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**CIGARETTE TAX AGREEMENT**

**Between**

**THE PUYALLUP TRIBE OF INDIANS**

**And**

**THE DEPARTMENT OF REVENUE**

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## **PREAMBLE**

WHEREAS, the Puyallup Tribe of Indians ("Tribe") is a federally-recognized Indian tribe and sovereign Tribal government, pursuant to the Treaty of Medicine Creek with the United States of America (10 Stat. 1132), and the Tribe's Constitution and Bylaws; and

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

WHEREAS, the body of federal law and policy recognizes the right and the importance of self-determination for tribes, the authority of a tribe to tax certain activities, and the need for tribal economic development; and

WHEREAS, the State has committed to the political integrity of the federally-recognized 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 long-standing 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 the Tribe will benefit from resolution of that disagreement by the change in focus from enforcement and litigation to a focus on the administration of and compliance with this Cigarette Tax Agreement; and

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

WHEREAS, the State and the Tribe will also benefit by the exercise of the attributes of sovereignty and from the improved well-being of enrolled members 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 the Tribe brought these two governments together to pursue their common interest in resolving this tax disagreement; and

WHEREAS, nothing herein shall waive the sovereign immunity from suit of the Tribe or the State, nor shall anything herein waive, alter, or diminish any rights, privileges, or immunities guaranteed by the Treaty of Medicine Creek; and

NOW THEREFORE, the Puyallup Tribe by and through its Chairman, and the state of Washington by and through its Governor, do hereby enter into this Agreement for their mutual benefit.

**PART I**  
**Recitals**

**1. Sovereign Immunity**

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

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

By entering into this Agreement, 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.

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

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

**4. Agreement Does Not Create any Third Party Beneficiaries**

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

**5. Tobacco Master Settlement Agreement**

This Agreement 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 that it will 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 Agreement supercedes or replaces chapters 70.157 or 70.158 RCW.

**6. Jurisdiction**

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

**PART II**  
**Definitions**

1. "Agreement" means this Agreement entered into by the State and the Puyallup Tribe.
2. "Carton" or "carton of cigarettes" means, unless otherwise indicated, a carton of two hundred (200) cigarettes.
3. "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.

4. "Department" means the Washington State Department of Revenue.
5. "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.
6. "Indian country," consistent with the meaning given in 18 U.S.C. 1151, means:
  - a. All land within the limits of the Puyallup Indian Reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including rights of way running through the Reservation; and
  - b. All Indian allotments or other lands held in trust for an enrolled Tribal member or the Tribe, the Tribal titles to which have not been extinguished, including rights of way running through the same.
7. "Liquor Control Board" or "Board" is an agency of the State with a mission to prevent the misuse of alcohol and tobacco through education, enforcement, and controlled distribution.
8. "Non-Indian" means an individual who is neither a Tribal member nor a nonmember Indian.
9. "Nonmember Indian" means an enrolled member of a federally recognized Indian Tribe other than the Puyallup Tribe.
10. "Parties to the Agreement" or "parties" means the Puyallup Tribe and the State.
11. "Puyallup Indian Reservation" or "Reservation" means the area recognized as the Puyallup Indian Reservation by the United States Department of the Interior.
12. "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.
13. "State" means the state of Washington.
14. "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."
15. "Tribal member" means an enrolled member of the Puyallup Tribe. For purposes of this Agreement, a member of another federally recognized Tribe who is the spouse of an enrolled Puyallup Tribal member shall be treated the same as an enrolled member of the Puyallup Tribe.

16. "Tribally-licensed retailer" means a tribal member who has a business license from the Puyallup Tribe to sell cigarettes at retail from a business located in Indian country.
17. "Tribal cigarette tax" means the tax enacted as a provision of Tribal ordinance on cigarettes sold at retail, expressed as a flat amount in cents per cigarette and units of packs and cartons, as more fully set forth in Part IV of this Agreement.
18. "Tribe," or "Tribal," means or refers to the Puyallup Tribe.
19. "Wholesaler" means a person who purchases, sells, or distributes cigarettes for the purpose of resale.

### **PART III**

#### **Applicability of the Agreement**

#### **1. Execution of Agreement**

This Agreement shall become effective upon completion of three steps: (a) authorization for the Governor's signature by enactment of the Washington Legislature; (b) approval by the Tribal Council as indicated by the signature of the Tribal Chairman, and (c) approval by the State as indicated by the signature of the Governor. This Agreement shall be executed in duplicate originals, with each party retaining one fully-executed duplicate original of the Agreement.

#### **2. Application**

From its execution, and contingent on the imposition of the Tribal cigarette tax pursuant to a Tribal resolution meeting the terms of Part IV of this Agreement, this Agreement shall apply to the retail sale of cigarettes by the Tribe as a retailer and by Tribally-licensed retailers. Sales subject to the Tribal cigarette tax imposed pursuant to this Agreement 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 Agreement is limited in scope to the selling of cigarettes by the Tribe and its members. This Agreement does not affect the tax obligations or tax treatment of:

- a. Cigarettes sold at retail by non-Indians or nonmember Indians;
- b. Tobacco Products as defined in Part II of this Agreement; and
- c. Cigarettes manufactured by the Tribe or its enterprises within Indian country.

**PART IV**  
**Imposition of Tribal Cigarette Taxes**

**1. Tribally-Licensed retailers**

- a. The Tribe shall require, by enactment of Tribal law, that each Tribally-licensed retailer comply with the terms of this Agreement. The Tribe agrees that it will maintain and enforce a requirement that any Tribal member selling cigarettes at retail on the Puyallup Indian Reservation must first obtain a business license from the Tribe. The Tribe agrees to provide to the Department and the Board upon execution of this Agreement a list of Tribally-licensed retailers, and to provide the Department and Board with an up to date version of the list. The Tribe agrees that any cigarette retailer wholly owned by Tribe is subject to this Compact. The Tribe and the State agree that compliance efforts in regard to such retailers shall be in accordance with Part IX of this Agreement.
- b. The Tribe shall enact policies regarding Tribal access to records of Tribally-licensed retailers. Such policies shall be in accord with and in furtherance of Part IX of the Agreement.

**2. Tax Imposed on Retail Sales by Tribally-Licensed Retailers and the Tribe**

- a. Subject to Part VI, 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 the Tribe as retailer and by Tribally-licensed retailers of cigarettes to retail purchasers within Indian country.
- b. Beginning no sooner than the date this Agreement is signed by both parties, and subject to enactment of a Tribal ordinance authorizing the imposition of a Tribal cigarette tax, the Tribe shall impose and maintain in effect a tax on the retail sale of cigarettes equaling no less than 5.875 cents per cigarette (eleven dollars and seventy-five cents per standard carton).
- c. During the term of this Agreement, upon any future increase in the State cigarette tax, the Tribal cigarette tax shall increase by no less than the dollar amount of the increase in the State tax. Upon any future decrease in the State cigarette tax, the Tribe may decrease its cigarette tax in a similar manner.
- d. During the term of this Agreement the State agrees that State taxes are not applicable to transactions that comply with the requirements of this Agreement. The State waives its right to collect the State cigarette, sales, and use taxes as to those transactions from the Tribe, Tribally-licensed retailers, state licensed wholesalers from which they purchase, or retail buyers. In addition, the State agrees that enforcement of this Agreement shall be done in accordance with the conditions set forth in this Agreement.

**3. Revenue-Sharing**

The Tribe shall provide to the State, on a quarterly basis, thirty percent (30%) of the revenue that the Tribe receives from the collection of the Tribal cigarette tax imposed under this part.

**PART V**  
**Purchase and Sale of Cigarettes by Tribal Retailers**

**1. Wholesale Purchases – Requirements**

By Tribal ordinance, the Tribe shall maintain and enforce a requirement that the Tribe as a retailer and Tribally-licensed retailers acquire cigarettes only from wholesalers or manufacturers licensed by the State to sell cigarettes at wholesale in the State; or the Tribe, subject to the requirements of Part VII, section 2 of this Agreement.

**2. Delivery of Cigarettes to Tribal Retailers Outside of Indian Country**

Cigarettes bearing the tax stamp required by this Agreement may be delivered or transferred within or outside of Indian country by a wholesaler to the Tribe or a Tribally-licensed retailer. Deliveries may be made by commercial carriers. Invoices identifying the cigarettes as Puyallup Tribe cigarettes must accompany such cigarettes.

**3. Retail Sale – Pricing Requirements**

The retail selling price of any cigarette must not be less than the price paid by the retailer for the cigarette, and such price must include the full amount of cigarette tax imposed on the cigarettes.

**PART VI**  
**Tax Stamps**

**1. Tax Stamp Required**

- a. Tribal retailers may not possess unstamped cigarettes. All cigarettes sold by Tribally-licensed retailers and the Tribe shall bear a Tribal tax stamp meeting the requirements of part VI.
- b. The Tribe agrees to require Tribally-licensed retailers to post a notice advising that cigarettes may not be purchased for resale.
- c. The Tribe agrees it will impose a tax on sales to members.

**2. Creation and Supply of Tribal Tax Stamp**

- a. The Tribe shall arrange for the creation and supply of a Tribal tax stamp by an appropriate manufacturer. Tribal tax stamps will have a serial number or some other discrete identification so that stamps may be traced to the wholesaler.
- b. The Tribe shall purchase stamps from a nationally recognized stamp manufacturer.

**3. Stamp Vendor Contract**

- a. The Tribe shall contract with a bank or other appropriate vendor to distribute tax stamps. The stamp vendor shall distribute stamps to wholesalers, upon payment by the wholesaler to the vendor of the Tribal cigarette tax and remit the collected taxes to the Tribe. The contract shall provide that the Tribe shall purchase a supply of Tribal tax stamps from the manufacturer and make them available for purchase by wholesalers through the stamp vendor. The Tribe may, at its option, select as the stamp vendor the bank with which the Department contracts for that service, or some other third party stamp vendor satisfactory



to both the Tribe and the Department. The Tribe agrees to provide the Department of Revenue with a copy of its stamp vendor contract.

- b. The Tribe shall require the stamp vendor to:
  - i) Remit to the Tribe all revenue collected from the Tribal cigarette tax (such amount being less a reasonable administrative fee for stamping wholesalers);
  - ii) Provide to the Tribe and to the Department timely reports detailing the number of Tribal tax stamps sold, and make its records available for auditing by the Tribe and the Department;
- c. This agreement contemplates that the Tribe may at some point in the future act as its own stamp vendor. In the event that the Tribe decides to act as its own stamp vendor, it agrees to first enter into a memorandum of agreement with the Department regarding this activity.

#### **4. Requirements for Affixation of Stamps by Wholesalers**

- a. Wholesalers shall affix the tax stamps to the smallest container of cigarettes that will be sold or distributed by the Tribally-licensed retailer. Stamps shall be affixed so that the stamps may not be removed from the package without destroying the stamp.
- b. Wholesalers may only possess unstamped cigarettes for as long as is reasonably necessary to affix tax stamps to the packages for sale. It is presumed that any such possession in excess of seventy-two (72) hours (excluding Saturdays, Sundays, and Holidays) is in contravention of this Agreement. The term "holiday" is limited to the following holidays: New Years Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving, and Christmas.
- c. For the purposes of this Section 4 of Part VI, any business outlet selling cigarettes at retail, including an outlet wholly owned and operated by the Tribe, is not a wholesaler. The Tribe agrees to purchase for and sell from any retail outlet that it owns and operates only stamped cigarettes acquired from the sources listed in Part V of this Agreement.

#### **5. Wholesaler Obligation Under State Law**

Affixing of the tax stamps, retention and production of records required by state law (in the case of state licensed wholesalers) and by this Agreement (in the case of Tribe acting as a wholesaler and subject to Part VII (2) of this Agreement), and compliance with other requirements in this Agreement, shall be deemed to satisfy the State cigarette excise tax obligation of a wholesaler.

#### **6. State Agreement Regarding Compliance with State and Federal Law**

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

**PART VII  
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.

**2. Tribe as Own Wholesaler**

The Tribe may sell stamped cigarettes to Tribally-licensed retailers for sale at retail under the terms of this Agreement. If the Tribe, by itself or through a wholly-owned and operated Tribal enterprise, sells cigarettes at wholesale to Tribally-licensed retailers, that wholesale activity does not require a memorandum of agreement under this Section. However, the Tribe agrees that it will be subject to the same buying restrictions as wholesalers licensed with the state of Washington, including the provisions of chapters 70.157 and 70.158 RCW, and RCW 19.91.300. In addition, the Tribe agrees that it will notify the State in advance of initiating business as a wholesaler and will work in conjunction with the Department of Revenue and the Liquor Control Board to assure that all necessary steps and controls are in place to assure security of the stamping process, handling of tax receipts, and integrity of the overall function.

**PART VIII  
Enforcement Authority Program**

**1. Intent**

It is the intent of the parties that responsibility for enforcement of the terms of this Agreement shall be shared by the State and the Tribe. The State shall have primary responsibility, exercised by its Liquor Control Board, for enforcement against non-Tribal and non-Tribal member wholesalers, to the extent allowed under law. The Tribe shall have primary responsibility for enforcement against Tribal member retailers. The parties shall work cooperatively by providing each other with relevant information and in other necessary ways to facilitate their respective enforcement responsibilities.

**2. Commercial Carriers**

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

**3. Notification**

If the Tribe has elected to act as a wholesaler, the Tribe or its designee shall notify the Department seventy-two (72) hours in advance of any shipments of unstamped cigarettes to the Tribe. Such notice shall include who is making the shipment (meaning who is the wholesaler), detail regarding both quantity and brand, and the invoice order number. Transportation of the cigarettes without the notice required by this section subjects the

cigarettes to seizure. The State and the Tribe may enter into a memorandum of agreement addressing the Tribe's activity as a wholesaler, in which case, this advance notice provision is not applicable and is supplanted by the terms of the memorandum of agreement.

## **PART IX**

### **Compliance and Enforcement Program**

#### **1. General**

The parties wish to provide assurance and ongoing confirmation that they are in compliance with the terms of this Agreement. This Part will provide a process for regular verification of that compliance. The verification process is intended to reconcile data from all sources that make up the cigarette stamping, selling, and taxing activities under this Agreement. Both parties acknowledge that the requirement to purchase cigarettes from wholesalers licensed with the State provides the State access to wholesaler records and provides both parties certainty in regards to stamping of cigarettes and collection of taxes.

#### **2. Compliance Program**

- a. The Tribe agrees to establish, in consultation with the Liquor Control Board and the Department of Revenue, a retailer compliance program. The purpose of the program is to monitor compliance with this Agreement and the ordinances enacted to implement this Agreement. The program shall include measures to monitor and investigate retailers in regard to:
  - i) Sales to minors;
  - ii) Sales of unstamped cigarettes;
  - iii) Sales of cigarettes obtained from unauthorized sources;
  - iv) Pricing compliance; and
  - v) Other factors agreed to by the parties.
- b. The Tribe agrees it will provide monitoring, sampling, investigation, reporting, and related activities necessary to carry out the retailer compliance program, either by contract with an independent third party or by the Tribe's Cigarette Tax Enforcement Department ("CTED.") These functions will be conducted either by CTED or by a third party under contract with the Tribe. The choice between those two options and the identify of the third party, if any, is subject to the approval of the State.
- c. The Tribes agrees that it will require in its contract with the third party that all reports be shared simultaneously with the Tribe, the Department of Revenue, and the Board. The Tribe, Board, and Department of Revenue working together shall establish the frequency for reports and criteria for timeliness of reporting and sharing information regarding violations. Except in cases of suspected and/or documented violations of the Agreement or Tribal law, the reports will not reveal the identities of retailers who are the subjects of the reports, other than to verify that all Tribally-licensed retailers have been monitored within the period of time specified by the parties as appropriate.

#### **3. Tribal Auditor to Review Government Records**

- a. For the purposes of any audit involving its government accounts and enterprise activities, the Tribe may use the same independent auditor that it uses to perform its routine

government audits. The Tribe agrees that the auditor will be a certified public accountant in good standing. 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.

- b. 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 Agreement only as necessary for an internal reconciliation of the Tribe's books. The purpose of the audit is to reconcile tax collections and to provide the State timely and accurate information regarding compliance with this Agreement.
- c. The Auditor will compile and provide to the Department of Revenue, the Liquor Control Board, and the Tribe, a separate report containing timely and accurate information on the following topics:
  - i. Overall tax collection;
  - ii. Revenue sharing;
  - iii. Stamp inventory and stamp purchases (in order to reconcile tax collections);
  - iv. A determination of whether the Tribe has expended revenue from the cigarette tax on essential government services.
- d. The Auditor shall provide a report on these topics to the Tribe, the Department, and the Liquor Control Board, once a year, covering the just-concluded fiscal year, and shall be delivered no later than 90 days after the end of the Tribe's fiscal year. The first required review shall cover the period from the effective date of the tax through the end of the Tribe's fiscal year. The Department and the Board shall be entitled, by operation of this Agreement, to the Auditor's report as outlined in this subsection, but not to a copy of the Auditor's complete audit of the Tribe's books and records.

## **PART X**

### **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. It is the parties' expectation that most disagreements and violations should and will be resolved most effectively through informal discussion. 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. Summary**

The parties intend, as spelled out in greater detail below, that the dispute resolution process will include the following elements:

- a. Notification of Violation;
- b. Meeting(s) and informal discussion seek resolution of dispute;
- c. Mediation: opinion and recommendation of mediator;
- d. Correction of violation;

- e. Termination of Agreement under defined circumstances.

### **3. Notification of Violation**

- a. If a party believes that there has occurred or is occurring a violation covered by this Part X, it shall notify the other party in writing, stating the nature of the alleged violation and any proposed corrective action or remedy ("Notice of Violation"). Violations that are subject to this Part include violations of (a) this Agreement or (b) applicable law that either party has undertaken in this Agreement to enforce, committed by (x) either party, (y) a Tribally-licensed retailer, or (z) a state-licensed wholesaler. An error made by the Auditor in any of its reports is also an appropriate subject for the dispute resolution procedure in this Part X.
- b. The parties shall meet within 14 days after receipt of a Notice of Violation, unless the parties agree on a different date, and on such further occasions as they shall agree to meet. They shall attempt to resolve the issue(s) raised by the Notice of Violation and to provide an opportunity to implement any agreed corrective action.

### **4. Mediation**

- a. If the parties are unable to resolve the disputed issues through joint discussions under Section 3 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.
- b. The parties recognize that disagreements and violations of the terms of this Agreement caused by actions of any retailer or wholesaler may take longer to resolve. With respect to that part of a disagreement or dispute involving a member retailer, the parties must wait at least 45 days after the sending of the Notice of Violation before delivering a Mediation Demand. The parties recognize that in cases where the appropriate remedy for a violation is enforcement action against the retailer or wholesaler, that action, even though initiated within 45 days, may take longer than that period of time to complete. It is the expectation of the parties that the parties will work together diligently during this period to arrive at a solution.

### **5. Opinion, Recommendation, Remedies**

Within a reasonable time after completion of the mediation session(s), the mediator(s) shall render an opinion as to whether a violation has occurred, including any recommended corrective action to remedy the violation. The mediator(s) shall not render an opinion or make a recommendation as to any issue on which the parties have reached agreement. Recommended remedies may include audit of relevant Tribal, a retailer's, or a wholesaler's records, interpretation of Agreement terms, changes in reporting, recordkeeping, enforcement practices, business practices, action by one or both parties to enforce the requirements of this Agreement or of applicable law, 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 Agreement.

#### **6. Termination of Agreement**

- a. It is the parties' intent that in cases where, in the mediator(s) opinion, there has been a substantial violation of this Agreement, the offending party be given a reasonable time to initiate and complete corrective action. A "reasonable time" will vary with the circumstances, but shall in general be the time that would ordinarily be required for a government, taking immediate action pursued with due diligence, to correct the violation or obtain compliance. A "substantial violation" is any violation that deprives either party of an important element of what it bargained for in this Agreement and includes, but is not necessarily limited to, the following violations:
- i) Ongoing, significant retail sales of unstamped cigarettes during the term of this Agreement;
  - ii) Failure to submit to mediation as required by this Part;
  - iii) Failure of the Tribe to establish a compliance program;
  - iv) A breach of the confidentiality provisions of Part XIII of this Agreement;
  - v) Failure of the Tribe to meet the revenue sharing obligations under this Agreement
  - vi) The State's violation of Part IV, Section 2(d) or Part VI, Section 6 of this Agreement;
  - vii) The Tribe's refusal to allow or require the Auditor access to records it needs to conduct its audit; and
  - viii) Failure of the Tribe to enforce the terms of this Compact in regards to member retailers.
- b. If the party in violation has not corrected the problem or obtained or sought compliance within a reasonable time, after receipt of the mediator(s) opinion finding a substantial violation of the Agreement, the aggrieved party may, in its discretion choose to terminate this Agreement. If the aggrieved party chooses not to terminate the Agreement at that time, it does not waive its right to terminate the Agreement subsequently at any time if the violation remains uncorrected.

#### **7. Notification of Sales to Minors Violation**

The Department and/or the Liquor Control Board shall immediately notify the Tribe if an allegation is made that a Tribally-licensed retailer has made sales to minors in violation of Part XIV, Section 2 of this Agreement. Upon such notification, the Tribe shall take enforcement action according to the provisions of Tribal law. Upon the third or subsequent violation within any calendar year, the provisions of Sections 2 through 5 of this Part shall apply.

#### **8. Notice Requirements**

For the purposes of this Agreement, 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: Chairman, Puyallup Tribal Council  
1850 Alexander Avenue  
Tacoma, WA 98421

With a copy to: Legal Department  
Puyallup Indian Tribe  
1850 Alexander Avenue  
Tacoma, WA 98421

## PART XI

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

The Parties recognize that this Agreement describes a mutual undertaking with shared responsibilities and further recognize the responsibilities of the Tribe, the Department of Revenue, and the Liquor Control Board to be as follows:

**1. Tribe**

The Tribe is responsible for the administration of the Agreement, a compliance program, audit and recordkeeping, and dispute resolution, as well as negotiation of its terms.

**2. Liquor Control Board**

This Agreement does not alter the Liquor Control Board's responsibility under chapter 82.24 RCW. The Board is responsible to provide input and expertise to the Department during negotiations and to work together with the Department of Revenue and the Tribe to ensure compliance with this Agreement.

**3. Department of Revenue**

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

## PART XII

### Term of this Agreement – Amendment

This Agreement may remain in effect no longer than eight (8) years from its effective date, subject to the termination provisions of Part X of this Agreement. Amendments or extensions to the Agreement shall be considered upon the written request of either party. Disputes regarding

requests for amendment of this Agreement shall be subject to the dispute resolution process in Part X of this Agreement.

### **PART XIII Confidentiality**

All information under the terms of this Agreement 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 XIV Miscellaneous Provisions**

#### **1. Periodic Review of Agreement Status**

- a. Representatives of the Tribe and the Department shall meet at mutually agreeable times and places upon the reasonable request of either party to review the status of this Agreement and any issues that have arisen under the Agreement.
- b. It is the expectation of the parties that the Tribe, the Department, and the Liquor Control Board will meet freely to discuss jurisdictional issues, expectations, and protocols, and to share enforcement and compliance information.

#### **2. Sales to Minors**

Neither the Tribe nor a Tribally-licensed retailer shall sell or give, or permit to be sold or given, cigarettes to any person under the age of eighteen (18) years.

#### **3. Essential Government Services**

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 IX of this Agreement.

#### **4. Rule 192 – Application**

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

#### **5. Other Retail Sales within Indian Country by Tribal Members**

Under Puyallup Tribal law, only licensed Tribal retailers are permitted to make retail cigarette sales within Indian country. The Tribe agrees to provide through tribal ordinance for suspension or revocation of such license in those instances where after notice is given and opportunity to comply is provided, the retailer's sale of cigarettes remains out of compliance with the requirements of this Compact.



**6. Subsequent State Legislative Enactments**

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

**7. Severability**

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

THUS AGREED THIS 20<sup>th</sup> day of April, 2005

**PUYALLUP TRIBE**

**STATE OF WASHINGTON**

By:

Herman Dillon, Sr.

Herman Dillon, Sr.,  
Chairman  
The Puyallup Tribe

By:

Christine Gregoire

Christine O. Gregoire,  
Governor  
State of Washington