

CIGARETTE TAX COMPACT
between
THE COWLITZ INDIAN TRIBE
and
THE STATE OF WASHINGTON

Effective Date:

PREAMBLE

WHEREAS, the Cowlitz Indian Tribe (“Tribe”) is a federally recognized Indian tribe, possessed of the full inherent sovereign powers of a government;

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

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

WHEREAS, the State has committed, through RCW 43.376.010, the Centennial Accord, and the 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;

WHEREAS, a long-standing disagreement exists over questions regarding jurisdiction over, and the taxation of, the sale and distribution of cigarettes within Indian country;

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 (“Compact”);

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 sovereignty and a tool of self-sufficiency;

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;

WHEREAS, both the Tribe and the 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;

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

WHEREAS, this Compact is authorized by 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 Cowlitz Tribal Council Resolution No. 17-01 dated January 14, 2017, signed by the Tribal Council Chair and attested to by the Tribal Council Secretary.

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 of this Compact.

2. “Allocation” means the number of Cigarettes available to be sold to Tribal members free of all State Taxes. It is based on a formula that includes consumption data and Tribal service area population.

3. “Carton” means a carton of cigarettes 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 agreement entered into by the State and the Tribe.

6. “Department” means the Washington State Department of Revenue.

7. “Direct Business Activities” include paying wages, benefits, bonuses, or expenses, related to the maintenance and operation of the retail facility or typically considered to be part of a business’s operating expenses and overhead.

8. “Essential Government Services” means services provided by the Tribe including, but not limited to, administration, public facilities, fire, court, police, health, education, elder care, social services, sewer, water, environmental and land use, transportation, utility services, community development and economic development.

9. “Indian Country,” consistent with the meaning given in 18 U.S.C. § 1151, includes:

(a) All land within the exterior boundaries of the Cowlitz 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 a Cowlitz Tribal Member or the Tribe, or otherwise subject to a restriction against alienation imposed by the United States, the Indian titles to which have not been extinguished, including rights of way running through the same.

10. “Cowlitz Indian Reservation” or “Reservation” means the geographic area recognized as the Cowlitz Indian Reservation by the United States Department of the Interior.

11. “Liquor and Cannabis Board” is an agency of the State with a mission to promote public safety and trust through fair administration and enforcement of liquor, tobacco and marijuana laws.

12. "Non-Indian" means an individual who is neither a Cowlitz Tribal Member nor a non-member Indian.

13. "Non-member Indian" means an enrolled member of a federally recognized Indian tribe other than the Cowlitz Indian Tribe.

14. "Parties" means the Tribe and the State.

15. "Retailer" means an entity that sells Cigarettes directly to consumers instead of selling Cigarettes to entities who intend to resell such Cigarettes.

16. "Retail Selling Price" means the price paid by the consumer for each Cigarette or package of Cigarettes or Carton, which price includes the Tribal Cigarette Tax.

17. "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.

18. "Self-Certified Wholesaler" means an out-of-state wholesaler who is not a Self-Certified Tribal Wholesaler, 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.

19. "State Cigarette Tax" means the State tax imposed on each Cigarette, which is expressed in cents per Cigarette.

20. "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.

21. "State Taxes" in this Compact only, means a combination of the State Cigarette Tax and State and Local Retail Sales and Use Taxes.

22. "State" means the State of Washington.

23. "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 does not include Cigarettes.

24. "Tribal Wholesaler" is a Wholesaler who meets the requirements of Part VI of this Compact.

25. "Tribal Member" means a duly enrolled member of the Cowlitz Indian Tribe. For purposes of this Compact, a member of another federally recognized tribe who is the spouse of an enrolled Cowlitz Tribal Member shall be treated the same as an enrolled member of the Cowlitz Indian Tribe.

26. "Tribal Retailer" means a Cigarette retailer wholly owned by the Cowlitz Indian Tribe or owned and/or operated by one of its branch or agencies and located in Indian Country.

27. "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 Retail Selling Price of the unit of Cigarettes.

28. "Tribal Tax Stamp" means the stamp or stamps that indicate the taxes imposed under this Compact have been paid or that identify those Cigarettes with respect to which no tax or another Tribal tax is imposed.

29. "Tribe" or "Tribal" means or refers to the Cowlitz Indian Tribe, a federally recognized tribe.

30. "Wholesaler" means every person who purchases, sells, or distributes Cigarettes for the purpose of resale.

PART II – APPLICABILITY OF THE COMPACT

1. Effective Date.

This Compact shall become effective when approved by both the Tribal Council and signed by the authorized signatories of the Tribe, 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 effective date, and contingent upon the imposition of the Tribal Cigarette Tax pursuant to a Tribal law meeting the terms of Part III of this Compact, 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.

3. Scope Limited.

This Compact does not apply to: (a) Cigarettes sold at retail by Non-Indians or Non-member Indians, or (b) Tobacco Products as that term is defined in Part I of this Compact; and (c) Cigarettes manufactured by the Tribe or by its branches or agencies within Indian Country.

PART III – IMPOSITION OF TRIBAL CIGARETTE TAXES

1. Tribal Retailers.

The Tribe will inform the Department 30 days prior to the startup of Cigarette sales by any Tribal Retailer who begins selling Cigarettes after the effective date of this Compact. Any Tribal Cigarette Retailer located within the Indian Country is subject to this Compact.

2. Tax Imposed on Sales by Tribal Retailers.

The Tribe, by Tribal ordinance and in accord with the requirements of this Part, shall impose Tribal Cigarette taxes on all sales by Tribal Retailers of Cigarettes to Non-Indian and Non-member Indian purchasers within Indian Country.

3. Phase-In Period.

Beginning no sooner than the effective date this Compact, and subject to enactment or revision of a Tribal law authorizing the imposition of a tax on Cigarettes, the Tribe shall impose and maintain in effect a tax on retail sales of Cigarettes equal to eighty (80) percent of the State Taxes.

Thirty-six (36) months after the initial imposition of a tax under this Compact, the Tribe shall impose and maintain in effect a tax on the retail sale of Cigarettes equal to one-hundred (100) percent of the State Taxes.

4. Future Increases or Decreases in State Cigarette Tax.

During the term of this Compact and upon any future increase in the State Cigarette Tax and / or State and Local Retail Sales and Use Taxes, the Tribal Cigarette Tax shall increase by no less than one-hundred (100) percent of the increase in the State Taxes. Notwithstanding the foregoing sentence, so long as the Tribe is entitled to apply the eighty (80) percent formula set forth above to Cigarette sales, the increase in State Taxes shall trigger an increase in the corresponding Tribal Cigarette Tax of one-hundred (100) percent of the eighty (80) percent of the increased amount.

Upon any future decrease in the State Taxes, the Tribal Cigarette Tax may decrease to a minimum of no less than one-hundred (100) percent of the State Taxes.

The State will notify the Tribe at least thirty (30) days prior to the effective date, in writing, of any increases or decreases in the State Cigarette Tax or the State and Local Retail Sales and Use Taxes.

Pursuant to RCW 43.06.455(3) and RCW 82.24.295, the State waives its right from its tax during the time this Compact is in effect, subject the Tribe being in conformance with this Compact. In addition, enforcement of this Compact by the Parties shall be done in accordance with the conditions set forth in this Compact.

5. Exempt Sales.

The State recognizes that federal law prohibits the State from taxing the purchase of cigarettes by enrolled members of federally recognized tribes within their own reservations, and the State hereby acknowledges that such transactions are not subject to this Compact, unless the Tribe unilaterally elects otherwise.

The Tribe may allow for an exemption from this tax for Tribal Members who are over the age of eighteen (18) years.

If the Tribe chooses to exempt its members from all tax, the Tribe agrees to keep exact records of such sales.

The expectation of both Parties is that, if the Tribe chooses to tax Tribal Members, the allocation allowance under WAC 458-20-192 will be used as an approximation of sales to Tribal Members and the Tribe will not be required to keep exact records of such sales. Revenues collected or otherwise associated with taxed Tribal Member sales as calculated under the allocation are considered unrestricted funds and are not required to be expended on Essential Government Services.

PART IV – PURCHASE OF CIGARETTES BY TRIBAL RETAILERS

1. Wholesale Purchases – Requirements.

The Tribe shall enact and maintain in effect a Tribal ordinance which requires Tribal Retailers to purchase Cigarettes only from:

- (a) Wholesalers or manufacturers licensed to do business in the State;
- (b) Self-Certified Wholesalers who meet the requirements of Part VI section 2 of this Compact;
- (c) Self-Certified Tribal Wholesalers who meet the requirements of Part VI section 3 of this Compact; or
- (d) The Tribe or its branches, agencies, or economic instrumentalities as a Tribal manufacturer or Wholesaler.

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

Cigarettes bearing the tax stamp required by this Compact or Cigarettes purchased by the Tribe for stamping may be delivered or transferred within or outside Indian Country by a Wholesaler to the Tribe, a Tribal Retailer, or a Self-Certified Wholesaler subject to meeting any notification requirements of this Compact. Commercial carriers may make deliveries. Such Cigarettes must be accompanied by invoices identifying the Cigarettes as Cowlitz Indian Tribe's Cigarettes.

PART V – TAX STAMPS

1. Tax Stamp Required.

All Cigarettes purchased, possessed or sold by Tribal Retailers shall bear a Tribal Tax Stamp.

2. Creation and Supply of Tax Stamps.

The Tribe will use either State Tribal Compact tax stamps, which are acquired through the States stamp vendor, or Tribal Tax Stamps. If the Tribe elects to institute its own stamp, the Tribe shall arrange for the creation and supply of a Tribal Tax Stamp by a nationally recognized stamp manufacturer. Tribal Tax Stamps will have a serial number or some other discrete identification so that stamps may be traced to the Wholesaler.

(a) If the Tribe elects to use the State Tribal Compact tax stamps it will purchase Cigarettes with the stamp affixed after the effective date of the Tribal Cigarette Tax, until such time as the Tribe arranges for the use of a Tribal Tax Stamp. If the Tribe makes this election, the Wholesaler shall obtain the stamps from the State's stamp vendor. The Wholesaler shall affix the stamps to the Cigarettes, sell the Cigarettes to the Tribe without tax included in the price, and the Tribe in turn shall institute an accounting and pricing protocol that assures the Tribal Cigarette Tax is included in the Retail Selling Price of the Cigarettes.

(b) The Tribe may contract with a bank or other stamp vendor to distribute Tribal Tax Stamps, subject to the conditions set forth in this subsection. The stamp vendor shall distribute stamps to Wholesalers, upon payment of the applicable Tribal Cigarette Tax by the Wholesaler, and remit the collected taxes to the Tribe. The contract shall provide that the stamp vendor purchase a supply of Tribal Tax Stamps from the manufacturer and make them available for purchase. The Tribe may, at its option, select the stamp vendor which the Department contracts for that service, or some other third-party stamp vendor satisfactory to both Parties. The Tribe shall require the stamp vendor to remit to the Tribe all revenue collected from the Tribal Cigarette Tax. The Tribe shall require that the stamp vendor 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, Auditor, and the Department. The Tribe's contract with the stamp vendor shall specify a process by which the Tribe is assured that all Wholesalers who sell Cigarettes to Tribal Retailers are paying the applicable Tribal taxes. This process may include a requirement that Wholesalers agree to provide documentation such as invoices of sales to verify to the Tribe that all applicable Tribal Cigarette taxes were paid. In the alternative, the Tribe may elect to act as its own stamp vendor in which case the Parties shall enter into a memorandum of agreement setting forth protocols regarding security and audit. The Department shall not unreasonably refuse entry into said memorandum of agreement.

3. Requirements for Affixation of Stamps by Wholesalers.

Wholesalers or the Tribe shall be responsible for affixing the tax stamps to the smallest container of Cigarettes that will be sold or distributed by the Tribal Retailer. Stamps shall be

affixed so that the stamps may not be removed from the package without destroying the stamp. Stamps shall be affixed so that they may be readily viewed by inspection.

Wholesalers may only possess unstamped Cigarettes for as long as is reasonably necessary to affix tax stamps to the packages for sale or to ship to the Tribe: It is presumed that any such possession in excess of seventy-two (72) hours (excluding Saturdays, Sundays, and Holidays) is in contravention of this Compact. The term "holiday" is limited to the following holidays: New Year's Day, Martin Luther King Day, President's Day, Veterans Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving and the following day, Christmas and Tribal funeral closures as determined by Tribal government.

4. 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 Compact (in the case of Self-Certified Wholesaler or Self-Certified Tribal Wholesalers), and compliance with other requirements in this Compact, shall be deemed to satisfy the State Cigarette excise tax obligation of a Wholesaler.

5. State Agreement Regarding Compliance with State and Federal Law.

As to all transactions that conform to the requirements of this Compact, such transactions do not violate State law, and the State 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 laws governing Cigarettes.

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.

2. Self-Certified Out-of-State Non-tribal Wholesalers.

Wholesalers who are not licensed to do business within the State, and who are not required by State law to be licensed, but who have agreed to comply with the provisions of this Compact, must certify by letter to the Tribe and Department that they will, and can meet the terms of this Compact and agree to comply with all notification and documentation requirements for the transportation of unstamped cigarettes as specified in RCW 82.24.250.

The Self-Certified Wholesaler must be licensed to do business as a Cigarette Wholesaler within the jurisdiction where it has its main business office.

The Tribe shall require compliance with this Compact in its contracts with any Self-Certified Wholesaler and shall provide copies of such agreements to the Auditor for its record.

Any contract between the Tribe and a Self-Certified Wholesaler will also include requirements that:

(a) Invoices detailing the quantity and brand of Cigarettes destined for the Tribe will accompany the Cigarettes transported into the State. Such invoices shall provide an order number that matches the order number provided under Part IV, section 2 of this Compact and shall identify the seller of the Cigarettes as well as the buyer of the Cigarettes; and

(b) The Wholesaler will allow the Auditor access to its records for the purpose of determining whether the required tax stamps are properly affixed.

3. Self-Certified Tribal Wholesalers.

Self-Certified Tribal Wholesalers who are not licensed to do business within the State or any other state, and who are not required by State or federal law to be licensed, but who have agreed to comply with the terms of this Compact, must certify by letter to the Department that they will and can meet the terms of this Compact.

The Tribe shall require compliance with this Compact in its contracts with any such Self-Certified Tribal Wholesalers and shall provide copies of such agreements to the Auditor for its record. Any contract between the Tribe and a Self-Certified Tribal Wholesaler will also include requirements that:

(a) Invoices detailing the quantity and brand of Cigarettes destined for the Tribe will accompany the Cigarettes transported in the State. Such invoices shall provide an order number and shall identify the seller of the cigarettes as well as the buyer of the cigarettes; and

(b) The Wholesaler will allow the Auditor access to its records for the purpose of determining whether the tax stamps for the Tribe's Cigarettes are properly affixed to the Cigarette containers.

4. Tribe as Wholesaler and/or Manufacturer.

This Compact contemplates that the Tribe may, at some future date, act as its own Wholesaler. In the event that the Tribe decides to act as its own Wholesaler in regards to sales to the Tribal Retailers, it will first enter into a memorandum of agreement with the Department regarding this activity. The Department shall not unreasonably refuse entry into said memorandum of agreement. The memorandum of agreement shall reference any applicable requirements of this Compact.

If the Tribe, by itself or through its branches, agencies or economic instrumentalities, manufactures and wholesales to the Tribal Retailers that wholesale activity does not require a memorandum of agreement under this subsection.

**PART VII – RESPONSIBILITIES OF THE COWLITZ INDIAN
TRIBE, THE DEPARTMENT OF REVENUE,
AND THE LIQUOR AND CANNABIS BOARD**

1. Cowlitz Indian Tribe.

The Tribe is responsible for both enforcement of the terms of this Compact and administration of the Compact, including audit procedures and record keeping, and dispute resolution.

2. Department of Revenue.

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

3. Liquor and Cannabis Board.

The State authorizing legislation for this Compact states that it is the intent of the Legislature that the Liquor and Cannabis Board and the Department continue their division of duties and shared authority under Chapter 82.24 RCW and therefore the Liquor and Cannabis Board is responsible for enforcement activities that come under the terms of Chapter 82.24 RCW. The Tribe shall have primary responsibility for enforcement against Tribal Retailers.

4. Commercial Carriers.

The State recognizes that shipments of cigarettes both from in-state and from out-of-state Wholesalers who meet the requirements of this Compact may be made by commercial carrier. Such shipments must be accompanied by documents as required under this Compact and are subject to the notice requirements set forth in Part VI.

PART VIII – INDEPENDENT AUDITORS

1. General.

The Parties desire that all Parties to this Compact and all persons named in this Compact who engage in Cigarette wholesaling or retailing comply with the spirit and terms of this Compact. The purpose of this Part is to 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 stamping, selling, and taxing activities under this Compact.

2. Tribe to Contract with Third Party Auditor.

The Tribe will retain, at its own expense, a Auditor to verify its compliance with this Compact. The Tribe shall be entitled to freely communicate with the Auditor. The Auditor must be a certified public accountant licensed by the State and 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.

3. Audit Protocol.

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

Period under review: To verify the requirements of this Compact, the Auditor must 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 entity's books. In situations where the Auditor is responsible for verifying records on less than an annual basis, the period under review shall not include years previously reviewed by the Auditor, except when a violation is alleged to have occurred during the period previously reviewed.

Purpose for examination: To verify the requirements of this Compact, the Auditor must review at a minimum the records specified below. In all situations, the Auditor is not responsible for, nor allowed to, examine records that do not relate to the stamping, selling, or taxing activities of the Tribe, unless a review of the records is necessary for an internal reconciliation of the books.

Records to be examined:

(a) Self-Certified Wholesaler and Self-Certified Tribal Wholesaler: records and invoices of stamp purchases, records and invoices of sales of stamped Cigarettes, stamp inventory, and the stamping process;

4. Tribal Retailers.

(a) Tribal Retailers: records and invoices of Cigarettes purchased from State-licensed Wholesalers, Self-Certified Wholesalers, Self-Certified Tribal 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 XII section 7 and records to verify that the Retail Selling Price included the applicable Tribal taxes; and

(b) Tribe: records necessary to verify that all Tribal Cigarette Tax revenue was used to fund Essential Government Services of the Tribe.

5. Initial Review.

The first required review must cover the period starting on the effective date of the Tribal Cigarette Tax and ending the close of the tribe's next fiscal year, and the Auditor must report its findings to the Tribe 60 days after completion of the audit. This initial review shall include all of the activities covered by the protocol. Thereafter, reviews shall take place on the regular one-year audit period, which follows the Tribe's fiscal year, with an audit report submitted at the conclusion of each audit. The Tribe and the Department may by 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. The Tribe's fiscal year is on a calendar year basis.

6. Audit Report Format.

The Auditor shall provide the Department with a certified statement that, after each audit, will detail any findings or confirm the audit finds the Tribe to be in compliance with the terms of this Compact. The Department may view the audit report at the Tribe's Offices, but may not copy or remove the same.

7. Self-Certified Wholesalers and Self-Certified Tribal Wholesalers.

The Auditor will be responsible for reviewing the records, identified in subsection 3(a) of this Part, of all Self-Certified Wholesalers and Self-Certified Tribal Wholesalers that sell Cigarettes to a Tribal Retailer to verify that the Tribal Cigarette Tax was paid by the Wholesaler, and that the stamps were correctly affixed to containers of Cigarettes.

The Auditor must review the records, identified in subsection 3(a) of this Part, of all Self-Certified Wholesalers and Self-Certified Tribal Wholesalers that sell Cigarettes to a Tribal Retailer no less than once every two years. If a Wholesaler who previously sold Cigarettes to a Tribal Retailer stops making such sales, the Auditor must review the records of that Wholesaler during the next regularly scheduled audit.

8. Tribal Retailers.

The Auditor will be responsible for reviewing the records, identified in subsection 4 of this Part, of the Tribal Retailers to certify that the Tribal Cigarette Taxes were collected, that all Cigarettes are properly stamped, that Cigarettes were obtained from Wholesalers authorized under this Compact, that any exemptions from any tax are documented, and that revenue from the Tribal Cigarette Tax under this Compact have not been not used to subsidize the Tribal Retailer.

9. Joint Audit Implementation and Review.

The Tribe and the State shall confer prior to the beginning of the initial audit cycle. The purpose will be to discuss the objectives of the upcoming audit, the expectations of both the Tribe and the State, the audit standards to be used in such audit, and any issues regarding detail of the audit, records pertinent to the review, or substance of the Auditor's report. Subsequent audit meetings will be held as agreed by the Parties.

If warranted by the findings in the report, the Tribe and the State shall meet jointly with the Auditor to review the report and discuss any issues of concern. For the purposes of this section, "audit cycle" refers to the reoccurring scheduled audit of an entity.

10. Dispute Resolution.

In the event that either Party disagrees with the Auditor's final report, either party may notify the other of the disagreement and follow the procedures for resolution of the disagreement in Part IX of this Compact.

PART IX – DISPUTE RESOLUTION

The Tribe and the State desire to prevent disagreements and violations whenever possible, and to quickly and effectively resolve disagreements and violations when they arise. To the extent possible, the Parties will use informal methods of dispute resolution before engaging in the formal processes provided by this Part.

As used in this Part “days” means calendar days, unless otherwise specified. The Parties may, by mutual agreement, extend any of the time deadlines stated in this Part.

1. Notification of Violation.

If either party believes a violation of the Compact has occurred or has concerns about an Auditor’s report which the Parties have been unable to resolve through the joint audit review process, it shall notify the other party in writing. The notice shall state the nature of the alleged violation and any proposed corrective action or remedy. The Parties will meet, either in person or by teleconference, within twenty-one (21) days of receipt of the notice, unless the Parties mutually select a different date. The purpose of the meeting will be to attempt to resolve between them the issues raised by the notice of violation, and provide an opportunity to implement any agreed corrective action.

2. 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 a written mediation demand to the other party. The Parties shall first attempt to mutually select a mediator. If the Parties cannot agree on a mediator within thirty (30) days of written demand, the Parties shall use a mediator selected by the Judicial Arbitration and Mediation Service’s (“J.A.M.S.”) Seattle office, or if no such office exists at the time of the dispute, then to a mediator mutually agreed upon by the Parties in writing.

Each party shall bear its own attorney’s costs and expenses but shall share equally in the costs of mediation, including the costs of the mediator. A mediator shall be subject to the following:

- (a) Mediators may recommend corrective action to remedy any violation that has occurred.
- (b) In no case shall a mediator render an independent recommendation or decision on any issue on which the Parties reach agreement.
- (c) Remedies may include interpretation of contract terms, changes in reporting, record keeping enforcement practices, business practices, and/or similar changes.
- (d) 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.

3. Termination of Compact.

If, after twenty-four (24) months from the initial Notice of Violation or notice of other disagreement, the Parties are unable to resolve the disagreement or alleged violation and/or the appropriate corrective action using the dispute resolution methods authorized in this section, or if a party continues to violate a Compact term after the completion of the mediation process authorized in this section, this Compact may be terminated. The termination of this Compact under this paragraph shall not prevent the Parties from negotiating or entering into a new Compact, on similar or different terms, after six (6) months following such termination.

4. Notification of For Cause Termination.

Either party may terminate the Compact for cause. For the purposes of this section, "for-cause" shall mean only the following violations:

- (a) Significant and/or continued violation of this Compact by either party;
- (b) Failure to submit to mediation as required by this Part IX;
- (c) A breach of the confidentiality provisions of Part XI of this Compact;
- (d) Use of tax proceeds in violation of the terms of this Compact;
- (e) Failure to complete a required audit;

The party seeking the termination for cause shall notify the other party in writing providing therein the facts upon which the notice is based. The responding party shall within ten (10) days of receiving such notice either agree to terminate this Compact or initiate mediation pursuant to Section IX, paragraph 2 above.

If the Parties fail to reach resolution of issues arising under this Part through mediation or corrective action within one hundred eighty (180) days from the date of a party's receipt of the Termination Notice, the Compact shall be terminated. If the Parties resolve their dispute or the for-cause violation is corrected during this period, the Compact shall not terminate.

5. 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 this Compact. Upon such notification, the Tribe shall take enforcement action according to the provisions of Tribal law.

6. Notice Requirements.

For the purposes of this Compact, notice shall be by certified mail, return receipt requested. A party may consent in writing to accept notice by facsimile or e-mail. Upon execution of this Compact, the Parties shall identify the party's representative authorized to receive notice by facsimile or e-mail and provide the appropriate facsimile number and e-mail

addresses. Notice by certified mail shall be deemed effective on the date of actual receipt. Notice shall be given as follows:

To the Department:

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

With a copy to:

Assistant Director of Special Programs
Washington State Department of Revenue
P.O. Box 47454
Olympia, WA 98504-7454

To the Tribe:

Chairperson
Cowlitz Indian Tribe
P.O. Box 2547
Longview, WA 98632-8594

With a copy to:

Tribal Attorney
Edward Fleisher
Fleisher Law Firm, PC
2834 Nisqually View Loop NE
Olympia, WA 98516

7. 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 – TERM OF THIS COMPACT; AMENDMENT

1. Term.

This Compact shall remain in effect no longer than eight (8) years from its effective date, subject to the termination provisions under Part IX of this Compact.

2. Renewal.

The Compact shall be automatically renewed for successive periods of eight years, unless either party objects in writing at least thirty (30) days prior to the expiration date.

3. Amendments.

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.

4. Most Favored Nation.

The Department will make all of the tribal cigarette compacts available upon request in an electronic format. In the event the Tribe identifies terms in the Tribal Cigarette Tax Compacts of other Tribes more favorable than those included in this Compact, the State agrees, within 30 days of receiving notice from the Tribe, to negotiate in good faith regarding inclusion of such terms within this Compact, and shall not unreasonably withhold amendment of this Compact concerning those items.

PART XI – 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 an Auditor, mediator, and/or certified public accountant is confidential and shall not be disclosed to anyone, in any forum, for any purpose.

PART XII – 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 without 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. 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 supersedes or replaces chapter 70.157 RCW.

5. Periodic Review of Compact Status.

Appropriate representatives of the Tribe and of the Department shall hold periodic meetings to review the status of this Compact and any issues that have arisen under the Compact. Those meetings shall be held no less frequently than once every twenty four (24) months, but may be held more frequently.

6. Sales to Minors.

The Tribe, 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.

7. Essential Government Services.

(a) Tribal Cigarette Tax revenue shall be used for Essential Government Services.

(b) Tribal Cigarette Tax revenue may not be used to subsidize tribal Cigarette Retailers. "Subsidize" means that proceeds from the Tribal Cigarette Tax cannot be expended on the Direct Business Activities of the Tribal Retail Cigarette business. In addition, where the Cigarette business is located with a retail food business, the proceeds cannot be expended on the Direct Business Activities of the Tribal Retail Cigarette business.

8. Rule 192 – Application.

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

9. Subsequent State Legislative Enactments.

Should the Legislature enact a law that provides more favorable terms for the Tribe, the Parties shall amend the Compact to include such terms.

10. Jurisdiction.

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

11. Severability.

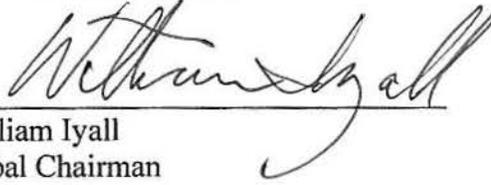
If any provision of this Compact or its application to any person or circumstance is held invalid, the remainder of the Compact is not affected.

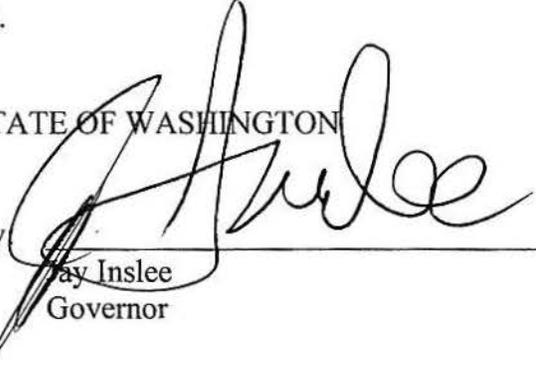
[Signatures Follow On Next Page]

Thus agreed this 9th day of March 2017.

COWLITZ INDIAN TRIBE

STATE OF WASHINGTON

By: 
William Iyall
Tribal Chairman

By: 
Jay Inslee
Governor