance Zone excluding payroll within the Expanded Tribal Agreement Area. The credit is otherwise allowed in accordance with State law.

VIII. ADMINISTRATION: GENERAL

A. Consistent with State law, the Tribe, Tribal Members, and Tribal Entities shall maintain records (including retention of original receipts other than those for purchases claimed on the *Sales Tax Table Return*) sufficient to substantiate claims for exemption from tax under this Agreement.

B. By December 15 of each year the Tribe shall provide to the State a current list of:

1. Resident Tribal Members with their addresses, Tribal identification number, and social security number;

2. Tribal, Tribal Member, and Tribal Entity businesses operating within the Agreement Area. The list shall state the business name, the business address, the business(es)' federal tax identification number, and the name(s) of the business owners. The list shall also identify:

a. Businesses that are engaged in the sale or storage of motor fuel with a statement as to the location of the storage tanks;

b. Businesses that are engaged in the sale or storage of tobacco products identifying the facilities operated by the Tribe. Provided, however, that in identifying a facility owned, leased, or operated by the Tribe, the Tribe may designate the specific rooms in the facility where tobacco products are authorized to be stored or offered for sale under this Agreement. If such a designation is made, the State's authority to conduct inspections referenced at **§ XIII(C)(4)(a)** without a Tribal Court order shall be limited to the whole of the rooms designated and all rooms which are directly accessible from those rooms as well as all areas through which tobacco products are transported. In the absence of a designation of rooms, the State shall be permitted to inspect the entire facility designated;

c. Businesses that are authorized by the Tribe to sell tax exempt motor fuel; and

d. Businesses that are authorized by the Tribe to sell tax exempt tobacco products.

3. Non-Tribal businesses operating within the Tribal Agreement Area that are authorized by the Tribe to sell tax exempt motor fuel;

4. Non-Tribal businesses within the Agreement Area that are authorized by the Tribe to sell tax exempt tobacco products; and

5. The Tribal official(s) authorized to sign *Tribal Certificates of Exemption* on behalf of the Tribe as provided at **§ XII(B)(1)(a)**, or refund requests under **§ XII(B)(2)** of this Agreement.

C. The Tribe shall notify the State in writing of all lands, title to which is acquired in the name of the Tribe or in federal trust for the Tribe after execution of this Agreement, which are within the Agreement Area or claimed as Tribal and Trust Lands under **§ II(K)** of this Agreement. If the parties agree, the Appendix A setting forth the Tribal and Trust Lands shall be amended to reflect all of the lands that are Tribal and Trust Lands under this Agreement.

IX. ADMINISTRATION: INCOME TAX, SINGLE BUSINESS TAX, AND MICHIGAN BUSINESS TAX

A. Income Tax

All Resident Tribal Members shall file a State tax return if they owe a Michigan Income Tax, are due a refund, or their federal adjusted gross income exceeds their exemption allowance. (See MCL 206.30 (2) and (3)). In addition a Resident Tribal Member shall file a return in all instances where a federal return is required in order to eliminate unnecessary correspondence with the Department. A taxpayer who is entitled to exemption based on this Agreement shall complete a Schedule in accordance with its

instructions whereat the subtractions will be taken. These subtractions shall then be carried over to the MI 1040.

B. Withholding

Withholding is to be done in accordance with regulations/instructions applicable to all persons required to withhold.

C. Single Business Tax

A taxpayer claiming entitlement to exemptions provided in this Agreement shall prepare and file the SBT annual return form C-8000. The C-8000 shall have a box on its face indicating that the taxpayer is claiming exemptions under this Agreement. A taxpayer who checks that box will be directed to complete a separate schedule which will guide the taxpayer through the special apportionment calculations to arrive at the non-exempt property, payroll and sales numbers which will then be carried over to the C-8000H for use in completing the return.

D. Michigan Business Tax

A taxpayer claiming entitlement to exemptions provided in this Agreement shall prepare and file the MBT annual return form 4567. A taxpayer claiming MBT exemption under this Agreement shall complete a separate schedule which will guide the taxpayer through the special apportionment calculations to arrive at the non-exempt sales numbers which will then be carried over to form 4567 for use in completing the return.

X. ADMINISTRATION: MOTOR FUEL TAX

The Tribe shall utilize either a quota system or a refund system to acquire motor fuel for exempt Tribal and Tribal Member use as determined by the quota or refund ceiling. The election to use a refund or quota system shall be effective for an entire calendar year. The Tribe may change from one system to the other upon at least 60 days written notice to the State. The change shall be effective on the first day of the next calendar year.

A. Quota System

1. The quota amount shall be determined by negotiation and will be reviewed, and may be adjusted by mutual consent of the parties, on request of either party but not more frequently than semi-annually (in May and November) during the first two years of this Agreement. Thereafter, the quota amount will be reviewed at the request of either party, and may be adjusted by mutual consent of the parties, but not more frequently than annually. A separate quota shall be established for gasoline and diesel. The quota will be calculated on a twelve month basis. In any given month the total amount of tax free quota motor fuel delivered to the Tribe and those authorized by the Tribe to store or sell tax free motor fuel shall not exceed 15% of the total quota amount calculated on a twelve month basis.

2. The Tribe shall purchase all of its tax free quota motor fuel from a single wholesaler licensed by the State. The Tribe shall notify the State in writing of the wholesaler it will use prior to making any purchase of tax free quota motor fuel. The State shall contact the wholesaler and authorize the quantity of tax free quota motor fuel to be sold to the Tribe. The designated wholesaler may be changed by written notice to the State providing the name of the new wholesaler and providing at least 14 days advance notice of the date that the change will be effective. The notice from the Tribe to the State shall also state the total number of gallons purchased from the old wholesaler and the number of gallons remaining to be purchased under the quota. The State shall then advise the new supplier that it is authorized to make sales of tax free quota motor fuel to the Tribe and the amount remaining under the quota.

3. The Tribe shall determine which retailers within the Agreement Area will be authorized to purchase and sell tax free motor fuel and the quantities that each retailer may acquire. The Tribe shall establish a system whereby the Tribe shall pre-approve, and clearly designate, all purchases of tax free fuel prior to submission to the wholesaler. In addition to maintaining the books and records required by State law, all authorized retailers (including the Tribe itself) shall maintain a log of their purchases of tax free quota motor fuel showing the delivery date and the type (gasoline or diesel) and quantity of fuel purchased.

4. The Tribe shall maintain a record of its use of tax free motor fuel acquired under the quota. This record shall indicate the vehicle(s) in which motor fuel is used, the number of gallons used by each vehicle (or each category of vehicles), and a general description of the use of the vehicles.

B. Refund System

1. A refund ceiling shall be negotiated and will be reviewed, and may be adjusted by mutual consent of the parties, upon written request of either party but not more frequently than semi-annually (in May and November) during the first two years of this Agreement. Thereafter, the refund ceiling amount will be reviewed at the request of either party, and may be adjusted by mutual consent of the parties, but not more frequently than annually. Separate refund ceilings shall be established for both gasoline and diesel for which a refund will be sought. The refund ceilings shall be calculated on a twelve month basis.

2. The Tribe shall determine which retailers located within the Agreement Area will be entitled to seek a refund for sales of motor fuel. The Tribe shall be responsible for devising a means for dividing the refund ceiling(s) among the retailers authorized by the Tribe to receive refunds and the Tribe itself. The retailers authorized by the Tribe to receive refunds shall submit their claims to the Tribe which will compile them as a single request to be filed with the State on a monthly or quarterly basis. The State will then issue a single refund check to the

Tribe. The State will not make additional refunds for the period covered under the refund ceiling once the refund ceiling amount has been reached.

3. In addition to maintaining the books and records required by State law, all authorized retailers (including the Tribe itself) shall maintain a log of their sales of tax free motor fuel showing the date, the purchaser's name, the purchaser's Tribal identification number, the purchaser's signature, and the amount and type (gasoline or diesel) of fuel purchased. The purchaser's signature shall not be required if a swipe card system, acceptable to both the Tribe and the State, is utilized.

4. Upon receipt of a refund request from the Tribe, the State shall verify that the refund ceiling has not been exceeded and then process the request. Interest will be paid at the statutory rate if the refund is not paid within 45 days of receipt by the Department.

5. The Tribe shall maintain a record of its use of tax free motor fuel acquired under the refund ceiling. This record shall indicate the vehicle(s) in which motor fuel is used, the number of gallons used by each vehicle (or each category of vehicles), and a general description of the use of the vehicles.

XI. ADMINISTRATION: TOBACCO PRODUCTS TAX

The Tribe shall utilize either a quota system or a refund system to acquire tobacco products for Tribal and Tribal Member use as determined by the quota or refund ceiling. The election to use a refund or quota system shall be effective for an entire calendar year. The Tribe may change from one system to the other upon at least 60 days written notice to the State. The change shall be effective on the first day of the next calendar year.

A. Quota System

1. The quota amount shall be determined by negotiation and will be reviewed, and may be adjusted by mutual consent of the parties, on request of either party but not more frequently than semi-annually (in May and November) during the first two years of this Agreement. Thereafter, the quota amount will be reviewed at the request of either party, and may be adjusted by mutual consent of the parties, but not more frequently than annually. A separate quota shall be established for cigarettes and other tobacco products. The quota shall be calculated on a twelve month basis. In any given month the total amount of tax free quota tobacco products delivered to the Tribe and those authorized by the Tribe to store or sell tax free tobacco products shall not exceed 15% of the total quota amount calculated on a twelve month basis.

2. The Tribe shall purchase all of its tax free quota tobacco products from a single wholesaler licensed by the State. The Tribe shall notify the State in writing of the

wholesaler it will use prior to making any purchase of tax free quota tobacco products. The State shall contact the wholesaler and authorize the quantity of tax free quota tobacco products to be sold to the Tribe. The designated wholesaler may be changed by written notice to the State providing the name of the new wholesaler and providing at least 14 days advance notice of the date that the change will be effective. The notice from the Tribe to the State shall also state the total number of cigarette sticks and quantity of other tobacco products purchased from the old wholesaler and the number of cigarette sticks and quantity of other tobacco products remaining to be purchased under the quota. The State shall then advise the new supplier that it is authorized to make sales of tax free quota tobacco products to the Tribe and the amount remaining under the quota.

3. All cigarettes sold to retailers authorized to sell tax free cigarettes shall bear the State tribal stamp.

4. The Tribe shall determine which retailers within the Agreement Area will be authorized to purchase and sell tax free tobacco products and the quantities that each retailer may acquire. The Tribe shall establish a system whereby the Tribe shall pre-approve, and clearly designate, all purchases of tax free product prior to submission to the wholesaler. In addition to maintaining the books and records required by State law, all authorized retailers (including the Tribe itself) shall maintain a log of their purchases of tax free quota tobacco products showing the date, type (cigarettes, cigar, chew, etc.), quantity, and brand.

B. Refund System

1. A refund ceiling shall be negotiated and will be reviewed, and may be adjusted by mutual consent of the parties, upon written request of either party but not more frequently than semi-annually (in May and November) during the first two years of this Agreement. Thereafter, the refund ceiling amount will be reviewed at the request of either party, and may be adjusted by mutual consent of the parties, but not more frequently than annually. A separate refund ceiling shall be established for cigarettes and other tobacco products for which a refund will be sought. The refund ceiling shall be calculated on a twelve month basis.

2. The Tribe shall determine which retailers located within the Agreement Area will be entitled to seek a refund for sales of tobacco products. The Tribe shall be responsible for devising a means for dividing the refund ceiling(s) among the retailers authorized by the Tribe to receive refunds and the Tribe itself. The retailers authorized by the Tribe to receive refunds shall submit their claims to the Tribe which will compile them as a single request to be filed with the State on a monthly or quarterly basis. The State will then issue a single refund check to the Tribe. The State will not make additional refunds for the period covered under the refund ceiling(s) once the refund ceiling(s) amount has been reached.

3. In addition to maintaining the books and records required by State law, all authorized retailers (including the Tribe itself) shall maintain a log of their sales of tax free tobacco products showing the date, type, quantity, and brand of product sold with the name, Tribal identification number, and signature of the purchaser. The purchaser's signature shall not be required if a swipe card system, acceptable to both the Tribe and the State, is utilized.

4. Upon receipt of a refund request from the Tribe, the State shall verify that the refund ceiling has not been exceeded and then process the request. Interest will be paid at the statutory rate if the refund is not paid within 45 days of receipt by the Department.

XII. ADMINISTRATION: SALES TAX AND USE TAX

A. General

1. A Tribal, Tribal Member, or Tribal Entity retailer making a sale within the Agreement Area to the Tribe, a Resident Tribal Member, or a Tribal Entity which is exempt under the terms of this Agreement, need not collect sales tax or use tax on such a sale. No refund requests will be honored for a purchase from a retail establishment owned by the Tribe, a Tribal Member, or a Tribal Entity located with the Agreement Area.

2. To obtain the benefit of statutory exemptions other than those specifically identified in **§ III(A)(1)**, **§ III(A)(2)**, **§ III(A)(3)**, or **§ III(A)(4)**, of this Agreement, the Tribe, Tribal Member or Tribal Entity shall use the standard procedures and forms used by all taxpayers claiming exemption. See Revenue Administrative Bulletin 2002-15.

B. Tribal Purchases

The Tribe shall have the option of using a *Tribal Certificate of Exemption* or seeking a refund of sales tax and use tax paid for those transactions that are exempt under the terms of this Agreement.

1. *Tribal Certificate of Exemption* Option

   a. Application for *Tribal Certificate of Exemp*tion.

      The Tribe may apply for a *Tribal Certificate of Exemption* by filing a written request with the Department stating the name and business address of the Tribe, and the names and titles of the Tribal officials that are authorized by the Tribe to sign the *Tribal Certificate of Exemption* on behalf of the Tribe. Upon receipt of the Tribe's request signifying its election to use the *Tribal Certificate of Exemption*, the Department shall issue to the Tribe a *Letter of*

Authorization indicating that it may begin using the *Tribal Certificate of Exemption* as provided in this **§ XII**.

b. Use of *Tribal Certificate of Exemption*

To obtain the benefit of an exemption under **§ III(A)(1), § III(A)(3)** and **§ III(A)(4)** of this Agreement, the Tribe shall present to the vendor or contractor a signed *Tribal Certificate of Exemption* with a copy of the *Letter of Authorization* attached. In the case of affixation to real property by a contractor, the contractor shall submit the *Tribal Certificate of Exemption* together with the contractor's *Sales and Use Tax Certificate of Exemption* to the supplier at the time of purchase.

c. The Tribe shall not use or authorize the use of any *Tribal Certificate of Exemption* after the termination of this Agreement.

2. Refund Option

a. General

If the Tribe does not choose to use a *Tribal Certificate of Exemption* , it may instead seek a refund under **§ III(A)(1), § III(A)(3)**, and **§ III(A)(4)** of sales tax and use tax on a monthly or quarterly basis using a *Tribal Sales Tax and Use Tax Refund* form prescribed by the Department. The refund request shall be signed by a designated official of the Tribe.

b. Taxes Paid by Contractor

The Tribe may seek reimbursement from the State of sales tax and use tax paid by a contractor under § **III(A)(3).** Refund claims shall be filed on the *Tribal Sales Tax and Use Tax Refund* form and accompanied by a signed statement from the contractor stating the location at which materials were affixed to real estate, the date that the work was done, the amount paid for materials, and the sales tax and use tax paid on the purchases of the materials.

C. Resident Tribal Member and Tribal Entity Purchases

1. *Tribal Certificate of Exemption* Option

If the Tribe has elected to use a *Tribal Certificate of Exemption* under **§ XII(B)(1)**, the Tribe may elect to authorize Resident Tribal Members or Tribal Entities to use a *Tribal Certificate of Exemption* for the purchases described in this **§ XII(C)(1)(a)** or **§ XII(C)(1)(c)** below. If the Tribe so elects and notifies the State of such election, Resident Tribal Members and Tribal Entities shall use a *Tribal Certificate of Exemption* and may not seek refunds of taxes paid for purchases described in **§ XII(C)(1)(a) or § XII(C)(1)(c)** below.

a. Resident Tribal Member purchases where a *Tribal Certificate of Exemption* must be used:

i. **§ III(A)(2)(a)** (only for the purchase and affixation by the Resident Tribal Member of materials for construction, renovation, or improvement of real property owned by the Tribe or the federal government in trust for the Tribe which is located within Tribal and Trust Lands);
ii. **§ III(A)(2)(b)** (only for the purchase and affixation by the Resident Tribal Member of materials for construction, renovation, or improvement of his or her principal residence within the Agreement Area);
iii. **§ III(A)(2)(c)** and **§ III(A)(2)(d)**;
iv. **§ III(A)(2)(e)**;
v. **§ III(A)(3)**; and
vi. **§ III(A)(4)**.

b. Resident Tribal Member purchases where a *Tribal Certificate of Exemption* may not be used:

A Resident Tribal Member may only obtain the benefit of an exemption under **§ III(A)(2)(a)** (except for purchases of materials for construction, renovation or improvement of real property owned by the Tribe or the federal government in trust for the Tribe which is located in Tribal and Trust Lands) by filing a refund using the *Resident Tribal Member/Tribal Entity Sales Tax and Use Tax Refund Request* form.

c. Tribal Entity purchases where a *Tribal Certificate of Exemption* must be used:

i. **§ III(A)(1)(a)** (only for the purchase and affixation by a Tribal Entity of materials or construction, renovation, or improvement of real property owned by the Tribe or the federal government in trust for the Tribe which is located within Tribal and Trust Lands);
ii. **§ III(A)(3)(a)**;
iii. **§ III(A)(4)(b)**.

d. Tribal Entity Purchases where a *Tribal Certificate of Exemption* may not be used:

A Tribal Entity may only obtain the benefit of an exemption under **§ III(A)(1)(a)** (except for purchases of materials for construction, renovation or improvement of real property owned by the Tribe or the federal government in trust for the Tribe which is located in Tribal and Trust Lands) by filing a refund using the *Resident Tribal Member/Tribal Entity Sales Tax and Use Tax Refund Request* form.

e. Issuance of Tribal Certificate of Exemption

A Resident Tribal Member or Tribal Entity shall submit to the Tribe a signed *Resident Tribal Member/Tribal Entity Claim* indicating the requester's name, address, items to be purchased (including identification numbers for vehicles and mobile homes) and, in the case of a Resident Tribal Member, his or her identification number and a certification that the Resident Tribal Member resides within the Agreement Area. In those instances where the claim is made under **§ III(A)(3)**, a signed statement from the contractor stating the location at which materials will be affixed to real estate, the date that the work is to be done, and an estimate as to the amount to be paid for materials shall also be submitted to the Tribe by the Resident Tribal Member or Tribal Entity seeking authorization. Upon verifying the information provided in the claim and determining that the claim is consistent with the terms of this Agreement, an authorized Tribal representative shall complete and sign a *Tribal Certificate of Exemption* authorizing the Resident Tribal Member's or Tribal Entity's exempt purchase. The certificate shall indicate the name of the requester, the items to be purchased including identification numbers for vehicles and mobile homes and, for Resident Tribal Members, the Resident Tribal Member's identification number.

f. Use of *Tribal Certificate of Exemption*

If a *Tribal Certificate of Exemption* is issued to a Resident Tribal Member or Tribal Entity, the Resident Tribal Member or Tribal Entity shall present the Certificate (together with the *Letter of Authorization*) to the vendor or contractor at the point of purchase. In those instances where the claim is made for purchase of material affixed to real property by a contractor under **§ III(A)(3)**, the Resident Tribal Member or Tribal Entity shall obtain a *Tribal Certificate of Exemption* from the Tribe indicating the Resident Tribal Member or Tribal Entity as the purchaser and the contractor as the seller. The contractor shall complete a *Michigan Sales and Use Tax Certificate of Exemption* (Form 3372) and present the form together with the *Tribal Certificate of Exemption* and the *Letter of Authorization* to the vendor/supplier of the tangible personal property that will be affixed to the real estate. Where a contractor is used for affixation or construction under **§ III(A)(3)**, when obtaining the *Tribal Certificate of Exemption* from the Tribe the Resident Tribal Member shall also submit (in addition to any other required documentation) a signed statement from the contractor stating the location at which materials will be affixed to real property, the date that the work is to be done, and an estimate as to the amount to be paid for materials.

2. Refund Method (without *Tribal Certificate of Exemption* authorization)

If the Tribe has not elected to use *Tribal Certificates of Exemption* as provided at **§ XII(B)(1)**, or has elected to use the *Tribal Certificate of Exemption* at **§ XII(B)(1)** but has not authorized its Resident Tribal Members and Tribal Entities

to use *Tribal Certificates of Exemption*, Resident Tribal Members and Tribal Entities shall pay sales tax and use tax on all purchases, except those that would be exempt under State law in the absence of this Agreement or those made from a Tribal, Tribal Member or Tribal Entity retailer where the retailer is not required to collect tax as described in **§ XII(A)(1)**. Refund requests for sales tax and use tax shall be made on the *Resident Tribal Member/Tribal Entity Sales Tax and Use Tax Refund Request* form as follows:

a. A Resident Tribal Member may seek a refund of sales tax and use tax paid on transactions exempted under **§ III(A)(2)(a)**, **§ III(A)(2)(b)** (only for the purchase and affixation by the Resident Tribal Member of materials for construction, renovation, or improvement of his or her principal residence within the Agreement Area), **§ III(A)(2)(c)**, **§ III(A)(2)(d)**, **§ III(A)(2)(e)**, **§ III(A)(3)** and **§ III(A)(4)** of this Agreement.

b. A Resident Tribal Member may seek a refund of sales tax and use tax paid by a contractor under **§ III(A)(3)** as follows:

   i. Within Tribal and Trust Lands. The Resident Tribal Member shall use the *Resident Tribal Member/Tribal Entity Sales Tax and Use Tax Refund Request* and shall also file a signed statement from the contractor stating the location at which materials were affixed to real estate, the date the work was done, the amount paid for materials, and the sales tax and use tax paid on the purchases of the materials. If the claim is for an affixation to a Resident Tribal Member's principal residence, the Resident Tribal Member shall attest to that fact.

   ii Personal Residence Within Agreement Area. The Resident Tribal Member shall use the *Resident Tribal Member/Tribal Entity Sales Tax and Use Tax Refund Request*, and shall also file a signed statement from the contractor stating the location at which materials were affixed to real estate, the date the work was done, the amount paid for materials, and the sales tax and use tax paid on the purchases of the materials. If the claim is for an affixation to a Resident Tribal Member's principal residence, the Resident Tribal Member shall attest to that fact.

c. Tribal Entities may seek refunds for taxes paid on transactions exempted under **§ III(A)(1)(a)**, **§ III(A)(3)(a)** and **§ III(A)(4)(b)** of this Agreement.

d. Tribal Entities may seek a refund of sales tax and use tax paid by a contractor under **§ III(A)(3)(a)**. The Tribal Entity shall file a signed statement from the contractor stating the location at which materials were affixed to real estate, the date the work was done, the amount paid for materials, and the sales tax and use tax paid on the purchases of the materials.

e. Refund Request Form – Content

The *Resident Tribal Member/Tribal Entity Sales Tax and Use Tax Refund Request* form shall require the following information and attachments:

i. The name of the purchaser with Tribal affiliation, member number, resident address;
ii. The date of the purchase;
iii. The name and address of the vendor;
iv. A description of the item(s) purchased;
v. For items claimed exempt under **§ III(A)(2)(c)** and **§ III(A)(2)(d)**, the sales tax account number of the vendor;
vi. The original receipt;
vii. For a passenger vehicle, pick up truck, recreational vehicle, motorcycle, recreational watercraft, snowmobile, or off road vehicle (ORV), the vehicle identification number and a statement as to where the items will be principally garaged, berthed, or stored;
viii, For a vehicle required to be registered with the Secretary of State, a RD-108L form;
ix. For a modular or mobile home, the unit serial number and a statement that the purchase is for use exclusively within the Tribal and Trust Lands or as a principal residence within the Agreement Area;
x. For a purchase or acquisition of tangible personal property for use in exercising of a treaty fishing right, a statement that the property will be used in the exercise of the right.

f. Filing and Payment of Refund Requests. *Resident Tribal Member/Tribal Entity Sales Tax and Use Tax Refund Request* forms may be filed with the State in April, July, October, and January. The State shall pay refunds and interest on late payments in accordance with State law.

3. Refund Table – Resident Tribal Members

A Resident Tribal Member shall be entitled to an annual refund representing sales tax and use tax paid on tangible personal property acquired under **§ III(A)(2)(b)** (except for the purchase and affixation by the Resident Tribal Member of materials for construction, renovation, or improvement of his or her principal residence within the Agreement Area). This refund shall apply under both the *Tribal Certificate of Exemption* method described in **§ XII(C)(1)**, above and Refund Method described in **§ XII(C)(2)** above. This refund shall be determined by use of the following table:

Resident Tribal Member's federal Adjusted Gross Income modified to include Social Security benefits, Social Security disability benefits, Railroad Retirement benefits, Veteran Disability Pay, 50% of the Combat Zone

Compensation for Enlisted Members of the Armed Forces, fishing income under section 7873 of the Internal Revenue Code, and disability income to the extent they are specifically exempt from or excluded from the computation of federal Adjusted Gross Income (but not to exceed $80,000) x 15% x 6%.

The Table shall be reviewed upon the written request of either party with notice to all other tribes that have agreements that are substantially similar to this Agreement but not more frequently than once every three years. It is the intent of the parties that any revision to the Table shall be uniformly applied to all tribes that have agreements that are substantially similar to this Agreement.

D. Collection, Remittance and Sharing of Sales and Use Taxes

1. Outside of Tribal and Trust Lands

Except as provided at **§ XII(A)(1)**, the Tribe, Tribal Members and Tribal Entities operating as retailers anywhere in the State outside of Tribal and Trust Lands shall collect and remit sales tax and use tax to the State in accordance with State procedures generally applicable to retail sellers.

2. Inside Tribal and Trust Lands

a. In those instances where the Tribe has not enacted its own sales tax on transactions occurring within Tribal and Trust Lands, the Tribe, Tribal Members, and Tribal Entities operating as retailers within Tribal and Trust Lands shall collect and remit State sales tax or use tax, as applicable, in accordance with State procedures generally applicable to retail sellers on a special form prescribed by the State. The Department shall not later than 45 days after the close of the calendar quarter or the receipt of all of the prescribed returns, whichever is later, review the information received and send a check to the Tribe together with a schedule showing the calculation of the amount paid to the Tribe pursuant to **§ III(B)(2)** of this Agreement. The State shall pay interest at the statutory rate applicable for refunds not paid as of the 45th day following the later of the end of the calendar quarter or the receipt of all of the prescribed returns.

b. In those instances where the Tribe has enacted its sales tax on transactions occurring within Tribal and Trust Lands which is subject to sharing under the terms of the Agreement, the Tribe shall collect the taxes due and shall not later than 45 days after the close of each quarter compile the information received during the quarter and send a check to the State together with a schedule showing the calculation of the amount paid to the State pursuant to **§ III(B)(3)** of this Agreement. The Tribe shall pay interest at the statutory rate provided under State law for refunds not paid as of the 45th day following the end of the calendar quarter.

E. Record Retention

1. General

   a. Records shall be separately maintained for items that are claimed exempt on the basis that the transaction occurred in, and the use is exclusively in Tribal and Trust Lands.

   b. Tribal, Tribal Member and Tribal Entity retailers shall maintain records regarding sales that are not Taxable Sales under this Agreement.

   c. With respect to sales on which no tax was collected as provided in **§ XII(A)(1)**, Tribal, Tribal Member and Tribal Entity retailers shall maintain a record of such sales including the date, the name and Tribal identification number of the purchaser, the amount, and for any item of more than $50.00 or sales of more than $200.00 in the aggregate, the identification of the items purchased and any other data sufficient to document the exemption. This **§ XII(E)(1)(c)** shall not apply to sales of motor fuel.

2. Tribes

   a. For each item claimed exempt under **§ III(A)(1)(b)** that is not used exclusively for a Governmental Function, the Tribe shall maintain a log setting forth all uses of the item and the amount of each use. In establishing the percentage of each type of use, the Tribe shall consistently use the same measure for each class of item. For example, a vehicle use log would typically be maintained on the basis of miles driven. A copy machine log would typically be maintained on the basis of number of copies made for each respective use. A log for a piece of heavy equipment, such as a snowplow, may be maintained on the basis of hours of actual use excluding storage time or on the basis of miles plowed.

   b. If the Tribe is authorized under this Agreement to use the *Tribal Certificate of Exemption*, the Tribe shall separately maintain a copy of all exemption certificates used.

3. Resident Tribal Members and Tribal Entities

   If the Tribe is authorized under this Agreement to use the *Tribal Certificate of Exemption* and the Tribe authorizes a Resident Tribal Member or Tribal Entity to use such a certificate, the Resident Tribal Member or Tribal Entity shall maintain a copy of all certificates used. For items not covered by the Table, information and documentation must also be retained to substantiate where the transaction took place. This information shall include shipping documents showing the manner and means by which the item was delivered, e.g., common carrier, seller's truck, purchaser's truck, postal service, etc.

F. Tribal Responsibility for Tribal, Tribal Member, or Tribal Entity Use of the *Tribal Certificates of Exemption.*

The Tribe shall be responsible for and agrees to pay to the State any sales tax or use tax, including interest, resulting from the use of *Tribal Certificate of Exemption* in the following situations:

1. Tribal Use

   a. Arbitration Awards: Where there has been a final award under **§ XIV** or **§ XV(C)** of this Agreement.

   b. Use Prior to Termination: Where the State, after termination of this Agreement, discovers a certificate that was used prior to termination of this Agreement, and asserts that the transaction is not exempt under this Agreement.

   c. Use After Termination: Where the Tribe uses a *Tribal Certificate of Exemption* after termination of this Agreement.

2. Tribal Member and Tribal Entity Use

   a. Use Prior to Termination Whenever Discovered: Where there is a final determination of liability against a Tribal Member or Tribal Entity which remains unpaid for 60 days following the final determination of the liability.

   b. Use After Termination: Where the State has issued a Final Assessment with respect to the use of a *Tribal Certificate of Exemption* by a Tribal Member or Tribal Entity after termination of this Agreement and the assessment remains unpaid for 60 days after its issuance.

   c. Prior to holding the Tribe responsible as provided in this **§ XII(F)** for the wrongful use of a *Tribal Certificate of Exemption* by a Tribal Member or Tribal Entity, the State shall give the Tribe notice of such use including the name of the Tribal Member or Tribal Entity using the certificate, the date of the occurrence and a copy of the *Tribal Certificate of Exemption* alleged to have been wrongfully used. The Tribe agrees to pay the sales tax or use tax together with interest within 60 days of receiving the notice. The obligations contained in this **§ XII(F)** shall survive the termination of this Agreement.

3. Contractor Exemption – Use After Termination

   Notwithstanding the provisions of **§ XII(F)(1)** and **§ XII(F)(2)** above, a *Tribal Certificate of Exemption* provided by a Tribe, Resident Tribal Member or Tribal Entity to a contractor for the purpose of construction, improvement, or renovation of real property as permitted in **§ III(A)(3)** shall remain effective after the

termination of this Agreement by the State until the contract is completed, but not to exceed a period of 12 months, provided, however, that such contract may not be expanded or extended after the State provides notice of its intent to terminate the Agreement; provided further that the use and benefit of such certificates shall not be extended beyond the termination of the Agreement where the Agreement is terminated by the State for cause or is voluntarily terminated by the Tribe.

G. Utilities

The Tribe shall provide the State with a list of utility, telecommunications, cable, and internet providers serving the Agreement Area. The State shall advise the providers of the terms of this Agreement and that sales to named individuals and businesses shall be made without the imposition of sales tax or use tax.

H. Rental Rooms

Except as otherwise provided by this Agreement, the Tribe, Resident Tribal Members and Tribal Entities shall remit, in accordance with regular State law procedures, use tax on rooms subject to tax under State law.

XIII. ENFORCEMENT

A. General

Consistent with the purposes of this Agreement, the determination of the tax liability owed to the State by the Tribe, Tribal Members, and Tribal Entities pursuant to this Agreement, and the enforcement of the payment of any such liability, shall be made in accordance with State law, except as modified by the terms of this Agreement. State law, including judicial decisions interpreting State law, prescribing the scope and entitlement to exemptions or deductions other than those recognized in this Agreement shall govern the determination of tax liability. To the extent that the provisions of this Agreement differ from those of the otherwise applicable State law, this Agreement shall control.

B. Enforcement Action Against Non-Tribal Members in Indian Country

The State may exercise its tax enforcement authority under State law with respect to a Non-Tribal Member or non-Tribal Entity located or doing business within Indian Country provided, however, that where the Non-Tribal Member or non–Tribal Entity is located or doing business on trust lands, the State shall, before taking any enforcement action that requires entry upon such lands, provide notice of the proposed enforcement action to the Tribal police or public safety department. Upon receipt of such notice, the Tribal police or public safety department may direct one or more officers to accompany the State officers during the enforcement activity. If the Tribal police or public safety department is unable or unwilling to promptly assign a Tribal officer to accompany the State officers the State officers may, nonetheless,

carry out the proposed enforcement action against the Non-Tribal Member or non-Tribal Entity without the participation of a Tribal officer.

C. Enforcement Action Against the Tribe

1. Criminal Penalties. The Tribe and its officers, officials, employees, and agents acting within the scope of their authority are not subject to the criminal penalty provisions imposed by State law with respect to taxes that are the subject of this Agreement. This provision shall not be construed to limit the State's ability to collect interest on past due taxes as authorized by State law.

2. Notice of Audit. The State shall have the authority to conduct routine audits of the Tribe with respect to taxes that are the subject of this Agreement for all periods or partial periods commencing after the effective date of this Agreement and until this Agreement has been terminated. Prior to conducting any such audit, the State shall provide the Tribe with at least 30 days advance written notice. The notice shall include a statement of the business to be audited, the tax(es) involved in the audit, and the taxable period(s) at issue.

3. Seizure for Tax Liabilities. Tribal assets, wherever situated, are not subject to seizure nor the filing of notices of State tax liens to enforce a tax liability owed to the State under this Agreement. In lieu of such seizures and the filing of notices of State tax liens, dispute resolution or termination as provided in this Agreement shall be used to resolve issues.

4. Inspections and Seizures Within Indian Country. Notwithstanding **§ XIII(C)(3),** for purposes of enforcing the provisions of the Tobacco Products Tax Act, the Motor Fuel Tax Act, or the Motor Carrier Fuel Tax Act, as those acts are modified by this Agreement, the Tribe grants to the State the authority to take the following actions within the Tribe's Indian Country:

   a. The State may conduct inspections (including unannounced inspections) of Tribal facilities that have been identified by the Tribe to the State as facilities where tobacco (see **§ VIII(B)(2)(b)**) or motor fuel (see **§ VIII(B)(2)(a)**) products are sold or stored under this Agreement as well as the vehicles used to transport these products. If the inspection reveals any tobacco or motor fuel products held in violation of the Tobacco Products Tax Act, the Motor Fuel Tax Act, or the Motor Carrier Fuel Tax Act as those acts are modified by this Agreement, the State may seize any such tobacco or motor fuel and any vehicle (including trailers) in which such product is found together with associated books and records.

   b. If a State officer is lawfully at a location within a Tribally owned facility and discovers in plain view any tobacco or motor fuel products held in violation of the Tobacco Products Tax Act, the Motor Fuel Tax Act, or the Motor Carrier Fuel Tax Act as those acts are modified by this Agreement, the State officer

may seize such product. The authority described in this **§ XIII(C)(4)(b)** is not intended to authorize any State officer to enter into areas not otherwise open to the public or open to inspection by the State under the terms of this Agreement.

i. If the State has reason to believe that tobacco or motor fuel products may be transported or stored by the Tribe within its Indian Country contrary to the terms of this Agreement, the State may apply to the Tribal Court for a search warrant authorizing inspection of such locations. The Tribal Court shall rule on the search warrant request within twenty-four hours of receiving the application and shall issue the warrant if the Court finds that the State has reasonable cause to believe that tobacco or motor fuel may be stored at the location(s) set forth in the request. If the State is concerned that unlawful product may be removed during the pendency of such an application, the Tribal police shall, upon the request of the State, secure the location or vehicle until the Tribal Court makes its determination.

ii. If the State seizes tobacco or motor fuel products under this **§ XIII(C)(4)** the State shall, before removing the property, leave a written statement on the premises describing the factual circumstances and statutory and/or regulatory basis for the seizure. This statement shall be in addition to any notification required by State law.

5. State Enforcement Actions Outside of Indian Country. Except as otherwise provided in this Agreement, nothing in this **§ XIII(C)** shall preclude the State from exercising its enforcement authority outside of Indian Country as permitted under applicable law.

D. Enforcement Action Against Tribal Members and Tribal Entities

1. General. The parties recognize that (i) tax enforcement actions, and (ii) the process of audit, assessment and appeals of tax assessments, under this Agreement may be affected by jurisdictional issues where a Tribal Member or Tribal Entity or property is located within the Tribe's Indian Country. The parties intend to avoid such effects by providing in certain instances identified in this Agreement for Tribal enforcement or joint Tribal/State enforcement. For purposes of this **§ XIII** of this Agreement, the terms "tax enforcement action" or "enforcement action" shall refer to the power of the State Treasurer or the Commissioner of Revenue, (including his or her successor by law or pursuant to executive or administrative order) as set forth in the Revenue Act, to effectuate subpoenas, execute levies upon tangible personal property, real property or rights in such property, and to execute jeopardy tax assessments/warrants. In addition, these terms shall include the right to inspect tobacco products, to seize contraband

tobacco products and related books and records held in violation of the Tobacco Products Tax Act. These terms shall also refer to the enforcement/inspection provisions of the Motor Fuel Tax Act.

2. Notice of Audit. The State, consistent with State law, shall have the authority to conduct audits of Tribal Members residing within Indian Country and Tribal Entities whose principal place of business is located within Indian Country with respect to taxes that are the subject of this Agreement. Prior to conducting any such audit, the State shall provide the Tribal Member or Tribal Entity with at least 30 days advance written notice. The notice shall include a statement of the business or entity to be audited, the tax(es) involved in the audit, and the taxable period(s) at issue. Audits of Tribal Members who reside outside of Indian Country and Tribal Entities whose principal place of business is located outside of Indian Country shall be conducted in accordance with State law.

3. Enforcement of State Judicial Orders Outside of Indian Country. The State may exercise its enforcement authority under State law with respect to the property of a Tribal Member or Tribal Entity where the property is located outside of Indian Country. Further, the State may exercise its enforcement authority under State law with respect to a Tribal Member or Tribal Entity whose person is located outside of Indian Country.

4. Enforcement of State Judicial Orders Within Indian Country. In any case where the State has obtained a State Court judgment or order affecting the person or property of a Tribal Member or Tribal Entity located within Indian Country, the State may petition the Tribal Court to grant recognition and enforcement of the State court order or judgment. The Tribal Court shall within 14 business days rule on the petition using the same standards as contained in Michigan Court Rule 2.615. If the Tribal Court grants the petition, the Tribe, upon request of the State, shall promptly direct one or more Tribal police or public safety officers to enforce the judgment or order in the presence of and with the assistance of one or more State enforcement officers.

5. State Exercise of Non Judicial Enforcement Actions Outside of Indian Country. The State may exercise its tax enforcement authority under State law, with respect to the property of a Tribal Member or Tribal Entity where the property is located outside of Indian Country. Further, the State may exercise its tax enforcement authority under State law with respect to a Tribal Member or Tribal Entity located outside of Indian Country.

6. State Exercise of Non Judicial Enforcement Actions Within Indian Country. In any case where the State is authorized by State law to compel the production of books and records, to compel the appearance or testimony of an individual, or to undertake an audit where the enforcement action affects a Tribal Member or Tribal Entity whose person or property is located within Indian Country, and the taxpayer has failed or refused to comply with the requested State enforcement

action, the State may petition the Tribal Court for an order compelling compliance with that enforcement action. The Tribal Court shall conduct a hearing on the petition within 10 business days following service by the State on the taxpayer, and shall issue its decision within 14 business days of such service on the taxpayer. If the Tribal Court determines that (i) the taxpayer is a Tribal Member or Tribal Entity, (ii) the taxpayer and/or property is located within the Tribe's Indian Country, (iii) the proposed State tax enforcement action pertains to one or more of the taxes that is the subject of this Agreement, and (iv) the proposed State tax enforcement action is consistent with relevant State law and procedures and with this Agreement, the Tribal Court shall grant the petition and shall order the taxpayer to comply. In the event that the Tribal Member or Tribal Entity fails or refuses to comply with the Tribal Court order, the Tribe shall promptly direct one or more Tribal police or public safety officers to enforce the order with the assistance of one or more State enforcement officers.

7. State Exercise of Non Judicial Enforcement Actions Where the Location of Indian Country is in Dispute. In any case where the State is authorized by State law to compel the production of books and records, to compel the appearance or testimony of an individual, or to undertake an audit where the enforcement action affects the person or property of a Tribal Member or Tribal Entity and there is disagreement between the Tribe and the State regarding whether the taxpayer or property is located within Indian Country, the State may elect to proceed based upon the assumption that the taxpayer or property is within its enforcement authority under State law. If the taxpayer fails or refuses to comply with the requested State enforcement action, and the taxpayer asserts that the taxpayer or property is located within Indian Country and the State and the Tribe stipulate that there is a dispute regarding whether the taxpayer or property is located within Indian Country, the State may petition the Tribal Court for an order compelling compliance with the enforcement action. The Tribal Court, for purposes of this Agreement only, and for no other precedential purpose, shall treat the location of the taxpayer or property as being within Indian Country and shall follow the standards and procedures set forth in **§ XIII(D)(6)** above. In the event that the Tribal Member or Tribal Entity fails or refuses to comply with the Tribal Court order, the Tribe shall promptly direct one or more Tribal police or public safety officers to enforce the order with the assistance of one or more State enforcement officers.

8. State Tax Enforcement Actions Outside of Indian Country Prior to a Hearing. The State may exercise its authority under State law to seize or inspect property without a prior order or hearing, where the taxpayer is a Tribal Member or Tribal Entity whose affected property is located outside of Indian Country.

9. State Tax Enforcement Actions Within Indian Country Prior to a Hearing.

   a. Notwithstanding **§ XIII(D)(6)** above, in any case where the State is authorized by the Revenue Act, the Tobacco Products Act, or the Motor Fuel Tax Act, to

seize real or tangible personal property or inspect such property without a prior order or hearing, and where the taxpayer is a Tribal Member or Tribal Entity and the property is located within Indian Country, the Tribe and the State shall jointly execute such action. In such cases, the enforcement action shall be taken without first filing a petition in Tribal Court provided that the State gives notice of the need for the proposed action by the Tribal police or public safety department. Such notice shall specify the grounds for the enforcement action, and the appropriate statutory or regulatory authority for such action. Upon receipt of such notice, the Tribal police or public safety department shall promptly direct one or more Tribal police or public safety officers to execute the enforcement action jointly with one or more State enforcement officers. The affected Tribal Member or Tribal Entity may, within seven days following the enforcement action, file a petition in Tribal Court seeking a review of the enforcement action under the standard described in this **§ XIII(D)(9)(a)**. If the Tribal Court determines that (i) the taxpayer is a Tribal Member or Tribal Entity, (ii) the taxpayer and/or property is located within Indian Country, (iii) the State tax enforcement action pertains to one or more of the taxes that is the subject of this Agreement, and (iv) the State action is in compliance with relevant State law procedures and this Agreement, the Tribal Court shall affirm the enforcement action.

b. The administrative enforcement actions authorized under this **§ XIII(D)(9)** are:
    - Actions in furtherance of a jeopardy assessment. [MCL 205.26]
    - Inspection of vending machines or places where tobacco products are sold or stored. [MCL 205.426a]
    - Seizure of contraband consistent with the Tobacco Products Tax Act. [MCL 205.429]
    - Inspections or seizures consistent with this Agreement authorized under the Motor Fuel Tax Act or the Motor Carrier Fuel Tax Act.

10. Jurisdiction: State Tax Enforcement Actions Prior to a Hearing Where the Location of Indian Country Is In Dispute.

a. In any case where the State proposes to take any authorized enforcement action described in **§ XIII(D)(9)(b)** above that may affect the person or property of a Tribal Member or Tribal Entity and there is disagreement between the Tribe and the State regarding whether the affected person or property is located within or without of Indian Country, the State may elect to proceed based upon the assumption that the person or property is within its enforcement authority under State law. If the State knows, prior to taking the proposed enforcement action, that (i) the taxpayer is a Tribal Member or Tribal Entity, and (ii) there is a dispute between the State and the Tribe as to whether the site of the proposed action is within Indian Country, the State shall give notice of the proposed action to the Tribal police or public safety department. Such notice shall specify the grounds for the enforcement action,

and the appropriate statutory or regulatory authority for such action. Upon receipt of such notice, the Tribal police or public safety department shall promptly direct one or more Tribal police or public safety officers to execute the enforcement action jointly with one or more State enforcement officers.

b. If the taxpayer wishes to challenge the State enforcement action on the grounds that it is unlawful under State law including any modification to State law made under this Agreement, and the taxpayer asserts that the taxpayer or property is located within Indian Country, and the State and the Tribe stipulate to the Tribal Court that there is a dispute regarding whether the person or property is located within Indian Country, the taxpayer may petition the Tribal Court to review the propriety of the enforcement action applying State law including any modification to State law made under this Agreement. The Tribal Court, for purposes of this Agreement only, and for no other precedential purpose, shall treat the location of the person or property as being within Indian Country and shall follow the standards and procedures set forth in **§ XIII(D)(9)** above. If the Tribal Court determines that the affected person or property is not located within Indian Country or is not within the stipulated disputed area, the Tribal Court shall promptly dismiss the action.

11. Jurisdiction: Final Tax Assessment Issued or Refund Denied to a Tribal Member Residing or a Tribal Entity Operating Wholly Within Indian Country. In any case where the State has issued a final tax assessment or denied a tax refund to a Tribal Member residing within Indian Country, or to a Tribal Entity doing business wholly within Indian Country, for a tax imposed upon income, business activity, transactions, or privileges which were realized, occurred, or exercised wholly within Indian Country, and the Tribal Member or Tribal Entity wishes to appeal the assessment or denial of refund on the grounds that it is unlawful under (i) State law including any modification to State law made under this Agreement, or (ii) the Michigan Constitution, the U.S. Constitution, or federal law, provided that such claims shall be limited to those that are not predicated on Indian Tribal membership, the Tribal Member or Tribal Entity may appeal the final assessment or denial of refund to Tribal Court within 35 days of the issuance of the final assessment or denial of refund. The Tribal Court shall follow State law relative to the practices and procedures of a case in the Michigan Court of Claims; provided however, that the taxpayer shall not be required to prepay the contested portion of the tax, penalty, or interest prior to filing the appeal. The uncontested portion of the tax, penalty, or interest shall be paid prior to filing the appeal. The Tribal Court shall make its ruling within one year of the filing of the appeal.

12. Jurisdiction: Final Tax Assessment Issued to a Tribal Member or a Tribal Entity or Denial of Refund Where the Location of Indian Country Is In Dispute.

a. In any case where the State has issued a final tax assessment or denied a tax refund to a Tribal Member or to a Tribal Entity for a tax which the member or entity asserts is imposed upon income, business activity, transactions, or

privileges which were realized, occurred, or exercised wholly within Indian Country, and the Tribal Member or Tribal Entity wishes to appeal the assessment or denial of refund on the grounds that it is unlawful under (i) State law including any modification to State law made under this Agreement, or (ii) the Michigan Constitution, the U.S. Constitution, or federal law, provided that such claims shall be limited to those that are not predicated on Indian Tribal membership, the Tribal Member or Tribal Entity may appeal the final assessment or denial of refund to Tribal Court within 35 days of the issuance of the final assessment or denial of the refund. If the Tribal Court determines all of the income, business activity, transaction, or privilege being taxed was realized, occurred, or was exercised wholly within Indian Country or the stipulated disputed area, the Tribal Court shall, for purposes of this Agreement only and for no other precedential purpose, treat the location of the income, business activity, transaction or privilege as being within Indian Country and shall follow the standards and procedures set forth in **§ XIII(D)(11)** above.

b. If the Tribal Court determines that any of the taxes assessed or refunds denied were for a tax upon income, business activity, transactions, or privileges which were realized, occurred, or exercised within the State but outside of either Indian Country or the stipulated disputed area, the Tribal Court shall promptly dismiss the action. Once such a dismissal is entered, the Tribal Member or Tribal Entity may, consistent with State law, file a petition with the Michigan Tax Tribunal within 35 days, or a Complaint with the Michigan Court of Claims within 90 days, of the final Tribal Court order of dismissal.

13. Jurisdiction: Final Tax Assessment or Denial of Tax Refund to a Resident Tribal Member or a Tribal Entity Where Any Portion of the Activity Occurs Outside of Indian Country and Outside of a Disputed Area. State courts or tribunals will be used for the appeal of any final tax assessment or denial of tax refund to a Resident Tribal Member or Tribal Entity in those instances where any portion of the income, business activity, transaction, or privilege being taxed was realized, occurred, or was exercised within the State but outside of either Indian Country or any area where the Tribe and the State have a disagreement as to what constitutes Indian Country.

14. Application of State Law as Modified by this Agreement. The Tribe and the State agree that State law, as modified by this Agreement, will apply to the determination of tax liability or tax refund in any appeal of an assessment or denial of a tax refund filed in any State or Tribal quasi-judicial or judicial forum under this **§ XIII**.

E. Licensure and Registration

1. Tribal Registration. The Tribe shall comply with State licensure and registration provisions for the taxes that are the subject of this Agreement. With respect to

activity occurring solely within Tribal and Trust Lands, such licensure and registration shall serve only to identify Tribal operations that are subject to this Agreement. The Tribe shall not be subject to disciplinary action or penalty as a licensee or be subject to the revocation provisions applicable to any licensee under any of the taxes that are the subject of this Agreement, except for violations of the Motor Carrier Fuel Tax Act or the International Fuel Tax Agreement, to the extent not altered by this Agreement. Rather, alleged violations shall be addressed in the dispute resolution process or through termination of the Agreement.

2. Licensure and Registration of Tribal Members and Tribal Entities Outside of Indian Country. Tribal Members or Tribal Entities operating to any extent outside of Indian Country shall comply with all State licensure provisions for the taxes that are the subject of this Agreement.

3. Licensure and Registration of Tribal Members and Tribal Entities Operating Wholly Within Indian Country. With respect to Tribal Members and Tribal Entities operating wholly within Indian Country, the Tribe shall either:

   a. Require such Tribal Members and Tribal Entities to register with the State and obtain such licenses and registrations as would be required under State law if such Tribal Members or Tribal Entities were operating outside of Indian Country; or

   b. Establish its own licensing and registration requirements (which shall parallel State law) for all activities authorized under this Agreement requiring a State registration or license under State law applicable to the taxes that are the subject of this Agreement, in which case the Tribe shall forward the information to the State in a format mutually agreeable to the State and the Tribe.

F. Motor Carrier Fuel Tax and International Fuel Tax Agreement.

The Tribe, Tribal Members, and Tribal Entities engaging in activity that is covered by he Motor Carrier Fuel Tax Act or the International Fuel Tax Agreement shall fully comply with all of the provisions of that Act or Agreement including registration and licensing requirements and other obligations imposed by that Act and Agreement.

G. Responsibilities of the Tribe Regarding Tribal Members and Tribal Entities.

1. The Tribe shall inform Tribal Members and Tribal Entities of the terms of this Agreement including its administrative and enforcement provisions. To the extent that this Agreement imposes duties or obligations upon Tribal Members or Tribal Entities, the Tribe shall take appropriate steps under Tribal law to require Tribal Members and Tribal Entities to perform those duties or obligations.

2. The Tribe agrees to assist the State in ascertaining that Tribal Members and Tribal Entities are fully complying with the terms of this Agreement. Upon request of the State, the Tribe shall assist the State in the assessment and collection of taxes owed under the terms of this Agreement. In those instances where a question of jurisdiction arises between the State and a Tribal Member or Tribal Entity, and the Tribe agrees with the State's position, the Tribe shall assist the court or tribunal hearing the matter by providing affidavits and/or testimony.

3. If the State notifies the Tribe that one of the offenses listed below has occurred within the Tribe's jurisdiction, the Tribe shall, within 10 business days after notice by the State of the violation, take the following action: for a first offense, give a written warning to the offending party that further noncompliance will result in termination of any Tribally issued license or authorization to operate; for any subsequent offense, commence proceedings to terminate any Tribally issued license or authorization to operate. The offenses that may trigger the above actions are:

    a. Possession or sale by a Tribal Member or Tribal Entity (other than those in which the Tribe has an ownership interest) of cigarettes or other tobacco products which do not bear the appropriate State stamp.

    b. Sale by a Tribal Member or Tribal Entity (other than those in which the Tribe has an ownership interest) of cigarettes or other tobacco products to Non-Tribal Members where all taxes are not fully included in the price.

    c. Possession or sale by a Tribal Member or Tribal Entity (other than those in which the Tribe has an ownership interest) of motor fuel not acquired or possessed as provided in this Agreement.

4. In addition to assisting the State, the Tribe shall enforce this Agreement independently. Such independent enforcement shall include:

    a. Seizure from Tribal Members and Tribal Entities of tobacco products and motor fuel not acquired or possessed in accordance with the terms of this Agreement, and the transfer of the seized product to the State, consistent with applicable provisions of State law. In the event that the product seized and transferred to the State is sold in accordance with State law, the State shall treat the Tribe as a "local unit of government" for the purpose of sharing the proceeds of the sale as provided at MCL 205.429 or MCL 207.1130.

    b. Establishment of Tribal mechanisms to monitor and enforce Tribal Member and Tribal Entity compliance with the terms of this Agreement; and

    c. Notification to the State of any violations of this Agreement that the Tribe may discover.

H. Tribal Verification of State Compliance.

Upon request by the Tribe, the State shall, consistent with State law pertaining to confidentiality, provide access to sufficient information to allow the Tribe to verify that the State has paid all amounts required by this Agreement. Tribal access to such books, records and personnel shall be preceded by reasonable notice.

I. Payment of Liabilities.

In the event of a disagreement over an amount owed by either party to the other, the determination of liability shall be made pursuant to the dispute resolution process in this Agreement and not in any State or Tribal tribunal. Each party shall pay all undisputed amounts before invoking the dispute resolution process. Once the amount of liability is determined by the dispute resolution process, each party agrees to voluntarily pay that amount.

XIV. DISPUTE RESOLUTION

A. Consistent with the government-to-government relationship between the Tribe and the State, the parties shall make their best efforts to resolve disputes by good faith negotiations whenever possible. The provisions of this **§ XIV** are applicable to disputes between the Tribe and the State and shall not be utilized for resolution of disputes between the State and Tribal Members or Tribal Entities.

B. At any time this Agreement is in force, the Tribe or the State may file a notice with the other party seeking dispute resolution of any matter arising between the Tribe and the State under this Agreement.

1. The party seeking dispute resolution shall give written notice to the other party stating:

a. The nature of the issue including reference to specific provisions of the Agreement;

b. The amount of money, if any, that is in contest as a result of the issue;

c. A statement of position as to how the issue should be resolved;

d. Any additional information or documentation deemed pertinent or helpful in the resolution of the issue; and

e. At least three proposed dates for a meeting not less than 10 business days nor more than 20 business days from the date of the notice. If the Tribe is the party filing the notice, the meeting shall be at a location designated by the State. If the State is the party filing the notice, the meeting shall be at a location designated by the Tribe.

2. The party receiving the notice shall, within 10 business days of receipt, file a written response indicating which date is acceptable for a meeting and the precise location at which the meeting will be held.

3. At the meeting the parties shall attempt to resolve the matter in full to their mutual satisfaction. If the parties are not able to resolve the matter in full, the parties may schedule additional meetings, agree to fact finding, or take any other mutually agreed to action in an attempt to resolve the matter. Any agreement for further efforts to resolve the dispute shall be in writing and shall provide a date following which either party may seek resolution of the matter by arbitration as provided in this **§ XIV(C)** below.

C. If the matter in dispute is not resolved at the meeting and no method for further efforts to resolve the matter is mutually agreed to, or following the date specified in any written agreement for further dispute resolution efforts, either party may invoke arbitration as follows:

1. A party shall send notice to the opposing party of its intention to have the matter resolved by arbitration. The notice shall name one or more arbitrators who have agreed to act to resolve the dispute. The notice shall also indicate which arbitrator the party giving notice would use if none of those listed are acceptable to the other party if acting alone. The party receiving notice shall within 10 business days of receipt indicate which arbitrator, if any, named by the party giving notice is acceptable to act alone. If none of the named arbitrators acting alone are acceptable to the party receiving notice then that party shall name a single arbitrator who has agreed to act to serve on a panel consisting of that person, the arbitrator named by the party giving notice, and a third arbitrator named by the other two arbitrators. The two named arbitrators shall act within 10 business days of the naming of the second to name a third arbitrator.

2. The party requesting arbitration shall send copies of any notices of arbitration to all other tribes that have signed agreements that are substantially similar to this Agreement, in addition to the notice sent to the opposing party. Any tribe receiving such notice may thereafter elect to participate as a party in the arbitration as set forth below.

3. Within five business days of the naming of the arbitrator or the establishment of the arbitration panel, each original party shall submit to the arbitrator or panel, as well as to all other tribes that have signed agreements that are substantially similar to this Agreement, a list of the issues that are being submitted for resolution. The list shall designate those issues that, in the party's view, are likely to require interpretation of the terms of the Agreement including reference to specific provisions of the Agreement. Following these submissions, all parties, including all intervening tribes, shall have seven business days to comment on the issues proposed for submission. Within 14 business days after the time allowed for

comment, the arbitrator or the panel shall advise all parties of the issues to be addressed and establish a timetable to resolve those issues within 90 days thereafter. The arbitrator or panel shall designate which issues are likely to require interpretation of the terms of the Agreement, including reference to specific provisions of the Agreement. The timetable shall provide for discovery, submission of written argument and other materials, and if requested by either party for oral presentation including presentation of witnesses. Following submission of the materials and argument the arbitrator or panel shall, consistent with this Agreement, determine and award taxes due, refunds owed or such other matters as the circumstances warrant.

4. Each party shall bear its own costs incurred in the dispute resolution. The costs and fees charged by an arbitrator or arbitration panel shall be borne one-half by the State and one-half by the Tribe(s).

5. Matters of State law that are properly before the arbitrator or panel shall be resolved by applying State law.

6. The award of the arbitrator or panel shall set forth the factual findings, legal conclusions, and conclusions as to the interpretation of the terms of the Agreement on which it is based. The award shall be dated and shall be final and binding on the parties with regard to the dispute that it resolves. In addition, the award shall survive termination of this Agreement.

7. The decision of the arbitrator or panel shall designate which issues require interpretation of the terms of this Agreement. The decision of the arbitrator or panel regarding such issues shall be binding precedent in all future disputes regarding this Agreement and all agreements with other Tribes that are substantially similar to this Agreement. Conclusions as to State law shall not be precedent and future arbitrators or panels shall determine such matters based on applicable State law. Matters resolved by settlement or consent agreement shall be binding only on the parties to the settlement or consent agreement.

8. In order to serve as an arbitrator under this Agreement for the purposes of resolving a dispute under this **§ XIV**, a candidate must be admitted to practice law in the court of highest jurisdiction in any state of the United States or the District of Columbia, shall be a member in good standing of the bar of admission, and shall have experience in taxation or federal Indian law.

9. Except as otherwise provided in this **§ XIV** or mutually agreed by the parties, the arbitration shall proceed in accordance with the policies and procedures of the Commercial Rules of Arbitration of the American Arbitration Association; provided, that the arbitration itself shall not be administered by or proceed before the American Arbitration Association.

D. Engaging in the dispute resolution process does not preclude either party from seeking termination of this Agreement as provided at **§ XV.**

XV. TERM AND TERMINATION

This Agreement shall be for an indefinite term and shall remain in force and effect until terminated as provided in this **§ XV**.

A. Termination Without Cause

The Tribe or the State, acting through its Treasurer or his or her designee, may terminate this Agreement by giving written notice to the other party of its intention to terminate. The notice shall state a termination date which shall not be sooner than 90 days from the date of the notice and except as provided in **§ XV(B)** shall not take effect sooner than two years from the effective date of this Agreement. The notice of intent to terminate shall indicate at least three proposed dates for a meeting to take place within 30 days commencing with the date of the notice, to discuss the reasons for the termination. If the Tribe is the party giving the notice, the meeting shall be at a location designated by the State. If the State is the party giving the notice, the meeting shall be at a location designated by the Tribe. Within five business days of receipt of the notice, the party receiving the notice shall notify the party seeking termination as to which date is acceptable for the meeting and the precise location at which it is to be held.

B. Termination For Cause

1. Notwithstanding the provisions of **§ XV(A)**, the following violations of this Agreement shall constitute sufficient cause for termination of this Agreement at any time:

   a. Possession or sale by the Tribe, or any entity in which the Tribe has any ownership interest, of cigarettes or other tobacco products which do not bear the appropriate State stamp;

   b. Sale by the Tribe, or any entity in which the Tribe has any ownership interest, of cigarettes or other tobacco products to Non-Tribal Members where all taxes are not fully included in the price;

   c. Possession or sale by the Tribe, or any entity in which the Tribe has any ownership interest, of motor fuel not acquired or possessed as provided in this Agreement;

   d. Failure of the Tribe to seek licenses or registration as required under this Agreement within 10 business days following notice and request to do so;

e. Failure of a party to maintain necessary books and records, to comply with a request for review of books and records, or to permit inspections as provided in this Agreement;

f. Failure of the Tribe to promptly commence or authorize enforcement action requested by the State as provided by this Agreement;

g. Failure of the Tribal Court to render a decision on an enforcement action under **§ XIII(C)(4)(b)(i)** within the time frame specified in this Agreement;

h. Interference by a party with enforcement actions authorized by this Agreement, or failure of a party to follow procedures for enforcement actions authorized by this Agreement;

i. Failure of a party to pay amounts determined to be due under this Agreement within 45 days of such obligation becoming final.

2. In the event that a party determines that one or more of the events listed in **§ XV(B)** has occurred, that party shall request a meeting to be held within five business days of the notice for the purpose of discussing the matter. If the Tribe is the party requesting the meeting it shall be at a location designated by the State. If the State is the party requesting the meeting it shall be at a location designated by the Tribe. The request for the meeting shall provide a statement as to the nature of the alleged violation. At the meeting the parties shall discuss the incident(s) giving rise to the meeting. Following the meeting the party requesting the meeting may:

   a. Terminate this Agreement by giving notice of termination for cause;

   b. Defer determination as to whether to seek termination for cause for a period of time pending such further investigation or consultation as the party requesting the meeting shall determine appropriate; or

   c. Waive the breach.

   The party requesting the meeting shall notify the alleged offending party of its determination.

3. In cases where a notice of termination for cause is based on a violation of **§ XV(B)(1)(a), § XV(B)(1)(b), § XV(B)(1)(c), § XV(B)(1)(f), § XV(B)(1)(g), § XV(B)(1)(h), or § XV(B)(1)(i)**, the party requesting the meeting may terminate this Agreement immediately following the meeting subject to retroactive reinstatement in the event the arbitrator or panel determines that the violation did not occur. All other alleged violations shall, if confirmed by the arbitrator or panel, result in termination as of the date of the arbitration determination. Pending such determination this Agreement shall remain in full force and effect.

4. The party alleged to have violated this Agreement may within five business days of any notice of termination seek review of that action in accordance with the following process:

   a. The party seeking to invoke the process shall within five business days of the notice of termination send a notice of intent to contest the termination to the other party and shall name one or more arbitrators who have agreed to act to resolve the dispute. The notice shall also indicate which arbitrator the party giving notice would use if none of those listed are acceptable to the other party if acting alone. The party receiving notice shall within five business days of receipt indicate which arbitrator, if any, named by the party giving notice is acceptable to act alone. If none of the arbitrators acting alone are acceptable to the party receiving notice then that party shall name a single arbitrator who has agreed to serve on a panel to consist of that person, the arbitrator named by the party giving notice, and a third arbitrator named by the other two arbitrators. The two named arbitrators shall act within 10 business days of the naming of the second to name a third arbitrator.

   b. Within 14 business days of the arbitrator being named or upon the establishment of a panel, the arbitrator or panel shall establish a timetable to resolve the matter which shall not exceed 45 days from the date the arbitrator is named or the panel established. The timetable shall provide for discovery, submission of written argument and other materials, and, if requested by either party, for oral presentation including presentation of witnesses. Following submission of the materials and argument the arbitrator or panel shall make a single factual finding of whether the act alleged to give rise to a termination for cause has occurred. The determination of the arbitrator or the panel shall be final and binding on the parties.

   c. Each party shall bear their own costs incurred in the dispute resolution. The costs and fees charged by an arbitrator or arbitration panel shall be borne equally by the parties.

   d. In order to serve as an arbitrator under this Agreement for purposes of determining if there is a violation sufficient to justify a termination for cause, candidates must be admitted to practice law in the court of highest jurisdiction in any state of the United States or the District of Columbia and shall be a member in good standing of the bar of admission.

   e. Except as otherwise provided in this **§ XV** or mutually agreed by the parties, the arbitration shall proceed in accordance with the policies and procedures of the Commercial Rules of Arbitration of the American Arbitration Association; provided, that the arbitration itself shall not be administered by or proceed before the American Arbitration Association.

5. If the alleged offending party does not seek review of the termination within five business days of the notice, the termination shall be effective as of the date of the notice.

C. Final Accounting Following Termination

1. The State and the Tribe agree to pay amounts owed one to the other under the provisions of this Agreement accrued through the termination date. Within 10 business days following the termination date, a final accounting shall commence to determine the liabilities of the Tribe and the State one to the other. The State and the Tribe agree to cooperate in the exchange of information sufficient to determine their respective liabilities. If the parties cannot agree on the amount owed, then either party may by written notice to the other advise of its intent to submit the dispute to arbitration as provided in this **§ XV(C)**.

2. The notice of arbitration shall name one or more arbitrators who have agreed to act to resolve the dispute. The notice shall also indicate which arbitrator the party giving notice would use if none of those listed are acceptable to the other party if acting alone. The party receiving notice shall within 10 business days of receipt, indicate which arbitrator, if any, named by the party giving notice is acceptable to act alone. If none of the arbitrators named are acceptable to the party receiving notice then that party shall name a single arbitrator who has agreed to act to serve on a panel to consist of that person, the arbitrator named by the party giving notice, and a third arbitrator named by the other two arbitrators. The two named arbitrators shall act within 10 business days of the naming of the second to name a third arbitrator.

3. Within five business days of the naming of the arbitrator or the establishment of the arbitration panel, the parties shall submit to the arbitrator or panel a list of the issues that are being submitted for resolution. Following these submissions, the parties shall have seven business days to comment on the issues proposed for submission. Within 14 business days of being named the arbitrator or the establishment of the arbitration panel, the arbitrator or the panel shall establish a timetable to resolve the matter which shall not exceed 90 days. The timetable shall provide for discovery, submission of written argument and other materials, and if requested by either party for oral presentation including presentation of witnesses. Following submission of the materials and argument the arbitrator or panel shall, consistent with this Agreement, determine and award taxes due or refunds owed as the circumstances warrant. The award of the arbitrator or panel shall set forth the factual findings, legal conclusions, and conclusions as to the interpretation of the terms of this Agreement on which it is based. The monetary award of the arbitrator or panel shall be dated and shall be final and binding and shall survive termination of this Agreement.

4. Each party shall bear their own costs incurred in the dispute resolution. The costs and fees charged by an arbitrator or arbitration panel shall be borne equally by the parties.

5. In order to serve as an arbitrator under this Agreement for the purpose of making a final accounting following termination, candidates must be admitted to practice law in the court of highest jurisdiction in any state of the United States or the District of Columbia, shall be a member in good standing of the bar of admission, and shall have experience in taxation or federal Indian law.

6. Except as otherwise provided in this **§ XV(C)** or mutually agreed by the parties, the arbitration shall proceed in accordance with the policies and procedures of the Commercial Rules of Arbitration of the American Arbitration Association; provided, that the arbitration itself shall not be administered by or proceed before the American Arbitration Association.

XVI. NO THIRD PARTY RIGHTS CREATED

Nothing in this Agreement shall be construed to create any rights in third parties who are not parties to this Agreement, or constitute a basis for any third-party challenge or appeal, except as provided in **§ XIV(C)(2)** with respect to other Tribes not parties to this Agreement who intervene in Dispute Resolution under this Agreement.

XVII. NOTICE

A. General

1. Except as otherwise expressly provided in this Agreement, notice regarding tax matters arising between the State and Tribal Members or the State and Tribal Entities shall be directed to the member or entity in accordance with State law.

2. Where this Agreement provides that a matter is to be resolved in a State or Tribal court or tribunal, the rules and procedures of the designed court or tribunal shall control all matters of notice except as otherwise expressly provided in this Agreement.

3. Where this Agreement provides that a specified form be filed with the State for the purpose of (i) making a remittance to the State of taxes or fees, or (ii) seeking refund from the State, then the form, remittance, or refund request shall be filed and sent in accordance with its instructions.

4. Where a notice is to be given under the terms of this Agreement, the notice shall be made by personal delivery, overnight courier, or first class, certified or registered mail unless otherwise specified in this **§ XVII.**

5. Where under the terms of this Agreement notice is required to be given to or a request is to be made of the Tribal police or public safety department such notice or request shall be given by personal delivery to or by first class mail to Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians, ATTENION: TRIBAL CHAIRMAN, 1743 142ND Ave., PO Box 218, Dorr, MI 49323. .

B. Specific Notices

All notices and communication between the State and the Tribe with respect to the following matters shall be sent to:

For the Tribe:

D.K. Sprague, Chairman
Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians
1743 142nd Ave., PO Box 218
Dorr, MI 49323

with copy to:
Conly J. Schulte
Fredericks Peebles & Morgan LLP
3610 N. 163rd Plz.
Omaha NE 68116

For the State:

State Treasurer
Michigan Department of Treasury
Attention: Tribal Liaison
430 West Allegan Street
Lansing, MI 48922

§ I(C) – State Law Amendments. Notices provided for under § I(C) may be delivered electronically.
§ I(E)(4) – Protocol for exchange, retention, and destruction of taxpayer information.
§ I(F) – Annual Summit.
§ I(G) – Sovereign Immunity, all matters. All notices provided for under **§ I(G)** shall be by registered or certified mail with return receipt.
§ II(K) – Relating to status of lands as TTL.
§ VIII – General Administration; all lists to be sent to State by December 15 of each year.
§ X – Administration: Motor Fuel; all matters except refund requests.
§ XI – Administration: Tobacco Products; all matters except refund requests.

§ XII – Administration: Sales Tax and Use Tax; all matters except refund requests.

§ XIII – Enforcement; all matters except notice to Tribal police or public safety, written statements under **§ XIII(C)(4)(b)(ii)**, and notice of audit to Tribal Members or Tribal Entities.

§ XIV – Dispute Resolution, all matters. All notices provided fo r under **§ XIV** shall be by registered or certified mail with return receipt.

§ XV – Termination, all matters. All notices provided for under **§ XV** shall be by registered or certified mail with return receipt.

C. Where Notice Not Specified

In those instances where a party to this Agreement desires to send a written notice or other written communications to the other party and the person or office is not otherwise specified under this Agreement, the notice or communication shall be directed to:

Tribe: Tribal Chair and General Counsel
State: State Treasurer Attention: Tribal Liaison

D. Change of Person or Office That is to Receive Notice

A party to this Agreement may change the person or office to whom a notice is to be sent under this Agreement by directing a notice to that effect by registered or certified mail with return receipt clearly stating that a change in person or office to be notified under the terms of this Agreement is intended, providing a reference to the particular notice provision to be changed, and stating the person or office to whom the notice is to be sent commencing as of a specific date not less than 14 days after the notice of the change. A party receiving notice of such a change shall confirm by sending an acknowledgment of the change to the other party by certified or registered mail return receipt requested.

XVIII. AMENDMENT

The terms of this Agreement may be amended, to the extent permitted by law, only upon a mutual, written agreement executed by an authorized representative of each party.

XIX. EFFECTIVE DATE AND IMPLEMENTATION DATE

A. Effective Date

This Agreement shall become binding upon the parties on the date on which the last of the following actions occurs:

1. State legislation taking effect that authorizes the Department to enter into the Agreement on behalf of the State;

2. Signature by the State Treasurer or his or her designee as authorized by the State legislation;

3. Signature by a representative of the Tribe; and

4. Certification by the Tribe's legal counsel that the signatory acting on behalf of the Tribe has the necessary authority to enter into this Agreement and to bind the Tribe to this Agreement.

B. Implementation Date

The terms of this Agreement shall be implemented commencing upon a date agreed to by the Department and the Tribe following receipt by the Department of certification by the Tribe's legal counsel that the Tribe has taken all necessary steps to bind Tribal Members and Tribal Entities to the terms of this Agreement.

STATE OF MICHIGAN

By: Robert J. Kleine
ROBERT J. KLEINE
Michigan State Treasurer
First Floor, Austin Building
Lansing, MI 48922

MATCH-E-BE-NASH-SHE-WISH BAND OF POTTAWATOMI INDIANS

By: _____
D.K. Sprague, Chairman
Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians
1743 142nd Ave., PO Box 218
Dorr, MI 49323

Appendix A
to
Agreement between the State of Michigan
and the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians

I. Agreement Area per § II(A)

- Allegan County: Survey sections 9-16, 21-24, 27-30, 33, and 34 in T4N, R12W (Dorr Twp); survey sections 10, 11, 14, 15, 19-23, and 26-35 in T3N, R12W (Hopkins Twp); survey sections 16-18 and 32 in T4N, R11W (Leighton Twp); survey sections 25-27, 34, and 35 in T4N, R13W (Salem Twp); survey sections 4-9 and 16-36 in T3N, R11W (Wayland Twp); survey sections 5 and 16 in T2N, R12W (Watson Twp); and survey section 4 in T2N, R11W (Martin Twp). (Amended 11-19-12)

- Barry County: Survey sections 6, 7, 15, 17-20 in T3N, R10W (Yankee Springs Twp). (Amended 11-19-12)

II. Tribal and Trust Lands per § II(K)

K-1. Per § II(K)(1) list of lands currently held in federal trust for the benefit of the Tribe that have TTL and AA status regardless of how the lands are used:

None

K-2. Per § II(K)(2) list of fee lands currently owned by the Tribe that have TTL and AA status regardless of how the lands are used:

1. Property 1 referred to as Indian Lake A is approximately 17 acres the Assessor's Parcel number (APN) for Indian Lake A is 03-24-021-023-00, this property is located in the southwest ¼ of section 21, T3N,R11W Wayland Township, Allegan County

2. Property 2 referred to as Indian Lake B is 11.6 acres. Indian Lake B contains three (3) parcels, APN 03-24-021-023-60, 03-24-021-024-00, 03-24-028-015-00. this property is located in the southwest1/4 and the northwest ¼ of section21 and 28, T3N, R11W, Wayland Township, Allegan County

3. Property 3 referred to as the Daley property is 10 acres APN 03-24-028-015-30 it is located innorthwest1/4 section 28, T3N, R11W, Wayland Township, Allegan County

4. Property 4 referred to as Walker Property is 13 acres, APN 03-24-038-015-70 it is located in northwest ¼ section 28, T3N, R11W, Wayland Twp. Allegan County

5. Property 5 referred to as Larkin Property is 19 acres, APN 03-24-028-015-60 it is located in the southeast ¼ section 28, T3N, R11W, Wayland Twp. Allegan County

6. Property 6 referred to as the Bradley Mission property is 8.1 acres, APN 03-24-021-017-90 it is located in northeast section 21,T3N, R11W, Wayland Twp. Allegan County

7. Property 7 referred to as Dick's Woods is 30 acres, this property contains two (2) parcels, APN 03-24-021-041-10 and 03-24-022-030-00 it is located within the southwest ¼ of section 22, T3N, R11W, Wayland Twp., Allegan County

8. Property 8 referred to as Boot Lake Properties contains two (2) parcels, APN 03-24-027-018-00 this parcel is 41.3 acres located southwest ¼ of section 27, T3N, R11W, Wayland Twp., parcel 2 APN 03-24-027-015-00, E1/2,E1/2, SE1/4 EX S 165 ft of W 132 ft also EX S155 ft of E 300 ft section 27, T3N, R11W, Wayland Twp., Allegan County (totals acres 69.8)

K-3. Governmental Specified Area per § II(K)(3) [area where all Tribal lands acquired after execution of this Agreement have TTL and AA status so long as the lands are used for a Governmental Function]:

- Allegan County – T2N, R13W (Allegan Twp); T4N, R12W (Dorr Twp); T1N, R11W (Gun Plain Twp); T3N, R12W (Hopkins Twp); T4N, R11W (Leighton Twp); T2N, R11W (Martin Twp); T3N, R13W (Monterey Twp); T1N, R12W (Otsego Twp); T4N, R13W (Salem Twp); T2N, R12W (Watson Twp); and T3N, R11W (Wayland Twp).

- Barry County – T3N, R10W (Yankee Springs Twp); and T2N, R10W (Orangeville Twp).

- Kalamazoo County – The east ½ of T1S, R12W (Alamo Twp); the west ½ of T1S, R11W (Cooper Twp); T2S, R11W (Kalamazoo Twp); and T3S, R11W (Portage Twp).

- Kent County – T6N, R12W (Wyoming Twp).

- Ottawa Country – T6N, R13W (Georgetown Twp); T5N, R15W (Holland Twp); and T5N, R13W (Jamestown Twp);

List of Tribal lands acquired after execution of this Agreement that are within the Governmental specified area described above.

Reserved

K-4. Commercial Designated Area per § II(K)(4) [area where all Tribal lands accepted into federal trust after execution of this Agreement have TTL and AA status regardless of how the lands are used]:

- Allegan County: Survey sections 12, 13, 24, 25, and 36 in T4N, R12W (Dorr Twp); survey sections 4-9, 16-21, and 28-33 in T1N, R11W (Gun Plain Twp); survey sections 1, 12, 13, 24, 25, and 36 in T3N, R12W (Hopkins Twp); survey sections 7, 18, 19, 30, and 31 in T4N, R11W (Leighton Twp); survey sections 6, 7, 18, 19, 30, and 31in T2N, R11W (Martin Twp); survey sections 1, 12, 13, 24, 25, and 36 in T2N, R12W (Watson Twp); and survey sections 4-9 and 16-36 in T3N, R11W (Wayland Twp).

- Barry County: Survey sections 4, 5, 6, 8, and 9 in T2N, R10W (Orangeville Twp).

List of Tribal lands accepted into federal trust after execution of this Agreement which are located within the Commercial Designated Area described above.

Reserved

K-5. List of other lands acquired after execution of this Agreement by the Tribe that are mutually agreed upon in writing by the parties.

Reserved

Appendix A Amendments Post September 17, 2008.

I. Agreement Area per II(A)

- Allegan County: Survey sections 9-16, 21-24, 27-30, 33, and 34 in T4N, R12W (Dorr Twp); survey sections 10, 11, 14, 15, 19-23, and 26-35 in T3N, R12W (Hopkins Twp); survey sections 16-18 and 32 in T4N, R11W (Leighton Twp); survey sections 25-27, 34, and 35 in T4N, R13W (Salem Twp); survey sections 4-9 and 16-36 in T3N, R11W (Wayland Twp); survey sections 5 and 16 in T2N, R12W (Watson Twp); and survey section 4 in T2N, R11W (Martin Twp). (Amended 11-19-12)

- Barry County: Survey sections 6, 7, 15, 17-20 in T3N, R10W (Yankee Springs Twp). (Amended 11-19-12)

Walter A. [signature] Date: 11-19-12
State Representative

Daniel K. [signature] Date: 11-13-12
Tribal Representative