

PREAMBLE

WHEREAS, the Samish Indian Nation ("Tribe") is a federally recognized Indian Tribe, and

**CIGARETTE TAX COMPACT**

WHEREAS, the body of Federal Indian law and policy recognizes the right and the importance of self-determination for Indian Tribes, the Tribe to tax certain activities, and the need for economic development in Indian country by Indian Tribes; and

**Between**

WHEREAS, the State of Washington, the political entity of the federally recognized Indian Tribes within the state of Washington and has formally recognized that the sovereignty of each Tribe provides paramount authority for the Tribe to exist and to govern;

**THE SAMISH INDIAN NATION**

**And**

WHEREAS, a disagreement exists between the Tribe and the State over questions regarding

**THE STATE OF WASHINGTON**

WHEREAS, the State and Tribe will benefit from resolution of that disagreement by the change in focus from enforcement and litigation to a focus on the administration of this Cigarette Tax Compact and

WHEREAS, the Tribe and State will benefit from resolution of that disagreement by the tax base this Compact will enable, taxation being an essential attribute of Tribal sovereignty and a tool of self-governance; and

WHEREAS, the State and Tribe will also benefit by the exercise of the attributes of Tribal sovereignty and from the improved well-being of members of the Tribe that will result from economic development by the Tribe and its members; and

WHEREAS, both the Tribe and State desire a positive working relationship in matters of mutual interest and seek to resolve disputes and disagreements by conducting discussions on a government-to-government basis; and

WHEREAS, the mutual interests of the State and Tribe brought these two governments together to pursue their common interest in resolving this tax disagreement; and

WHEREAS, this Compact is authorized, on the part of the State by legislation, including House Bill 2575, enacted by the 2001 Regular Session of the 57<sup>th</sup> Legislature and signed by the Governor, effective July 22, 2001, House Bill 2553, enacted by the 2002 Regular Session of the 57<sup>th</sup> Legislature and signed by the Governor, effective June 13, 2002, and Substitute Senate Bill 2513, enacted by the 2003 Regular Session of the 58<sup>th</sup> Legislature and signed by the Governor, effective July 27, 2003, as codified in RCW 43.06.450, RCW 43.06.455, RCW 43.06.460, and

## PREAMBLE

WHEREAS, the Samish Indian Nation ("Tribe") is a federally recognized Indian Tribe, possessed of the inherent sovereign powers of a government; and

WHEREAS, the state of Washington ("State") is a state within the United States of America, possessed of the powers of state government; and

WHEREAS, the body of Federal Indian law and policy recognizes the right and the importance of self-determination for Indian Tribes, the authority of a Tribe to tax certain activities, and the need for economic development in Indian country by Indian Tribes; and

WHEREAS, the State has committed, through the Centennial Accord and Millennium Agreement, to the political integrity of the federally recognized Indian Tribes within the state of Washington and has formally recognized that the sovereignty of each Tribe provides paramount authority for the Tribe to exist and to govern; and

WHEREAS, a disagreement exists between the Tribe and the State over questions regarding jurisdiction over and the taxation of the sale and distribution of cigarettes; and

WHEREAS, the State and Tribe will benefit from resolution of that disagreement by the change in focus from enforcement and litigation to a focus on the administration of this Cigarette Tax Compact; and

WHEREAS, the Tribe and State will benefit from resolution of that disagreement by the tax base this Compact will enable, taxation being an essential attribute of Tribal sovereignty and a tool of self-sufficiency; and

WHEREAS, the State and Tribe will also benefit by the exercise of the attributes of Tribal sovereignty and from the improved well-being of members of the Tribe that will result from economic development by the Tribe and its members; and

WHEREAS, both the Tribe and State desire a positive working relationship in matters of mutual interest and seek to resolve disputes and disagreements by conducting discussions on a government-to-government basis; and

WHEREAS, the mutual interests of the State and Tribe brought these two governments together to pursue their common interest in resolving this tax disagreement; and

WHEREAS, this Compact is authorized, on the part of the State, by legislation, including House Bill 5372, enacted by the 2001 Regular Session of the 57<sup>th</sup> Legislature and signed by the Governor, effective July 22, 2001, House Bill 2553, enacted by the 2002 Regular Session of the 57<sup>th</sup> Legislature and signed by the Governor, effective June 13, 2002, and Substitute Senate Bill 5933, enacted by the 2003 Regular Session of the 58<sup>th</sup> Legislature and signed by the Governor, effective July 27, 2003, as codified in RCW 43.06.450, RCW 43.06.455, RCW 43.06.460, and

RCW 82.24.295; and on the part of the Tribe, by a Tribal Ordinance duly adopted by the Samish Indian Nation Tribal Council and signed by the Tribal Chairman.

NOW THEREFORE, the Tribe by and through its Tribal Council, and the State by and through its Governor, do hereby enter into this Compact for the mutual benefit of the Tribe and the State.

**PART I**  
**Definitions**

1. "Auditor" means an independent third party auditor selected pursuant to Part VIII, Section 2 of this Compact.
2. "Allocation" means the number of Cigarettes available to be sold to Tribal members free of all State cigarette and sales taxes. The Allocation is based on a formula that includes consumption data and Tribal service area population.
3. "Carton" or "carton of cigarettes" means, unless otherwise indicated, a carton of two hundred (200) cigarettes.
4. "Cigarette" means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and irrespective of the tobacco being flavored, adulterated, or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any material, except where such wrapper is wholly or in the greater part made of natural leaf tobacco in its natural state.
5. "Compact" means this Compact entered into by the State and the Tribe.
6. "Department" means the Washington State Department of Revenue.
7. "Essential government services" means services provided by the Tribe, including, but not limited to, administration, public facilities, fire, police, public health, education, job services, sewer, water, environmental and land use, transportation, utility services, and economic development, and as more fully defined in Part XIII, Section 8.
8. "Indian country," means land under the governance of the Samish Indian Nation and meeting the definition in 18 U.S.C. 1151.
9. "Liquor Control Board" is an agency of the State with a mission to prevent the misuse of alcohol and tobacco through education, enforcement, and controlled distribution.
10. "Local retail sales tax" means the combined Washington local retail sales and use taxes applicable in the area.
11. "NonIndian" means an individual who is neither a Tribal member nor a Nonmember Indian.

12. "Nonmember Indian" means an enrolled member of a federally recognized Indian Tribe other than the Samish Indian Nation.
13. "Parties to the Compact" or "parties" means the Tribe and the State.
14. "Retail selling price" means the ordinary, customary, or usual price paid by the consumer for each package or carton of cigarettes, which price includes the Tribal cigarette tax.
15. "Self-certified Tribal wholesaler" means a wholesaler who is a federally recognized Indian tribe or a member of such a tribe, who is not required to be licensed under any state law, and who has by letter certified to the Department that it will abide by the terms of this Compact and who has signed an agreement with the Tribe requiring it to abide by the terms of this Compact.
16. "Self-certified wholesaler" means an out-of-state wholesaler who is not a self-certified Tribal wholesaler and who has by letter certified to the Department that it will abide by the terms of this Compact and who has signed a contract with the Tribe requiring it to abide by the terms of this Compact.
17. "State cigarette tax" means the State tax imposed on each cigarette, which is expressed in cents per cigarette.
18. "State and local retail sales and use taxes" means taxes levied by the State or by local units of government and expressed as a percentage of the sales price (which includes the State cigarette tax) of a unit of cigarettes.
19. "State taxes," in this Compact only, means a combination of the "State cigarette tax," and the "state and local retail sales and use taxes."
20. "State" means the State of Washington.
21. "Tobacco products" means cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco, snuff, snuff flour, cavendish, plug and twist tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking. "Tobacco products" do not fall within the definition of "cigarettes."
22. "Tribal member" means an enrolled member of the Samish Indian Nation.
23. "Tribal retailer" means a cigarette retailer wholly owned by the Tribe and located in Indian country.

24. "Tribal cigarette tax" means the tax or taxes enacted as a provision of Tribal ordinance on the units of cigarettes sold, expressed in cents per cigarette, and on the sales of cigarettes to retail buyers, expressed in terms of a percentage of the sales price of the unit of cigarettes.
25. "Tribe" or "Tribal" means or refers to the Samish Indian Nation, a federally recognized Tribe.
26. "Wholesaler" means every person who purchases, sells, or distributes cigarettes for the purpose of resale only.

**PART II**  
**Applicability of the Compact**

**1. Execution of Compact**

This Compact shall become effective when approved by both the Tribal Council as indicated by the signature of the Tribal Chairman, and by the State when signed by the Governor. This Compact shall be executed in duplicate originals, with each party retaining one fully-executed duplicate original of the Compact.

**2. Application**

From its execution, and contingent on the imposition of the Tribal cigarette tax pursuant to a Tribal ordinance meeting the terms of Part III of this Compact, and contingent on the Tribe's possession of land meeting the status of "Indian country," this Compact shall apply to the retail sale of cigarettes by Tribal retailers. Sales subject to the Tribal cigarette tax imposed pursuant to this Compact are those in which delivery and physical transfer of possession of the cigarettes from the retail seller to the buyer occurs within Indian country. If the Tribe desires to pursue mail order and/or internet sales of cigarettes, the Tribe and State agree to negotiate in good faith mutually acceptable terms and conditions of a memorandum of understanding concerning the taxation of such sales.

**3. Scope Limited**

This Compact does not apply to:

- a. Cigarettes sold at retail by NonIndians or Nonmember Indians;
- b. Tobacco Products as defined in Part I of this Compact; and

**PART III**  
**Imposition of Tribal Cigarette Taxes**

**1. Tribal Retailers**

The Tribe agrees that any cigarette retailer wholly owned by the Tribe is subject to this Compact. The Tribe agrees that, for the purposes of this Compact, only cigarette retailers owned by the Tribe are authorized to make sales of cigarettes.

**2. Tax Imposed on Sales by Tribal Retailers**

- a. Subject to Part V, Section 1, concerning retail sales to Tribal members, the Tribe, by ordinance and in accord with the requirements of this Part, shall impose Tribal cigarette

- taxes on all sales by Tribal retailers of cigarettes to retail purchasers within Indian country.
- b. Beginning no sooner than the date this Compact is signed by both parties, and subject to enactment of a Tribal ordinance authorizing the imposition of a Tribal cigarette tax and the Tribe's possession of land meeting the status of "Indian country," the Tribe shall impose and maintain in effect a tax on the retail sale of cigarettes equaling no less than the sum of an amount equal to 80 percent of the State taxes.
  - c. During the term of this Compact, upon any future increase in the State cigarette tax or state and local retail sales and use taxes, the Tribal cigarette tax shall increase by no less than 100 percent of the increase in the combined State taxes. Notwithstanding the foregoing sentence, so long as the Tribe is entitled to apply the 80 percent formula set forth above to its cigarette sales, the increase in State taxes shall trigger an increase in the corresponding Tribal cigarette tax of 80 percent of the increased amount.
  - d. Upon any future decrease in the State cigarette tax or state and local retail sales and use taxes, the Tribal cigarette tax may decrease to a minimum of no less than 100 percent of the combined State taxes.
  - e. The State will give written notice to the Tribe at least thirty (30) days prior to the effective date of any increases or decreases in State taxes.
  - f. Pursuant to RCW 43.06.455(3), and subject to the imposition of a Tribal cigarette tax and the Tribe's possession of land meeting the status of "Indian country," the State retrocedes from its tax during the time this Compact is in effect.

**3. Phase-In Tax Rate**

The Tribe shall impose and maintain in effect a Tribal cigarette tax equaling no less than the sum of an amount equal to 80 percent of the State taxes. The Tribe shall provide the Department with written notice as to the date of imposition.

**4. Final Tax Rate**

No later than 36 months after the initial imposition of Tribal cigarette tax under this Compact and subject to the phase-in reduction under this Part, the Tribe shall impose and maintain in effect a Tribal cigarette tax equaling no less than the sum of an amount equal to 100 percent of the State taxes.

**5. Reduction in Three Year Phase-In – How to Determine**

The Tribe and the Department agree that prior to the imposition of the tribal cigarette tax the two parties must reach an agreement regarding the phase-in period and how to meet the baseline criteria as described in RCW 43.06.460.

**PART IV**

**Purchase of Cigarettes by Tribal Retailers**

**1. Wholesale Purchases – Requirements**

By Tribal ordinance, the Tribe agrees to maintain in effect a requirement that the Tribal retailers purchase cigarettes only from wholesalers or manufacturers licensed to do business in the State or such other wholesalers as may be authorized by a memorandum of agreement under Part VI of this Compact.

**2. Delivery of Cigarettes to the Tribal Retailer Outside of Indian Country**

Cigarettes bearing the tax stamp required by this Compact may be delivered or transferred within or outside Indian country by a wholesaler to the Tribe or a Tribal retailer, subject to meeting any notification requirements of this Compact. Deliveries may be made by commercial carriers. Invoices identifying the cigarettes as Tribe cigarettes must accompany such cigarettes.

**PART V  
Tax Stamps**

**(1) Tribal Tax Stamp Required**

- (a) All cigarettes sold by the Tribal retailer shall bear a Tribal tax stamp.
- (b) The Tribe may by ordinance allow for an exemption from the tax imposed under Part III of this Contract for Tribal members, in which case the cigarette allocation allowance under WAC 458-20-192 shall apply during the term of this Compact. The expectation of both parties is that the allocation allowance will be used as an approximation of sales to members and the Tribe will not be required to keep exact records of such sales.

**(2) Creation and Supply of Tribal Tax Stamps**

The State and the Tribe agree that prior to the imposition of the tribal cigarette tax the Department and the Tribe must enter into a memorandum of agreement concerning tax stamps, such agreement to be consistent with the requirements of RCW 43.06.450 through 460.

**PART VI  
Wholesalers**

**1. Wholesalers Licensed by the State**

Wholesalers licensed by the State are subject to the requirements as set forth in Title 82 RCW and any rules adopted thereunder, and therefore must maintain adequate records detailing which cigarettes are subject to State tax and which cigarettes are subject to the Tribal cigarette tax. If the Tribe desires to purchase cigarettes from self-certified wholesalers or self-certified Tribal wholesalers, the Tribe and State agree to negotiate in good faith mutually acceptable terms and conditions of a memorandum of understanding concerning among other things, the recordkeeping of such sales.

**2. Tribe as Wholesaler**

This Compact contemplates that the Tribe may, at some future date, act as its own wholesaler. If the Tribe decides to act as its own wholesaler in regards to sales to the Tribal retailers, the Tribe and State agree to negotiate in good faith mutually acceptable terms and conditions of a memorandum of understanding concerning among other things, such

wholesale activity. If the Tribe, by itself or through a Tribal enterprise, manufactures and wholesales to the Tribal retailers, that wholesale activity does not require a memorandum of agreement under this Section.

**PART VII**  
**Enforcement Authority and Responsibility of Liquor Control Board**

**1. Intent**

The State authorizing legislation for this Compact states that it is the intent of the Legislature that the Liquor Control Board and the Department continue the division of duties and shared authority under Chapter 82.24 RCW and therefore the Liquor Control Board is responsible for enforcement activities that come under the terms of Chapter 82.24 RCW.

**2. Commercial Carriers**

The State recognizes that wholesalers who meet the requirements of this Compact may make shipments of cigarettes by commercial carrier. Such shipments must be accompanied by documents required under this Compact and are subject to advance notice requirements.

**PART VIII**  
**Independent Third Party Auditor**

**1. General**

The Tribe wishes to provide assurance that all parties to this Compact are in compliance with its terms. This Part will provide a process for regular verification of the requirements in this Compact. The verification process is intended to reconcile data from all sources that make up the cigarette stamping, selling, and taxing activities under this Compact.

**2. Tribe to Contract with Third Party Auditor**

The Tribe and the State agree that, for the purposes of verifying compliance with this Compact, the Tribe will contract with an independent third party auditor. The Auditor must be a certified public accountant licensed by the State and in good standing as confirmed by the licensing board through which the Auditor is licensed. The Auditor will review records on an annual basis, consistent with the Tribe's fiscal year, to verify the requirements of this Part unless otherwise specified. The Tribe will retain the Auditor and bear the costs of the auditing services. The Tribe shall be entitled to communicate freely with the Auditor. The Tribe and the Department may by prior joint agreement select or vary the audit cycle depending on the on-going audit activity of the Tribe, in order to be efficient and effective in the use of auditor resources.

**3. Audit Protocol**

To ensure compliance with this Compact, the Auditor must adhere to the following protocol:

- a. **Period under Review:** To verify the requirements of this Compact, the Auditor shall review records for all years during the current appropriate audit cycle, and may



review records for earlier years after the date of the signing of the Compact only as necessary for an internal reconciliation of the Tribe's books.

b. **Records Examined:** To verify the requirements of this Compact, the Auditor shall review at a minimum the records specified below. In all situations, the Auditor is not responsible for examining records that do not relate to the Tribe's cigarette stamping, selling, or taxing activities, unless a review of the records is reasonably necessary for an internal reconciliation of the books:

i. **Tribal Retailers:** records and invoices of cigarettes purchased from licensed wholesalers, and manufacturers, records and invoices of cigarettes sold, cigarette inventory, and additional records necessary to verify whether Tribal cigarette tax revenue was used in accordance with the requirements of Part XIII, Section 8 of this Compact and records to verify that the retail selling price included the applicable Tribal cigarette tax; and

ii. **Tribe:** records necessary to verify that the Tribe used all Tribal cigarette tax revenue for essential government services.

**4. Initial Audit - Audit Report Format**

After the commencement of the Tribal tax, the State and the Tribe shall jointly agree on a due date for the initial audit and initial report. Thereafter, reviews shall take place on the regular audit period, which follows the Tribe's fiscal year, with an audit report submitted within three months of each audit. The Auditor shall provide the Department with a certified statement after each audit, regarding whether the Auditor finds the Tribe to be in compliance with the terms of this Compact. The Department may view the audit report at the Tribal Offices, but may not copy the same.

**5. Tribal Retailer**

The Auditor will be responsible for reviewing the records, identified in subsection 3(b) of this Part, of the Tribal retailer to certify that the Tribal taxes were collected, that all cigarettes are properly stamped, that cigarettes were obtained from wholesalers authorized under this Compact, that any exemptions from tax are documented, and that the Tribe used the Tribal cigarette tax revenues for essential government services.

**6. Essential Government Services**

The Auditor shall annually review the records of the Tribe and the Tribal retailer to certify that Tribe used the Tribal cigarette tax revenues for essential government services in accordance with the requirements of Part XIII, Section 8 of this Compact.

**PART IX**  
**Dispute Resolution**

**1. General**

- a. The Tribe and the State wish to prevent disagreements and violations whenever possible, and to quickly and effectively resolve disagreements and violations when they arise. The parties agree that, to the extent possible, informal methods shall be used before engaging in the formal processes provided by this Part.
- b. As used in this Part “days” means business days, unless otherwise specified.

**2. Notification of Violation**

Any party that believes a violation of the Compact has occurred shall notify the other party in writing, stating the nature of the alleged violation and any proposed corrective action or remedy (“Notice of Violation”). The parties shall meet within 14 days of sending of the Notice of Violation, unless the parties agree on a different date, to attempt to resolve between themselves the issues raised by the Notice of Violation, and provide an opportunity to implement any agreed corrective action.

**3. Mediation**

If the parties are unable to resolve the disputed issues through joint discussions under Section 1 of this Part, either party may request mediation by giving the other party a written mediation demand (“Mediation Demand”). The parties shall attempt to agree on a mediator. If they cannot agree on a mediator within 30 days of the Mediation Demand, each party shall select a mediator and the two mediators selected by the parties shall jointly select a third mediator. Mediation shall occur within a reasonable time of selection of the mediator(s). The parties shall bear their own attorneys fees but shall share equally the other costs of conducting the mediation, including the fees of the mediator.

**4. Remedies**

Whenever an issue is submitted to mediation pursuant to a Mediation Demand, the mediator(s) shall render an opinion as to whether a violation has occurred and may recommend corrective action to remedy such violation. The mediator(s) shall not render an independent recommendation on any issue on which the parties reach agreement. Recommended remedies may include audit of relevant Tribal records, interpretation of Compact terms, changes in reporting, recordkeeping, enforcement practices, business practices, or similar actions. Recommended remedies shall not include an award of monetary damages or costs of any kind, or the disclosure of any records not specifically subject to disclosure under this Compact.

**5. Termination of Compact**

If, after no more than twenty-four (24) months from the Notice of Violation, (a) the parties are unable to resolve a disagreement using the dispute resolution methods authorized in this Part, either party may terminate this Compact or (b) if a party continues to violate a Compact term after completion of mediation, the other party may terminate this Compact. The parties may, after no less than six (6) months following any such termination, enter into a new Compact.

**6. Disagreements Regarding Reports of the Auditor**

If either party has a concern about a report from the Auditor, such party may choose to resolve the concern through the use of a mediator under the procedures set forth in Part IX, Sections 2 through 5 of this Compact. Failure of either party to grant the mediator access to relevant records the mediator deems reasonably necessary to review the report is a violation of this Compact. The mediator may use the services of an independent third-party certified public accountant in undertaking such review.

**7. Termination For Cause**

- a. Either party may terminate the Compact for cause. For the purposes of this Section, "cause" shall mean only the following violations ("For Cause Violations"):
  - i. Retail sales of unstamped cigarettes during the term of this Compact;
  - ii. Failure to submit to mediation as required by this Part IX;
  - iii. A breach of the confidentiality provisions of Part XII of this Compact;
  - iv. Use of Tribal cigarette tax proceeds in violation of the terms of this Compact; and
  - v. The State's violation of Part III, Section 2(f) or Part XIII, Section 13 of this Compact.
- b. The party seeking the termination for cause shall notify the other party in writing stating the facts constituting the alleged For Cause Violation ("Termination Notice"). The parties shall, within ten (10) days of giving the Termination Notice, use the procedures of Part IX, Section 2 of this Compact to select a mediator(s) to review the facts upon which the Termination Notice is based. The responding party has ten (10) days to provide its facts to the mediator(s).
- c. If the mediator issues an opinion that the alleged For Cause Violation has not occurred, the Termination Notice shall be deemed withdrawn. If the mediator issues an opinion that the alleged For Cause Violation has occurred, the Compact shall be deemed terminated; provided that the party that gave the Termination Notice may elect to maintain the Compact pending discussion of a remedy within the time limit of Part IX, Section 7(d) below. The parties shall use their best efforts to resolve the dispute. If the parties reach agreement, or the For Cause Violation is corrected within such time limit, the Compact shall not be terminated.
- d. If the parties fail to reach agreement, or the For Cause Violation is not corrected, within one hundred eighty (180) days from the date of giving the Termination Notice, the Compact shall be terminated.

**8. Notification of Sales to Minors Violation**

The Department shall immediately notify the Tribe if an allegation is made that the Tribe has made sales to minors in violation of Part XIII, Section 7 of this Compact. Upon such notification, the Tribe shall take enforcement action according to the provisions of Tribal ordinance. Upon the third or subsequent violation within any rolling one-year period of Part XIII, Section 7 of this Compact, the provisions of Section 2 through 5 of this Part shall apply.

**9. Notice Requirements**

For the purposes of this Compact, notice shall be by certified mail, return receipt requested, unless both parties agree in writing to accept notice by facsimile. Notice shall be deemed to

be given three (3) working days after the date written notice is sent. Notice shall be given as follows:

To the Department: Director  
Washington State Department of Revenue  
P.O. Box 47454  
Olympia, WA 98504-7454

To the Tribe: The Honorable Kenneth Hansen  
PO Box 217  
Anacortes, WA 98221

With a copy to: Tribal Counsel, Samish Indian Nation  
PO Box 217  
Anacortes, WA 98211

**10. Sovereign Immunity**

Nothing in this Compact shall be construed as a waiver, in whole or in part, of either party's sovereign immunity.

**PART X**

**Responsibilities of the Tribe, the Department of Revenue,  
and the Liquor Control Board**

**1. Tribe**

The Tribe is responsible for both enforcement of the terms of this Compact and administration of the Compact, audit procedures and recordkeeping, and dispute resolution. Upon the proper disclosure and identification to the Tribe by Department personnel, such Department personnel may enter the Tribal retail store(s) during regular business hours to observe the purchase and sale of cigarettes pursuant to this Compact and may also purchase cigarettes.

**2. Liquor Control Board**

This agreement does not alter the Liquor Control Board's responsibility under chapter 82.24 RCW.

**3. Department of Revenue**

The Department is responsible for the administration of the Compact, audit procedures and recordkeeping, and dispute resolution, as well as negotiation of its terms, on behalf of the Governor of the State.

**PART XI**  
**Term of this Compact – Amendment**

This Compact shall remain in effect no longer than eight (8) years from its effective date, subject to the termination provisions of Part IX of this Compact. Amendments to the Compact shall be considered upon the written request of either party. Disputes regarding requests for amendment of this Compact shall be subject to the dispute resolution process in Part IX of this Compact.

**PART XII**  
**Confidentiality**

All information under the terms of this Compact received by the Department or open to Department review is “return or tax information” and is subject to the provisions of RCW 82.32.330, the tax information “secrecy clause.” All other information that is subject to review by the Auditor or review by the mediator or certified public accountant is confidential and shall not be disclosed to anyone, in any forum, for any purpose.

**PART XIII**  
**Miscellaneous Provisions**

**1. Tribe Does Not Submit to State Jurisdiction**

By entering into this Compact, the Tribe does not concede that the laws of the State, including its tax and tax collection provisions, apply to the Tribe, its members or agents regarding activities and conduct within or outside of Indian country.

**2. State Does Not Concede Tribal Immunity**

By entering into this Compact, the State does not concede that the Tribe has any immunity from its tax and tax collection provisions.

**3. Compact Does Not Create any Third Party Beneficiaries**

No third party shall have any rights or obligations under this Compact.

**4. Land Status**

The Tribe shall provide information regarding the status of land upon which any Tribal retailer is located at least thirty (30) days prior to the startup of any new cigarette sales by such retailer.

**5. Tobacco Master Settlement Agreement**

This Compact is not intended to impact the State’s share of proceeds under the Master Settlement Agreement entered into by the State on November 23, 1998. The Tribe recognizes the State has an interest regarding nonparticipating manufacturers. The State recognizes the Tribe has an interest in the Master Settlement Agreement. The Tribe agrees to not impede the State’s efforts to secure compliance of the nonparticipating manufacturers,

and the Tribe reserves its rights regarding these matters. Nothing in this Compact supercedes or replaces chapter 70.157 RCW.

**6. Periodic Review of Compact Status**

Representatives of the Tribe and the Department agree to meet at mutually agreeable times and places upon the reasonable request of either party to review the status of this Compact and any issues that have arisen under the Compact.

**7. Sales to Minors**

The Tribe or a Tribal retailer shall not sell or give, or permit to be sold or given, cigarettes to any person under the age of eighteen (18) years.

**8. Essential Government Services**

a. Tribal cigarette tax revenue shall be used for essential government services. The Auditor shall certify the use of such revenue under the process set forth in Part VIII of this Compact.

b. The Tribe may not use Tribal cigarette tax revenue to subsidize Tribal cigarette and food retailers. "Subsidize" means that proceeds from the Tribal cigarette tax cannot be expended on the direct business activities of the Tribal retail cigarette business. For the purposes of this Compact, it will be presumed that any maintenance and operation expenditures in regard to a Tribally-owned facility that has tenants in addition to the Tribal cigarette retailer do not subsidize the Tribal cigarette retailer.

c. The following definitions shall apply to this Part:

i. "Direct business activities" shall be limited to paying wages, benefits, bonuses, or expenses directly related to the maintenance and operation of the Tribal retail cigarette business;

ii. "Essential government services" includes, but is not limited to government services to provide and maintain infrastructure such as sidewalks, roads, and utilities; services such as fire protection and law enforcement; the costs of administering the Tribal cigarette tax stamp program under this Compact, including all deductions and exemptions similar to those available to retailers, wholesalers, and others under state law, further including transportation vehicles and related costs; Tribal administration activities such as tax functions, contracting for health benefits, economic development, natural resources, and the provision of job services; and distribution of moneys related to trust funds, education, general assistance, such activities as land and building acquisitions, and building development and construction.

**9. Other Retail Sales within Indian Country by Tribal Members**

Only Tribal retailers are permitted to make retail cigarette sales within Indian country.

**10. Rule 192 – Application**

This Compact is a "cooperative agreement" as that term is used in WAC 458-20-192 (Rule 192).

**11. Subsequent State Legislative Enactments**

If the State Legislature enacts a law that provides more favorable terms for the Tribe, the parties shall amend the Compact to reflect such terms.

**12. Jurisdiction**

This Compact does not expand or limit the jurisdiction of either the Tribe or the State.

**13. State Agreement Regarding Compliance with State and Federal Law**

As to all transactions that conform with the requirements of this Contract, such transactions do not violate state law, and the State agrees that it will not assert that any such transactions violate state law for the purpose of 18 U.S.C. § 2342 or other federal law specifically based on violation of state cigarette laws.

**14. Severability**

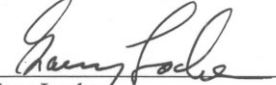
If any provision of this Compact or its application to any person or circumstance is held invalid, the remainder of the Compact is not affected.

THUS AGREED THIS 24<sup>th</sup> day of June, 2004.

**SAMISH INDIAN NATION**

By:   
Kenneth Hansen,  
Tribal Chair

**STATE OF WASHINGTON**

By:   
Gary Locke,  
Governor