

**COMPACT RELATING TO CIGARETTE SALES, TAXATION
AND ESCROW COLLECTION**

Between

The Sac And Fox Nation Of Missouri In Kansas And Nebraska

and

The State Of Kansas

This Compact Relating to Cigarette Sales, Taxation and Escrow Collection (“Compact”) is entered into between the Sac And Fox Nation Of Missouri In Kansas And Nebraska (“Tribe”) and the State of Kansas (“State”) and its agencies. The Tribe and the State are collectively referred to as the “Parties.” The Parties agree as follows:

WHEREAS, the Tribe is a federally-recognized tribe with certain sovereign powers of self-government;

WHEREAS, the State is a state within the United States of America possessed of full powers of state government;

WHEREAS, the Tribe is situated on and occupies a federally-established Indian Reservation situated, in part, in the northeastern part of Kansas;

WHEREAS, federal law recognizes that tribal jurisdiction exists on Qualified Tribal Lands regarding the rights of an Indian Tribe to pass its own laws and be governed by them, including the right to levy taxes and regulate commerce;

WHEREAS, it is in the best interests of both the State and the Tribe to prevent disputes between the Parties regarding possession, transport, distribution, and Sale of Cigarettes and other Tobacco Products, including but not limited to taxation and escrow collection, in the State of Kansas, on Compact Lands;

WHEREAS, on November 23, 1998, the State became party to the MSA;

WHEREAS, certain Tobacco Product Manufacturers, which are party to the MSA, are obligated, in return for a release of past, present and certain future claims against them as described therein, to pay substantial sums to State (tied in part to their volume of Sales); to fund a national foundation devoted to the interests of public health; and to make substantial changes in their advertising and marketing practices and corporate culture, with the intention of reducing underage smoking;

WHEREAS, it would be contrary to the policy of State if Tobacco Product Manufacturers who determine not to enter into such a settlement could use a resulting cost advantage to derive large, short-term profits in the years before liability may arise without ensuring that State will have an eventual source of recovery from them if they are proven to have acted culpably;

WHEREAS, the State entered into a Secondary Settlement Agreement with certain participating Tobacco Product Manufacturers in 2012 settling State's obligations under the MSA and disputes regarding certain payment adjustments under the MSA with respect to NPMs (as that term is defined below) for calendar years 2003-2012;

WHEREAS, as part of said Secondary Settlement Agreement, State has agreed to undertake certain diligent enforcement efforts of its Cigarette and other Tobacco Product laws and more specifically, its MSA laws on Qualified Tribal Lands within the borders of State;

WHEREAS, the Parties are of the opinion that cooperation between the Tribe and the State is mutually productive and beneficial;

WHEREAS, the State and the Tribe agree that it will serve the interests of both the State and the Tribe for the Tribe to be able to generate revenue for governmental purposes through the collection of certain Tribal taxes in accordance with this Compact and resolve their differences regarding the collection of escrow on certain Cigarettes Sold on Compact Lands;

WHEREAS, the Tribe has the authority pursuant to Article V of its Constitution to enter into agreements with the State and to enter into agreements for the economic benefit of the Tribe.

NOW THEREFORE, the State, as signed by the Governor and approved by the Kansas Legislature, and the Tribe, as approved by the Tribe's Tribal Council hereby enter into this Compact for the mutual benefit of the State and the Tribe, to-wit:

DEFINITIONS

"Business Day" shall mean any day that the governmental offices of the Tribe and State are open for business.

"Carton" shall mean a container of two hundred (200) Cigarettes, whether consisting of either eight or ten Packs.

"Cigarette" shall mean any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use and consists of or contains:

- (1) any roll of tobacco wrapped in paper or in any substance not containing tobacco;
- (2) tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, Consumers as a Cigarette; or
- (3) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, Consumers as a Cigarette described in clause (1) above.

The term "Cigarette" includes "roll-your-own" (i.e., any tobacco which, because of its appearance, type, packaging or labeling is suitable for use and likely to be offered to, or purchased by, Consumers as tobacco for making Cigarettes). For purposes of this definition, 0.09 ounces of "roll-your-own" tobacco shall constitute one individual "Cigarette."

“Compact” shall mean this agreement;

“Compact Lands” shall mean:

- (1) Lands within the boundaries of the State of Kansas that are within the Tribe’s Reservation as established in the treaty between the United States of America and the Tribe dated March 6, 1861 and ratified February 6, 1863; and
- (2) The following lands once the Secretary of the Department of Interior has fully acquired such land into trust for the beneficial use of the Tribe as authorized in accordance with Section 5 of the Indian Reorganization Act, 25 USC 465 and under 25 CFR § 151.10:
 - (A) That part of the Southwest Quarter lying east of the present U.S. Highway No. 75 in Section 15, Township 4, Range 15, Brown County, Kansas;
 - (B) All of Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 in Block 9 in the City of Reserve, Brown County, Kansas;
 - (C) A tract of land located in the West One-Half of the Southeast One-Quarter of Section 12, Township 1 South, Range 16 East of the Sixth Principal Meridian, Brown County, Kansas, being more particularly described as follows: Beginning at the Center One-Quarter Corner of said Section 12, Thence N89°16'58"E and along the North line of said Southeast One-Quarter a distance of 1328.13 feet to the Northeast Corner of the West One-Half of said Southeast One-Quarter; Thence S00°13'17"E and along the East line of said West One-Half a distance of 1486.02 feet to the Northeasterly corner of US Highway 73 Right-of-Way as described in District Court Case 12794, Parcel 13; Thence Northwesterly and along the Northerly Right-of-Way of US Highway 73 the following three courses: 1. N56°10'27"W a distance of 801.62 feet; 2. N61°53'27"W a distance of 251.30 feet; 3. N56°02'27"W a distance of 535.70 feet to a point on the West line of said Southeast One-Quarter; Thence N00°10'27"W and along the West line of said Southeast One-Quarter a distance of 605.50 feet to the Point of Beginning, containing 31.83 acres. AND A tract of land located in the West One-Half of the Southeast One-Quarter of Section 12, Township 1 South, Range 16 East of the Sixth Principal Meridian, Brown County, Kansas, being more particularly described as follows: Beginning at the South One-Quarter Corner of said Section 12, Thence N00°10'27"W and along the West line of said Southeast One-Quarter a distance of 1840.94 feet to the Southwesterly corner of US Highway 73 Right-of-Way as described in District Court Case 12794, Parcel 13; Thence Southeasterly and along the Southerly Right-of-Way of US Highway 73 the following three courses: 1. S56°10'27"E a distance of 623.45 feet; 2. S50°14'51"E a distance of 352.14 feet; 3. S56°10'27"E a distance of 654.50 feet to a point on the East line of the West One-Half of said Southeast One-Quarter; Thence S00°13'17"E and along the East line of said West One-Half a distance of 887.43 feet to the Southeast Corner of said West One-Half of the Southeast One-Quarter; Thence S89°16'16"W and along the South line of said Southeast One-Quarter a distance of 1330.31 feet to the Point of Beginning, containing 41.63 acres. Said tracts containing a total of 73.46 acres;

(D) A parcel of land located in the Southwest One-Quarter of Section 7, Township 1 South, Range 17 East of the Sixth Principal Meridian, Brown County, Kansas, being more particularly described as follows: Beginning at the South One-Quarter Corner of said Section 7, Thence N89°38'42"W and along the South line of said Southwest One-Quarter a distance of 1563.87 feet to a point on the Easterly Right-of-Way of the Union Pacific Railroad; Thence Northerly and along the Easterly Right-of-Way of the Union Pacific Railroad the following three courses: 1. N06°27'57"W a distance of 1331.84 feet; 2. S89°39'01"E a distance of 50.36 feet; 3. N06°27'57"W a distance of 1331.82 feet to a point on the North line of said Southwest One-Quarter; Thence S89°39'20"E and along the North line of said Southwest One-Quarter a distance of 1798.84 feet; Thence S00°19'01"E a distance of 210.32 feet to a point on the centerline of Walnut Creek; Thence Southerly and along the centerline of Walnut Creek generally the following nine courses: 1. S16°39'07"W a distance of 74.67 feet; 2. S08°37'19"E a distance of 102.59 feet; 3. S71°28'24"W a distance of 85.07 feet; 4. S76°57'12"W a distance of 86.41 feet; 5. S17°24'59"W a distance of 85.60 feet; 6. S34°27'31"E a distance of 51.75 feet; 7. N65°20'21"E a distance of 49.67 feet; 8. N84°54'06"E a distance of 68.59 feet; 9. S57°01'48"E a distance of 66.38 feet to a point on the East line of said Southwest One-Quarter; Thence S00°19'01"E and along the East line of said Southwest One-Quarter a distance of 125.53 feet to a point on the centerline of Walnut Creek; Thence Southerly and along the centerline of Walnut Creek generally the following five courses: 1. S24°20'03"W a distance of 142.98 feet; 2. S06°00'48"E a distance of 114.90 feet; 3. S02°38'41"W a distance of 195.67 feet; 4. S13°43'53"E a distance of 133.11 feet; 5. S55°33'32"E a distance of 33.42 feet to a point on the East line of said Southwest One-Quarter; Thence S00°19'01"E a distance of 1368.10 feet to the Point of Beginning, containing 100.88 acres. AND A parcel of land located in the Southwest One-Quarter of Section 7, Township 1 South, Range 17 East of the Sixth Principal Meridian, Brown County, Kansas, being more particularly described as follows: Commencing at the Southwest Corner of said Section 7, Thence N00°16'06"W and along the West line of said Southwest One-Quarter a distance of 595.44 feet to the Point of Beginning, Thence N00°16'06"W and along the West line of said Southwest One-Quarter a distance of 726.99 feet; Thence S89°39'01"E a distance of 562.67 feet to a point on the Westerly Right-of-Way of the Union Pacific Railroad; Thence S06°27'57"E and along the Westerly Right-of-Way of the Union Pacific Railroad Right-of-Way a distance of 1289.15 feet to a point on the Northerly Right-of-Way of US Highway 73 as described in District Court Case 12794, Parcel 9; Thence Northwesterly and along the Northerly Right-of-Way of US Highway 73 the following two courses: 1. N60°24'40"W a distance of 724.01 feet; 2. N13°59'07"W a distance of 173.61 feet; Thence N89°43'54"W a distance of 47.31 feet; Thence N00°16'06"W a distance of 75.00 feet; Thence S89°43'54"E a distance of 50.00 feet; Thence S00°16'06"E a distance of 63.99 feet; Thence N13°59'07"W and along the Northerly Right-of-Way of US Highway 73 a distance of 21.02 feet; Thence S89°45'14"W a distance of 25.02 feet to the Point of Beginning, containing 15.11 acres. Said tracts containing a total of 115.99 acres; and

(E) A tract of land located in the South One-Half of Government Lot 1, Located in the Northwest One-Quarter of Section 15, Township 4 South, Range 15 East of the Sixth Principal Meridian, Brown County, Kansas, being more particularly described as

follows: Beginning at the West One-Quarter Corner of said Section 15, Thence N00°33'17"E and along the West line of said Lot 1 a distance of 1292.86 feet to a point 30.00 feet Southerly of the Northwest Corner of the South One-Half of said Lot 1; Thence S89°43'06"E parallel with and 30.00 feet Southerly of the North line of the South One-Half of said Lot 1 a distance of 320.22 feet to the Westerly Right-of-Way of US Highway 75; Thence Southerly and along the Westerly Right-of-Way of US Highway 75 the following five courses: 1. S00°40'04"W a distance of 554.21 feet; 2. S22°15'00"W a distance of 38.08 feet; 3. S00°40'04"W a distance of 30.00 feet; 4. S19°53'17"E a distance of 42.72 feet; 5. S00°40'04"W a distance of 633.40 feet to a point on the South line of said Government Lot 1; Thence N89°46'00"W and along the South line of said Lot 1 a distance of 317.80 feet to the Point of Beginning, containing 9.44 acres.

“**Compact Licensed Distributor**” shall mean any entity licensed under the Tribe’s law for distributing Cigarettes to Compact Licensed Retailers.

“**Compact Licensed Retailer**” shall mean any entity licensed under the Tribe’s law for the retail Sale of Cigarettes on Compact Lands.

“**Consumer**” shall mean the individual or entity purchasing or receiving Cigarettes or other Tobacco Products for final use.

“**Escrow Statutes**” shall mean Chapter 50, Article 6a of the Kansas Statutes Annotated.

“**Indian Tribe**” shall mean any Indian tribe, band, nation or other organized group or community that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians under the laws of the United States.

“**KDOR**” shall mean the Kansas Department of Revenue.

“**KSAG**” shall mean the Office of the Attorney General of the State of Kansas.

“**MSA**” shall mean the settlement agreement (and related documents) entered into on November 23, 1998 by the State and leading United States Tobacco Product Manufacturers; provided, however, that such term does not include the Secondary Settlement Agreement.

“**NPM**” shall have the meaning set forth for the term “Non-participating manufacturer” in K.S.A. § 50-6a07(g).

“**Pack**” shall mean one package of either twenty (20) or twenty-five (25) Cigarettes.

“**Parties**” or “**Party**” shall mean the State and the Tribe.

“**PM**” shall mean a “participating manufacturer” as that term is used in the Escrow Statutes.

“**Qualified Tribal Lands**” shall mean:

- (1) All land within the borders of the State that is within the limits of any Indian reservation under the jurisdiction of the United States, notwithstanding the issuance of any patent, including rights-of way running through such reservation;

- (2) all dependent Indian communities within the borders of the State;
- (3) all Indian allotments within the borders of the State, the Indian titles to which have not been extinguished, including rights-of-way running through such allotments; and
- (4) any lands within the borders of the State, the title to which is either held in trust by the United States for the benefit of any Indian Tribe or individual, or held by any Indian Tribe or individual subject to restriction by the United States against alienation and over which an Indian Tribe exercises governmental power.

“**Sale**” (and any correlative term, such as “**Sell**,” “**Seller**,” or “**Sold**” shall have the correlative meaning) shall mean any sale, barter, trade, exchange, or other transfer of ownership for value of Cigarettes, no matter how characterized.

“**Secondary Settlement Agreement**” shall mean the 2003 NPM adjustment settlement agreement, which shall include the 2012 term sheet agreement, related to the MSA and to which State is a party.

“**State**” shall mean the State of Kansas, KDOR or KSAG used interchangeably.

“**Tribe**” or “**Tribal**” shall mean the Sac And Fox Nation Of Missouri In Kansas And Nebraska.

“**Tobacco Product Manufacturer**” shall mean an entity that after the Effective Date directly (and not exclusively through any affiliate):

- (1) manufactures Cigarettes anywhere that such manufacturer intends to be Sold in the United States, including Cigarettes intended to be Sold in the United States through an importer;
- (2) is the first purchaser anywhere for resale in the United States of Cigarettes manufactured anywhere that the manufacturer does not intend to be Sold in the United States; or
- (3) becomes a successor of an entity described in paragraph (1) or (2).

The term “Tobacco Product Manufacturer” shall not include an affiliate of a Tobacco Product Manufacturer unless such affiliate itself falls within any of paragraphs (1) through (3) above. Solely for purposes of this definition, the term “affiliate” shall mean a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of the preceding sentence, the terms “owns,” “is owned” and “ownership” mean ownership of any equity interest, or the equivalent thereof, of 10% or more, and the term “person” means an individual, partnership, committee, association, corporation or any other organization or group of persons.

“**Units Sold**” shall mean, with respect to a particular Tobacco Product Manufacturer for a particular year, the number of individual Cigarettes Sold in the State, including, without limitation, any Cigarettes Sold on any qualified tribal land within the State, by the applicable Tobacco Product Manufacturer, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, during the year in question, for which the State has the authority under federal law to impose excise or a similar tax or to collect escrow deposits, regardless of whether such taxes were imposed or collected by the State.

INTRODUCTION

1. The purpose of this Compact is to resolve disputes between the Parties regarding possession, transport, distribution, and Sale of Cigarettes, including but not limited to taxation and escrow collection, on the Qualified Tribal Lands of the Tribe. For the purposes of this Compact, only, and for no other purpose whatsoever, the State and the Tribe agree that the Tribe's Treaties with the United States of America do not exempt, exclude or reserve the Tribe's land from the boundaries of Kansas. For the purposes of this Compact only, and for no other purpose whatsoever, the Tribe's Reservation and Qualified Tribal Lands are within the State of Kansas.
2. For purposes of this Compact, a Tribal-owned entity includes any entity wholly owned by the Tribe or any wholly-owned subsidiary of that entity. The Tribe shall provide the KSAG a list of all Tribal-owned entities relating in any way to manufacturing, handling, delivering, receiving, or Selling of Cigarettes on Compact Lands. The citation to any Kansas statute or regulation in this Compact refers to the version in effect on the date the Compact is executed by the Parties, unless the Parties specifically agree in writing to a modification of the Compact.

TERM

3. This Compact shall commence on July 1, 2017 (the "Effective Date").
4. This Compact shall have a term of 10 years subject to automatic renewal absent a requested revision in writing by either Party or requested termination in writing by either Party with such notice occurring at least 60 days prior to the end of the term.
5. Either Party can revoke this Compact in writing at any time, provided the Parties have first attempted to resolve their differences. Before the revocation becomes effective, the revoking Party shall serve a written thirty (30) day notice of intent to revoke the Compact and thereafter schedule a meeting to discuss differences between the Parties with the option of continuing discussions beyond the thirty (30) days, upon joint written agreement of the Parties.

LICENSES

6. The Tribe will enact an ordinance or other statutory means for licensing Compact Licensed Distributors which will be authorized to purchase only:
 - (a) Unstamped Cigarettes from federally-licensed manufacturers or their federally-licensed direct importers, or
 - (b) Joint State-Tribal stamped Cigarettes from State stamping agents, licensed under K.S.A. § 79-3303.

Said Tribal license will authorize Compact Licensed Distributors to Sell Cigarettes only to Compact Licensed Retailers licensed under paragraph 7 below; retailers licensed by another tribe which has signed a Compact with the State; or retailers and distributors located in a State other than Kansas that are licensed by a federally-recognized Indian Tribe.

7. The Tribe will enact an ordinance or other statutory means to license retail Cigarette dealers in Compact Lands. The license will be required for the retail Sale of Cigarettes to Consumers in the Compact Lands. The license will permit Compact Licensed Retailers to only purchase, possess and Sell at retail:
 - (a) Cigarettes bearing a joint State-Tribal stamp, as set out in paragraphs 10-18 below, from the Compact Licensed Distributors, and
 - (b) Cigarettes bearing a State stamp from a State-licensed stamping agent.
8. The Tribe will inform the State in writing of the name and address of the licensees issued licenses pursuant to paragraphs 6 and 7 above. Any changes will be updated quarterly if necessary.

TAX

9. The Tribe will enact a Cigarette excise tax, which shall be applied equally to all Cigarettes Sold on the Tribe's Compact Lands regardless of manufacturer or brand, which shall be collected by the affixation of a joint State-Tribal tax stamp to each Pack of Cigarettes Sold on the Tribe's Compact Lands.
10. State and the Tribe agree that each Pack of Cigarettes that a Compact Licensed Retailer Sells on Compact Lands shall bear a joint State-Tribal tax stamp that will be designed jointly by the Tribe and State.
 - (a) Said stamp shall bear the name "S&F" and "KS" and a logo in a form and color mutually agreeable to both the Tribe and State;
 - (b) State shall cause said stamps to be produced at its sole expense;
 - (c) State shall provide said joint State-Tribal stamps to the Tribe who shall be responsible for providing said State-Tribal stamps to Compact Licensed Distributors which shall be affixed on all Cigarettes to be Sold by Compact Licensed Retailers on Compact Lands;
 - (d) Compact Licensed Distributors shall ship all Cigarettes bearing joint State-Tribal stamps to the Tribe or to a Compact Licensed Retailer at the expense of the Tribe, the Compact Licensed Distributor, or Compact Licensed Retailer. In no circumstance shall the cost of such shipping be paid by State.
11. Only Compact Licensed Distributors can collect Tribal taxes on Cigarettes and affix the joint State-Tribal tax stamps, provided that nothing in this paragraph or Compact shall be construed to limit licensing authority of a Tribal tax commission, agency, or other Tribal tax administration authority.
12. No State Cigarette taxes shall be owed or collected on Cigarettes stamped with the joint State-Tribal tax stamp and Sold on the Tribe's Compact Lands.
13. All Cigarettes Sold by Compact Licensed Retailers on the Tribe's Compact Lands will bear the joint State-Tribal tax stamp.

14. The Tribe's Cigarette excise tax shall be at a minimum \$0.17 per Pack of Cigarettes Sold at retail on Compact Lands.
15. Packs of Cigarettes stamped with the joint State-Tribal tax stamp shall be treated by the State the same as though stamped with the State's tax stamp for purposes of transport and Consumer use in the State outside of the Tribe's Compact Lands and for purposes of possession, distribution, Sale and Consumer use within the Tribe's Compact Lands.
16. Compact Licensed Distributors shall be responsible for affixing the joint State-Tribal tax stamp and paying the tax to the Tribe.
17. The cost of the tax shall be included in all retail Sales of Cigarettes on Compact Lands.
18. The State shall provide to the Tribe joint State-Tribal tax stamps within fifteen (15) days after the date requested and in sufficient amounts to ensure that the Tribe, Compact Licensed Distributors and Compact Licensed Retailers can meet Consumer demand for the purchase of Cigarettes.

CIGARETTE SALES

19. The Tribe, Compact Licensed Distributors, and Compact Licensed Retailers will maintain records of all Cigarette Sales made within its jurisdiction sufficient to prove the number of such Sales within Compact Lands.
20. State licensed distributors can Sell unstamped PM brands to Compact Licensed Distributors for stamping with the joint State-Tribal tax stamp and distribution within the Compact Lands.
21. Compact Licensed Distributors shall Sell to Compact Licensed Retailers only Packs of Cigarettes with the joint State-Tribal tax stamp affixed.
22. Compact Licensed Retailers shall Sell only Packs of Cigarettes with the joint State-Tribal tax stamp affixed on Compact Lands.
23. Compact Licensed Distributors shall Sell to Compact Licensed Retailers only brands of Cigarettes that are in compliance with the Escrow Statutes and the Kansas Fire Safety Standard and Firefighter Protection Act, K.S.A. § 31-601, *et seq.*, and listed as compliant brands in the Kansas directories of compliant manufacturers maintained by the KSAG pursuant to the Escrow Statutes.
24. Compact Licensed Retailers shall Sell on Compact Lands only brands of Cigarettes that are in compliance with the Escrow Statutes and the Kansas Fire Safety Standard and Firefighter Protection Act, K.S.A. § 31-601, *et seq.*, and listed as compliant brands in the Kansas directories of compliant manufacturers maintained by the KSAG pursuant to the Escrow Statutes.
25. Tobacco Product Manufacturers and first importers, as defined in the Escrow Statutes, shall be responsible for payment of escrow obligations to the State. Unless acting as a Tobacco Product Manufacturer or first importer, the Tribe is not taking on any obligation to deposit escrow nor is the Tribe required to otherwise satisfy any obligations under the Escrow Statutes unless specifically set forth herein.

PAYMENT TO TRIBE

26. The State acknowledges that the Tribe is incurring costs in its efforts to assist the State in ensuring compliance with State tobacco laws and the Secondary Settlement Agreement.
27. The State agrees to reimburse the Tribe for these costs in the amount of Seventy Thousand Dollars (\$70,000.00) for each quarter of the year, with payment to be made on the last day of the quarter (March 31, June 30, September 30, and December 31) during the initial five (5) year term of the Compact. For the following five (5) years during the remaining term of the Compact, the quarterly payment amount shall be increased fifteen percent (15%), as a one-time only increase, over the quarterly payment amount payable during the immediately prior five (5) year period.
28. As provided in Section VII of the Memorandum of Understanding for Voluntary Compliance for Cigarette Sales and Reporting (the "MOU"), entered into between the Tribe and the State, with an effective date of January 1, 2017, for its full compliance with the terms of such MOU, the State agrees to a one-time payment to the Tribe in the amount of \$35,000 to be paid on July 1, 2017.
29. As additional consideration to reimburse the Tribe for economic cost incurred by the tribe in assisting the State in its ongoing diligent enforcement efforts under the MSA and the Secondary Settlement Agreement, the following shall be exempt from tax imposed by the Kansas Retailers' Sales Tax Act, K.S.A. 79-3601 *et. seq.* and amendments thereto: all sales of tangible personal property or services, including the renting and leasing of tangible personal property, purchased by the Tribe or a Tribal-owned entity, and used exclusively for Tribal purposes.

GENERAL

30. Compact Licensed Distributors shall provide to the Tribe monthly a brand-specific list showing totals of all Cigarettes delivered to the Tribe and Compact Licensed Retailers for Sale on Compact Lands with the joint State-Tribal tax stamps affixed. The Tribe shall provide to the KDOR monthly a brand-specific list showing totals of all Cigarettes delivered to and Sold on the Tribe's Compact Lands with the joint State-Tribal tax stamp affixed, in a form and format agreed upon by the KDOR and the Tribe. This list for Sales during each calendar month shall be provided no later than 25 days after the end of the month. (For example, brands Sold during the month of January shall be listed and provided by February 25.)
31. The Parties agree that agents or employees of the Tribe and agents or employees of KSAG and/or KDOR will conduct joint inspections of Compact Licensed Retailers and Compact Licensed Distributors located on Compact Lands. In connection with any such joint inspection, the Tribe shall permit such agents or employees of the Tribe and agents or employees of KSAG and/or KDOR to review all documentation collected and maintained by the Tribe pursuant to this Compact.

The joint inspections shall be conducted using a method as agreed upon by the Parties, *provided, however*, such joint inspections shall not involve complete audits or complete inventories but shall be limited to random sample inspections of stock, tax indicia, and

documentation on hand at the premises of a Compact Licensed Retailer or Compact Licensed Distributor, as applicable, for the purposes of verifying that all Cigarettes offered or intended for Sale by any Compact Licensed Retailer on Compact Lands (i) are solely brands of Tobacco Product Manufacturers meeting the requirements as provided in paragraphs 23 and 24, (ii) were acquired from a Compact Licensed Distributor, and (iii) bear indicia of payment of excise tax to the extent required in this Compact. In any event, such joint inspections shall not be disruptive of the business operations nor damage any inventory of any Compact Licensed Retailer or Compact Licensed Distributor.

32. The State reserves the right hereunder to initiate and participate in up to twelve (12) joint inspections described in paragraph 31 per calendar year, with a limit of up to two (2) such joint inspection per calendar month; *provided, however*, that joint inspections of any one or more separate premises on the same Business Day shall only constitute one “joint inspection” for purposes of the preceding limitations; *provided, further*, that if the State and Tribe inspection team notes any violations of this Compact by one or more Compact Licensed Retailers or Compact Licensed Distributors during any such joint inspection, the State may initiate, by giving notice in accordance with paragraph 33, one follow-up joint inspection with the Tribe of all premises involved in such violations on a subsequent Business Day following the earlier of notice of completed cure related to such violations, with such follow-up joint inspection not counting against the monthly or annual limits set forth in this sentence.
33. The Tribe shall make its personnel available for joint inspections permitted hereunder on a Business Day between the hours of 9:00 a.m. and 4:30 p.m. upon prior email notice to the Tribe transmitted by a representative of the State by 10:00 a.m. one Business Day prior to the requested inspection. State representatives and Tribal representatives shall coordinate the details of the joint inspection by 3:00 p.m. on the day of such email notice. Any email notice provided to the Tribe pursuant to this section shall be given at tribaltax@sacandfoxcasino.com or by written notice.
34. Any Packs of Cigarettes found for Sale at a Compact Licensed Retailer during a permitted joint inspection that are not brands of Tobacco Product Manufacturers meeting the requirements as provided in paragraphs 23 and 24 or that do not bear indicia of payment of excise tax as required in this Compact shall be removed by the Tribe until the matter is resolved.
35. Tribe and State shall select a third party auditor (the “Auditor”) for purposes of verifying compliance with this Compact. For purposes of verifying compliance with this Compact, the parties agree to jointly retain said Auditor and shall each bear fifty percent (50%) of the costs of the auditing services. The Auditor must possess a valid Kansas Permit to Practice issued by the Kansas Board of Accountancy. The Tribe and State shall be entitled to freely communicate with the Auditor. The Auditor will review records on an annual calendar year basis and issue an annual report and certification as provided herein.
 - (a) Audit Protocol. To verify compliance with this Compact, the Auditor must adhere to the following protocol:
 - (b) Period Under Review. The Auditor must review records for the calendar year under audit and may review records for earlier years that are after the Effective Date but only as necessary for an internal reconciliation of the relevant books. Subject to the

foregoing, records relating to any period before the Effective Date are not open to review. 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.

- (c) Records to be Examined. The Auditor must review records and invoices of stamp purchases, records and invoices of Sales of joint State-Tribal stamped Cigarettes, joint State-Tribal stamp inventory, the joint State-Tribal stamping process, products sold, product inventory records, and such additional records as are necessary to verify (1) the Units Sold (2) the retail selling price, including application of Tribal sales and excise taxes, and (3) procedures demonstrating the Tribe's compliance with this Compact, all with respect to Sales of Cigarettes on Compact Lands by the Tribe. In all situations, the Auditor is not responsible for examining, and shall not examine, records that do not relate to the stamping, Selling, or taxing activities of the Tribe on Compact Lands.
- (d) Audit Report and Certification. After each annual audit, the Auditor shall issue an audit report and a certification, as further described below, with respect to compliance with this Compact. The annual audit report shall set forth the total Units Sold attributable to each Tobacco Product Manufacturer by the Tribe during the relevant period. The annual audit report shall also include a certified statement of the Auditor to the KSAG that the Auditor finds the Tribe to be in compliance with this Compact or else that the Tribe is in compliance except for specifically listed items that are explained in the annual report.
- (e) Audit Schedule. Audit reviews shall take place following each calendar year (or portion thereof) during the term of this Compact, with an audit report submitted no later than April 1 following such calendar year.
- (f) Joint Audit Implementation and Review. The Tribe and the State shall meet jointly with the Auditor prior to the beginning of each annual audit. The purpose of such meeting will be to discuss the objectives of the upcoming audit, the expectations of the Tribe and of the State, the standards to be used in such audit, and any issues regarding conduct of the audit, records pertinent to the audit or the contents of the Auditor's report. The Tribe and State agree that the report will audit the processes, controls and the supporting documentation of the Tribe's purchases and Sales of Cigarettes and tobacco products on Compact Lands using both Generally Accepted Auditing Standards and Generally Accepted Accounting Principles. Subsequent meetings before and during the audit may be held as required. As soon as practicable after the issuance of the Auditor's report and certification, the Tribe and the State may meet jointly with the Auditor as often as required to review the audit report and discuss any issue of concern. In the event that either the Tribe or the State disagrees with the Auditor's report or certification, or any audit finding contained therein, either Party may notify the other of the disagreement and follow the procedures for resolution of the disagreement in Article III, Paragraph 1 of this Compact.

36. All information, including but not limited to, any lists showing total Sales of Cigarettes in paragraphs 30 and 31, provided to the State shall be held in confidence and only shared with other states, agencies, or other third parties (to which the State has a legal obligation to share such information), solely for enforcement purposes or for establishing the State's compliance with the MSA, Secondary Settlement Agreement and Escrow Statutes. The State agrees to provide notice to the Tribe ten (10) days prior to the release of such information to any of the Parties listed in this paragraph. The State may not share this information with any other person without written consent from the Compact Licensed Distributor that provided the information. Such information shall further be specifically exempt from disclosure under the Kansas Open Records Act (K.S.A. 45-215 *et. seq.*).
37. During the Term of this Compact, State may enter into and be party to one or more compacts or other agreements regarding possession, transport, distribution, or Sale of Cigarettes or other Tobacco Products, including but not limited to taxation and escrow collection, with the Iowa Tribe of Kansas and Nebraska, the Kickapoo Tribe in Kansas or the Prairie Band Potawatomi Nation but State shall not enter into or be party to any such compact or agreement with any Indian Tribe other than the foregoing. The State agrees that Tribe may propose an amendment to this Compact by written notice to the State based on any provision of a compact which State may enter into with one or more of the foregoing Indian tribes which Tribe desires to include as a provision in this Compact. Any amendment proposed pursuant to this section will be subject to approval of the Kansas Legislature and the Tribe's Tribal Council.
38. The reference to and citation of State statutes and laws in this Compact shall be for reference only for the convenience of the Parties and considered nothing more than contractual terms and obligations. While the Tribe agrees to comply with all contractual obligations set forth in this Compact, no reference to or incorporation of laws, rules, or regulations in this Compact shall be construed as a waiver or cession of any sovereign authority or immunity of the Tribe or an agreement by the Tribe to be subject to such laws, rules or regulations within Indian Country except to the extent agreed to herein.
39. Notwithstanding any provision of this Compact to the contrary, the possession, gift, or use within the Tribe's Compact Lands of noncommercial privately produced tobacco for religious or ceremonial use shall be exempt from taxation by the State and may be exempt from taxation by the Tribe. Such tobacco shall be deemed not to be a common nuisance or contraband pursuant to State law or process, in each case on grounds of non-payment of any State tax. For the purposes of this section, "tobacco" shall mean any plant, including parts or products thereof, within the genus *Nicotania* and which does not constitute a "controlled substance" within the meaning of 21 U.S.C. 802(6).
40. All notices under this Compact shall be in writing and sent by way of certified U.S. mail to the following officials or their successors in office:

To the Tribe:

Chairperson and Tribal Council
Sac and Fox Nation of Missouri in Kansas and Nebraska
305 North Main Street
Reserve, KS 66434

To the State:

To the Governor:

Office of the Governor
300 SW 10th Ave., Ste. 241S
Topeka, KS 66612-1590

To the Attorney General:

Office of the Kansas Attorney General
120 SW 10th Ave., 2nd Floor
Topeka, KS 66612-1597

To the Kansas Department of Revenue

Secretary of Revenue
915 SW Harrison Street, Second Floor
Topeka, KS. 66612-1588

The Parties agree to provide written notice within thirty (30) days of any change to the above addresses.

IN WITNESS WHEREOF, the parties hereto have executed this Compact as of the date first above written.

Sac and Fox Nation of Missouri in Kansas and
Nebraska

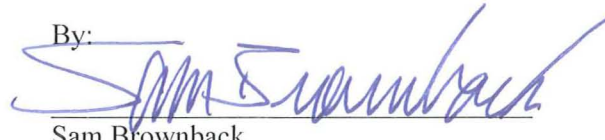
By:



Edmore Green
Chairman of the Tribal Council

State of Kansas

By:



Sam Brownback
Governor