

## **PARTIAL SETTLEMENT AGREEMENT**

The Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan (a/k/a the Gun Lake Tribe) (Tribe) and the State of Michigan (State) enter into this Partial Settlement Agreement (Agreement) to resolve a portion of an existing dispute between the Parties.

### **THE GAMING COMPACT**

1. The Tribe and the State are parties to a gaming compact (the Compact) dated May 9, 2007, establishing the terms and conditions under which the Tribe may conduct class III gaming pursuant to the Indian Gaming and Regulatory Act, 25 U.S.C. § 2701 *et seq.*
2. Section 15(B) of the Compact requires the Tribe to make “semi-annual payments of a percentage of its Net Win to the Michigan Strategic Fund” based on the payment scale provided and in exchange for certain exclusivity rights.
3. Section 15(C) of the Compact limits the Tribe’s obligations to make semi-annual payments to the Michigan Strategic Fund by stating the circumstances in which the Tribe may withhold 50% or 100% of the payments.

### **THE LOTTERY DISPUTE**

4. The Michigan Bureau of State Lottery (State Lottery) introduced iLottery to the public on August 11, 2014. iLottery allows players to buy and play lottery games from the State Lottery using personal computers, tablets, and other mobile devices connected to the internet.
5. In a letter dated December 1, 2014, the Tribe stated it had made the full semi-annual payment for the revenue sharing period that ended September 30, 2014. However, the Tribe “reserve[d] any and all rights and claims to an amount of in the amount of \$1,064,670.49” from that revenue sharing period “related to the effective date of the iLottery,” which it claimed to constitute an Electronic Game of Chance under the Compact.
6. The Tribe withheld 100% of both of its semi-annual payments to the Michigan Strategic Fund in 2015, and the first semi-annual payment in 2016, amounting to the following:

- a. \$6,777,782.72 withheld for the revenue sharing period ending March 31, 2015; and
  - b. \$7,627,549.19 withheld for the revenue sharing period ending September 30, 2015.
  - c. \$7,334,018.61 withheld for the revenue sharing period ending March 31, 2016.
7. The Tribe also challenges the State Lottery's decision to authorize a limited number of qualified organizations to sell charity lottery tickets using electronic pull-tab machines, which dispense and display the results of the charity lottery tickets.
8. The State contests the Tribe's grounds for withholding any amount from its semi-annual payments under Section 15 the Compact.
9. Notwithstanding the ongoing nature of the dispute, the State and Tribe wish to settle those issues on which they can agree, preserve the remainder of the dispute for future resolution, improve their relationship, and cooperate in economic development activities that benefit both the Tribe and the State.

The State and Tribe **HEREBY AGREE** to the following terms and conditions of this Agreement:

#### **TERMS AND CONDITIONS**

10. **Definitions.** Unless otherwise stated in this Agreement, the terms used in this Agreement shall have the same meanings given to them in the Compact. The following terms shall have the definitions stated below:
- a. "Agreed Amount" or "Agreed Amounts" means 50% of each semi-annual payment payable by the Tribe to the Michigan Strategic Fund, or its successor, required under Section 15 of the Compact in the second revenue-sharing period in calendar year 2016 and thereafter.
  - b. "Compact" means the gaming compact between the Parties referenced in Paragraph 1.
  - c. "Economic Development Incentive" means 15% of each semi-annual payment payable by the Tribe to the Michigan Strategic Fund, or its successor, under Section 15 of the Compact, but which the Tribe may retain subject to the requirements of Paragraph 12 in the second revenue-sharing period of calendar year 2016 and thereafter.



- d. "Lottery Dispute" means any and all issues, claims, rights, and theories concerning acts or omissions by the State, the Michigan Strategic Fund, and State Lottery on or before the Effective Date that the Tribe has asserted or may in the future assert as the basis for withholding any amount of money from a semi-annual payment required under Section 15 of the Compact.
  - e. "Retained Amount" or "Retained Amounts" means 35% of each semi-annual payment historically paid by the Tribe to the Michigan Strategic Fund, or its successor, pursuant to Section 15 of the Compact in the second revenue-sharing period of calendar year 2016 and thereafter.
11. **Compact Not Affected.** This Agreement does not amend or modify any terms or conditions of the Compact or the Parties' respective obligations under the Compact, including the calculation of Net Win payable under Section 15 of the Compact. The Parties intend this Agreement to narrow the scope of their dispute and demonstrate their good faith intentions to resolve that dispute in the future.
12. **Economic Development Incentive.**
- a. **Amount.** The Tribe may deduct and retain 15% of each semi-annual payment payable to the Michigan Strategic Fund, or its successor starting in the second revenue-sharing period of calendar year 2016 and thereafter.
  - b. **Limits on Use.** All sums deducted and retained by the Tribe as an Economic Development Incentive shall be paid or transferred into a separate financial account held in the name of GLIMI, LLC and shall not be available to be disbursed or expended before the Tribe makes it semi-annual payment to the Michigan Strategic Fund, or its successor for the same revenue-sharing period. The Economic Development Incentive funds shall not be commingled in a financial account with other funds held by the Tribe or GLIMI, LLC. The Economic Development Incentive shall be disbursed or expended solely for economic development projects approved by GLIMI, LLC that are geographically located within the State of Michigan.
  - c. **No Appropriation, Grant, or Payment.** The amount of the Economic Development Incentive is dependent on the Tribe's Net Win under the Compact. This Agreement does not guarantee that the Economic Development Incentive will meet or exceed any particular amount of money. This Agreement does not obligate the Michigan

Legislature to appropriate funds for the Tribe or for the State to otherwise make grants or payments to the Tribe for an Economic Development Incentive.

- d. **State Appointment to GLIMI, LLC.** The Governor of the State of Michigan shall be entitled to appoint one person to represent the State of Michigan on the Board of GLIMI, LLC, or its successor, in all calendar years in which the Tribe deducts and retains an Economic Development Incentive. The Governor of the State of Michigan shall make the appointment to the Board of GLIMI, LLC, or its successor, by sending notice to the Tribe pursuant to Paragraph 28a.
  - e. **Participation by State's Representative.** The State's representative on the Board of GLIMI, LLC, or its successor, shall have the same rights and privileges as other members of the Board of GLIMI, LLC, or its successor, in connection with any activities and decisions concerning the Economic Development Incentive, including the right to review and provide information, attend meetings, and comment on projects involving the Economic Development Incentive; provided, however, that the State's representative on the Board of GLIMI, LLC, or its successor, shall not have a right to vote on matters that come before the Board of GLIMI, LLC.
13. **Payment of Past Amounts.** Within thirty days of the Effective Date, the Tribe shall do all of the following with respect the semi-annual payments that it withheld in 2015 and 2016:
- a. Deduct and retain \$3,580,303.73 as an Economic Development Incentive subject to the requirements of Paragraph 12.
  - b. Pay \$9,805,004.77 to the Michigan Strategic Fund or its successor.
  - c. Retain \$8,354,042.02 as the Tribe's Retained Amount, which shall be deposited in the D.K. Sprague Educational Scholarship Endowment.
14. **Payment of Future Amounts.** With respect to all semi-annual payments under Section 15 of the Compact beginning with the second semi-annual payment in calendar year 2016 and thereafter, the Tribe shall do all of the following:
- a. Calculate the Retained Amount by multiplying each semi-annual payment under Section 15 of the Compact by 0.35.



- b. Calculate the Agreed Amount by multiplying each semi-annual payment under Section 15 of the Compact by 0.50.
  - c. Calculate the Economic Development Incentive by multiplying each semi-annual payment under Section 15 of the Compact by 0.15.
  - d. Provide Notice to the State of the Retained Amount.
  - e. Retain the Economic Development Incentive subject to the requirements of Paragraph 12.
  - f. Pay the Agreed Amount to Michigan Strategic Fund, or its successor.
15. **Illustration of Payments.** The following calculations are an illustration of the payments made under Paragraph 14 and do not constitute a limit or calculation of any sums actually owed by the Tribe under Section 15 of the Compact.
- If the Tribe owed a semi-annual payment to Michigan Strategic Fund in the amount of \$1,000,000.00:
- a. The Retained Amount is  $\$1,000,000 \times 0.35 = \$350,000$ .
  - b. The Agreed Amount is  $\$1,000,000 \times 0.50 = \$500,000$ .
  - c. The Economic Development Incentive is  $\$1,000,000 \times 0.15 = \$150,000$ , which the Tribe may retain subject to the requirements of Paragraph 12.
16. **No Late Payments.** Except as stated in Paragraph 13, all payments made by the Tribe to the Michigan Strategic Fund, or its successor, pursuant to this Agreement must be made within the sixty-day period specified in Section 15(B) of the Compact. Nothing in this Agreement authorizes the Tribe to wait until after the sixty-day period provided in Section 15(B) of the Compact to make a payment. The State may exercise its right to enforce this Agreement if the Tribe withholds payment or has not made a payment within the sixty-day period in Section 15(B) of the Compact.
17. **Limited Release of Claims.** Except as provided in Paragraph 18, the Parties release the following claims, including the right to sue under this Agreement or initiate dispute resolution pursuant to Section 7 of the Compact, as stated below:

- a. The Tribe releases all claims to withhold or offset any portion of the \$1,064,670.49 referenced in the Tribe's letter dated December 1, 2014. This release shall be effective on the Effective Date.
  - b. The State releases all claims for funds the Tribe actually pays to the Michigan Strategic Fund, or its successor, required under Section 15 of the Compact. This release and waiver of claims shall be effective only when the Michigan Strategic Fund, or its successor, receives the payment.
18. **Dispute Preserved.** The Parties expressly preserve and do not waive or release any arguments, issues, claims, or rights concerning:
- a. Any Retained Amounts.
  - b. Any amounts due and owing from the Tribe under Section 15 of the Compact that the Tribe does not actually pay to the Michigan Strategic Fund, or its successor.
  - c. Any Economic Development Incentives for a revenue-sharing period under Section 15 of the Compact in which the Tribe does not comply with the obligations of Paragraph 12 or does not pay the full Agreed Amount to the Michigan Strategic Fund, or its successor.
  - d. Disputes that arise concerning either Party's performance or satisfaction of its obligations under this Agreement; and
  - e. Disputes that are unrelated to the Lottery Dispute and are, therefore, outside the scope of this Agreement.
19. **Notice Under Compact.** This Agreement constitutes notice of the Lottery Dispute under Section 12 of the Compact. Payments that the Tribe makes in accordance with the requirements of Paragraph 14 do not require further notice by either Party under Section 12 of the Compact to preserve the Parties' dispute. Any new or different grounds for a dispute between the Parties concerning the Compact require additional notice under Section 12 of the Compact.
20. **No Admission.** Neither the State nor the Tribe admits any wrongdoing in connection with this dispute. Neither the substance nor existence of this Agreement may be used against either Party, except in a judicial proceeding in state or federal court to enforce this Agreement.



21. **Limited Waiver of Sovereign Immunity.** The State waives its sovereign immunity for the limited purpose of enforcing this Agreement and for no other purpose. The Tribe waives its sovereign immunity for the limited purpose of enforcing this Agreement and for no other purpose. By executing this Agreement, both Parties consent to be sued in a state or federal court of competent jurisdiction for the enforcement of this Agreement, including any necessary equitable or legal remedies. No separate or specific pledge of assets by either Party is required to make the payments required under this Agreement or to satisfy a judgment entered in an action to enforce the obligations in this Agreement.
22. **Access to Information.** The State may request information from the Tribe necessary to determine the Tribe's compliance with this Agreement pursuant to and in accordance with Section 4(A)(4)(b) of the Compact.
23. **Confidentiality.** This Agreement shall not be confidential and will be made public.
24. **Entire Agreement.** This Agreement is the entire agreement between the Parties and supersedes all prior agreements, whether written or oral, with respect to the Lottery Dispute.
25. **Duration.** This Agreement shall remain in effect so long as the Compact remains in effect, unless and until superseded by a written agreement concerning the disbursement of Disputed Amounts.
26. **Severability and Invalidity.** The terms of this Agreement are not severable. If a federal or state court of competent jurisdiction holds or declares that any portion of this Agreement is invalid, or if the United States Secretary of the Interior or National Indian Gaming Commission determines that this Agreement must be reviewed and approved in the manner of an amendment to the Compact, this Agreement shall terminate and be of no further force and effect, with both Parties preserving all claims and disputes that would otherwise be released and waived in this Agreement.
27. **Survival.** Paragraph 21 shall survive this Agreement.
28. **Notices.** Any notices, requests, information, or demands under this Agreement must be given or requested in writing and shall be personally delivered or sent by first-class, certified or registered United States mail, postage prepaid, return receipt requested, and sent to the other Party at the addresses below:
  - a. Notice to the Tribe shall be sent to:

Match-e-be-nash-she-wish Band of Pottawatomi Indians  
2872 Mission Drive  
Shelbyville, MI 49344  
Attn: Tribal Chairperson

With a copy to:

Gun Lake Tribal Gaming Authority  
1123 129<sup>th</sup> Avenue  
Wayland, MI 49348  
Attn: General Counsel

- b. Notice to the State shall be sent to:

Governor's Office  
State of Michigan  
P.O. Box 30013  
Lansing, MI 48909

With a copy to:

Division Chief  
Environment, Natural Resources, and Agriculture Division  
Michigan Department of Attorney General  
P.O. Box 30755  
Lansing, MI 48909

29. **No Oral Modification or Amendment.** The Parties may amend this Agreement only in a writing signed by the Governor of the State of Michigan and a tribal official authorized by a Tribal Council resolution to sign the modification or amendment to this Agreement.
30. **Effective Date.** The Tribe shall obtain a resolution of the Tribal Council approving this Agreement and authorizing a tribal official to execute this Agreement. The Agreement shall be effective immediately when signed by the Governor of the State of Michigan and the tribal official authorized in the Tribal Council resolution to sign this Agreement.
31. **Separate Counterparts.** This Agreement may be executed in separate counterparts, each of which is deemed an original. The executed counterparts, together, constitute a single and binding agreement.



32. **Copies.** The Parties may rely on copies of the fully-executed and effective version of this Agreement as if they were originals.

By executing this Agreement, the individuals who sign below represent that they have all authority necessary to bind the respective Parties to this Agreement.

**MATCH-E-BE-NASH-SHE-WISH BAND  
OF POTTAWATOMI INDIANS OF MICHIGAN (a/k/a GUN LAKE TRIBE)**

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BY: Leah Sprague-Fodor

ITS: Chairwoman

DATED: 7-5-16

**STATE OF MICHIGAN**

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BY: Rick Snyder

ITS: Governor

DATED: July 13, 2016