

**AGREEMENT ON THE COLLECTION OF PROVINCIAL:
TOBACCO TAX,
GASOLINE TAX,
AND
HARMONIZED SALES TAX
AND
SELF-LICENSING RELATING TO GAMING**

**BETWEEN:
KINGSCLEAR FIRST NATION
As represented by Chief & Council
(Hereinafter referred to as the Kingsclear First Nation)
Of the First Part**

- and -

**Her Majesty the Queen in Right of the
PROVINCE OF NEW BRUNSWICK**

**As Represented by the Minister of Finance
(Hereinafter referred to as the Minister)
Of the Second Part.**

AGREEMENT

WHEREAS section 87 of the Indian Act, R.S.C. 1985, c.I-6, exempts from taxation the personal property of an Indian or Band situated on a reserve, and

WHEREAS it is the position of the First Nation that such exemption is applicable to cigarette and tobacco products and gasoline and motive fuel purchased by Indians on the First Nation Reserve (hereinafter referred to as the Reserve), and

WHEREAS the Parties are desirous of co-operating with each other so as to resolve the question as to the alleged entitlement to an exemption whilst at the same time protecting the integrity of the provincial administration of tax in the Province of New Brunswick.

THE PARTIES AGREE AS FOLLOWS:

- 1.(a) Subject to paragraph 4, the quantity of tobacco products that are likely to be purchased on the Reserve each month by Status Indians for their own consumption is set out in Schedule "A".
- (b) Subject to paragraph 4, the quantity of gasoline and motive fuel that are likely to be purchased on the Reserve each month by Status Indians for their own consumption is set out in Schedule "B".

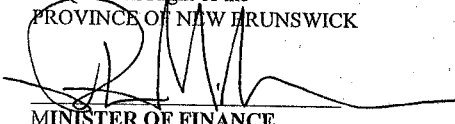
- 2.(a) The First Nation will advise, or cause the authorized retail vendor(s) as defined in the Tobacco Tax Act, R.S.N.B. 1973, c.T-7, to advise the Minister of the name of the wholesale vendor as defined in the Act from whom the retail vendor(s) will purchase tobacco.
- (b) The First Nation will advise, or cause the authorized retailer vendor(s) as defined in the Gasoline and Motive Fuel Tax Act, R.S.N.B. 1973, c.G-3 to advise the Minister of the name of the wholesaler as defined in the Act from whom the retail vendor(s) will purchase gasoline and motive fuel.
3. The Minister will then advise the wholesale vendor(s) that the wholesale vendor(s) is(are) not required to collect the tax on the quantity of tobacco products and gasoline and motive fuel agreed to by the First Nation and the Minister under paragraphs 1 or 4.
4. At the request of either the First Nation or the Minister, the First Nation and the Minister will review the quantity of tobacco products and gasoline and motive fuel agreed to under paragraph 1. During the course of the first six months of this agreement this review may occur at most, every two months, and thereafter not within six months of a previous review.
- 5.(a) Tobacco retailers on the Reserve will register with the Minister to obtain a vendor's licence in accordance with the Tobacco Tax Act, and will collect from persons other than Status Indians any tax imposed by the Province on the sale of tobacco products, and will remit any such tax to the Minister in accordance with the provisions of the Tobacco Tax Act, and the Revenue Administration Act, R.S.N.B. 1973, c.R-10.22.
- (b) Gasoline and motive fuel retailers on the Reserve will register with the Minister to obtain a retailer's licence in accordance with the Gasoline and Motive Fuel Tax Act and will collect from persons other than Status Indians any tax imposed by the Province on the sale of gasoline and motive fuel, and will remit any such tax to the Minister in accordance with the provisions of the Gasoline and Motive Fuel Tax Act, and the Revenue Administration Act, R.S.N.B. 1973, c.R-10.22.
- (c) Vendors on the Reserve will register in accordance with Part IX of the Excise Tax Act, of Canada, and will collect from persons other than Status Indians the Harmonized Sales Tax imposed under this Act, and will remit any such tax in accordance with the provisions of this Act.
6. The Minister will share the taxes in sub-paragraph 5 (a) and 5(b) with the First Nation in accordance with Schedule "C". The First Nation agrees that it will not apply or permit the application by any retail vendor of any taxes so shared by the Minister so as to permit the retail vendor to sell tobacco products, gasoline and motive fuel at prices which are unreasonably low or are designed to or have the effect of lessening competition or eliminating a competitor.
7. If the First Nation is a retail vendor of tobacco and / or gasoline and motive fuel it will permit representatives of the Minister to inspect, audit and examine the First Nation's accounts pertaining to these sales to determine if the First Nation has complied with the terms of this Agreement and the Provincial legislation.

- 16. In the event of the termination or cancellation of this Agreement for any reason, the Minister shall be free to recommend to the Lieutenant-Governor in Council the immediate revocation of any Order-in-Council referred to in Article 2.03 of Schedule "F" hereto, which specifies the Gaming Commission (as defined therein) as a licensing authority for the purpose of Section 207(1)(b) of the Criminal Code, and upon such revocation all gaming activities on the Reserve (if applicable) will immediately cease.
- 17. Nothing in this agreement derogates from the Aboriginal, treaty or other rights or freedoms of the First Nation or its members or from the powers, rights or privileges of the legislature or government of the Province.

SIGNED IN DUPLICATE:

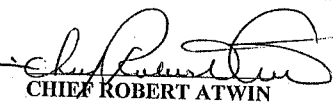
This 19th day of December, 2001

ON BEHALF OF Her Majesty
the Queen in Right of the
PROVINCE OF NEW BRUNSWICK



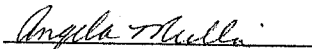
MINISTER OF FINANCE

ON BEHALF OF THE
KINGSCLEAR FIRST NATION

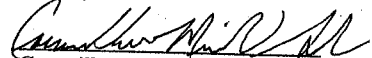



CHIEF ROBERT ATWIN

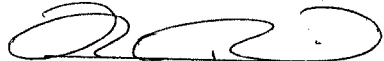
In the presence of:


Witness

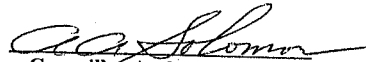
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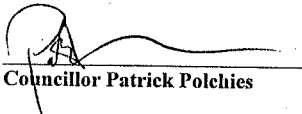

Councillor Micheal Solomon


Councillor Robert Francis


Councillor Theodore Polchies


Councillor Anthony Atwin


Councillor Anthony Solomon


Councillor Patrick Polchies

SCHEDULE "A"

AGREED QUANTITY OF EXEMPT TOBACCO

The First Nation and the Minister determine and agree upon a consumption rate of 263 cartons of cigarettes (or the equivalent quantity of other tobacco products) for the members of the Band per week. This is based upon current population, ages, and smoking demographics of the Band, calculated as follows:

Band membership over 18 years of age	<u>526</u>	
Rate of smokers	<u>50%</u>	
	<u>263</u>	cartons per week

SCHEDULE "B"**AGREED QUANTITY OF EXEMPT GASOLINE
AND MOTIVE FUEL**

The First Nation and the Minister have determined and agreed upon a consumption rate of 37,650 litres of gasoline and 2000 litres of motive fuel for the First Nation and the members of the First Nation per week. This is based upon current motor vehicle demographics and average consumption rates for the First Nation, as calculated as follows:

Gasoline:

753 vehicles including cars, vans, trucks and ATV's = 37,650 litres

Motive Fuel (Diesel):

20 vehicles including cars, trucks and tractors = 2,000 litres

SCHEDULE "C"**EXTENT OF SHARING OF TAX**

The Minister and the Band agree that the Minister will share the Tobacco Tax and the Gasoline and Motive Fuel Tax collected by the First Nation or retail vendors on tobacco products, gasoline and motive fuel sold on the Kingsclear Reserve to persons other than Status Indians in the following ratio:

Band's share of Provincial Tobacco Tax and Gasoline and Motive Fuel Tax 95%

Minister's share of Provincial Tobacco Tax and Gasoline and motive Fuel Tax 5%

SCHEDULE "D"

The licensed gasoline retailers located on the reserve shall file, on a form provided by the Minister, the following information:

beginning and ending meter readings for each gasoline /motive fuel pump;

total number of litres of gasoline/motive fuel sold to Status Indians for their own consumption;

total number of litres of taxed and exempt gasoline/motive fuel purchased;

total number of litres of taxed and exempt gasoline/motive fuel in inventory;

and any other information the minister may require.

SCHEDULE "E"

The licensed tobacco retailers located on the reserve shall file, on a form provided by the Minister, the following information:

total inventory of taxed and exempt tobacco and tobacco products at the beginning of the month;

total inventory of taxed and exempt tobacco and tobacco products at month's end;

total volume of taxed and exempt tobacco and tobacco products purchased during the month;

total volume of taxed and exempt tobacco and tobacco products sold during the month;

and any other information the Minister may require.

SCHEDULE "F"

SELF-LICENSING AGREEMENT

BETWEEN:

THE KINGSCLEAR INDIAN COMMUNITY, a body of Indians declared to be a band for the purposes of the Indian Act (Canada) by Order-in-Council P.C. 1973-3571, of the Kingsclear First Nation in the Province of New Brunswick, (hereinafter called the "First Nation"),

OF THE FIRST PART,

- and -

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NEW BRUNSWICK represented herein by the Minister of Finance, (hereinafter called the "Province").

OF THE SECOND PART.

WHEREAS:

- (a) the Kingsclear First Nation intends to establish, license and regulate gaming activities on its lands in order to promote the development of a strong and balanced economy upon its lands and will dedicate the profits from such gaming activities to the public purposes of the First Nation;
- (b) the Province respects the right of the First Nation to govern its own affairs and the Province has negotiated this agreement with the First Nation on a government-to-government basis without the intervention or participation of any other Indian Band or aboriginal group or association;
- (c) Section 207(1)(b) of the *Criminal Code of Canada* provides that the Lieutenant Governor in Council of a province may specify a licensing authority which may license charitable or religious organizations to conduct and manage a lottery scheme in that province if the proceeds from the lottery scheme are used for a charitable or religious object or purpose;
- (d) Section 35 of the *Constitution Act, 1982* recognizes and affirms the existing treaty and aboriginal rights of the aboriginal peoples of Canada;

(e) the Province and the First Nation have agreed that a gaming commission will be established by the First Nation to license and monitor gaming activities on the First Nation Reserve; and

(f) the Province and the First Nation have agreed that the Indian Community Gaming Commission shall be vested with authority to license and monitor gaming activities on the First Nation Reserve by concurrent enactments of the Province and the First Nation;

(g) nothing in this agreement derogates from the Aboriginal, treaty or other rights or freedoms of the First Nation or its members or from the powers, rights or privileges of the legislature or government of the Province.

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the above recitals and the respective covenants and agreements hereinafter set forth the parties agree as follows:

1. Definitions and Schedules

1.01 For the purposes of this Agreement:

- (a) "Agreement" means this Self-Licensing Agreement between the First Nation and the Province;
- (b) "Corporation" means the Atlantic Lottery Corporation as defined in the regulations under the Lotteries Act;
- (c) "Criminal Code" means the *Criminal Code of Canada* R.S.C., 1985 c.C-46, as amended;
- (d) "Gaming Commission" means the Indian Community Gaming Commission established by the First Nation;
- (e) "Gross Proceeds" in respect of a gaming activity means the gross revenues derived from that gaming activity;
- (f) "Lotteries Act" means the *Lotteries Act*, R.S.N.B., 1973 c.L-13.1, as amended;
- (g) "Lotteries Commission" means the Lotteries Commission of New Brunswick established under the Lotteries Act;
- (h) "Lottery Scheme" means any lottery scheme as defined in section 207(4) of the Criminal Code;
- (i) "Reserve" means the existing reserve lands at Kingsclear First Nation Indian reserve at Kingsclear, New Brunswick.

- 1.02 The Appendices attached to and forming part of this Self-Licensing Agreement are the following:

Appendix "F-1"- First Nation Terms and Conditions for Lottery Licensing
 Appendix "F-2"- Provincial Terms and Conditions for Lottery Licensing

2. **Gaming Commission**

- 2.01 The First Nation shall establish the Gaming Commission for the purpose of licensing and regulating Lottery Schemes on the Reserve.
- 2.02 All licensing and regulatory authority of the First Nation in respect of Lottery Schemes shall be exercised by the Gaming Commission and by no other person or entity.
- 2.03 The Province shall, by an Order-in-Council, specify the Gaming Commission as a licensing authority for the purposes of Section 207(1)(b) of the Criminal Code solely for the purpose of licensing and regulating Lottery Schemes to be conducted on the Reserve.
- 2.04 The First Nation, by resolution of the Band Council, shall designate the Gaming Commission as the licensing authority to license and regulate all gaming activities on the Reserve.

3. **Scope of Operations of the Gaming Commission**

- 3.01 The Gaming Commission may issue licenses to charitable or religious organizations to conduct and manage Lottery Schemes on the Reserve in accordance with the terms and conditions for lottery licensing set out in Appendix "F-1" provided that each such license is issued on condition that the proceeds from each such Lottery Scheme are used for a charitable or religious object or purpose.
- 3.02 The parties acknowledge that common principles underlie the Terms and Conditions for Lottery Licensing set out in Appendix "F-1" (the "First Nation Lottery Rules") and the Terms and Conditions for Lottery Licensing (the "Provincial Lottery Rules") issued by the Lotteries Commission and currently in effect as set out in Appendix "F-2".
- 3.03 The Gaming Commission shall be at liberty to make changes to the First Nation Lottery Rules provided that:
- (a) the Gaming Commission has provided to the Lotteries Commission 10 days prior notice of any such change; and
 - (b) the proposed change does not depart from the common principles referred to in clause 3.02 above.
- 3.04 The Province agrees to co-operate with the Gaming Commission by providing the Gaming Commission with information and advice about the First Nation Lottery Rules.

3.05 The Gaming Commission shall not make any change to the First Nation Lottery Rules that would be a departure from the common principles referred to in clause 3.02 without the prior agreement of the Lotteries Commission.

3.06 The parties acknowledge that this Agreement is limited to those Lottery Schemes covered by the First Nation Lottery Rules and that other gaming activities not covered by this Agreement may be the subject of separate agreements negotiated between the parties.

4. **Enforcement**

4.01 The Gaming Commission shall adopt and employ methods of dealing with infractions of the First Nation Lottery Rules that are substantially similar to those that are adopted and employed by the Lotteries Commission in dealing with infractions of the Provincial Lottery Rules.

5. **Accountability**

5.01 The Gaming Commission shall annually provide to the Province an independent audit prepared by a reputable public accounting firm of the gaming activity over which the Gaming Commission has jurisdiction.

5.02 The Gaming Commission shall maintain a standardized system of records of licensees on the Reserve including financial reports of licensees. These records are to be made available for inspection, as required, by the Province.

5.03 The Province agrees to assist the Gaming Commission in establishing a system of standardized record-keeping.

6. **Break-Open Tickets and Bingo Cards**

6.01 The Gaming Commission shall require of licensees that bingo cards for use in a Lottery Scheme under its jurisdiction are purchased only from suppliers registered under the Province's Bingo Card Supplier Registration Program.

6.02 Subject to clause 6.03, the Gaming Commission shall require of licensees that break-open tickets for use in a Lottery Scheme under its jurisdiction are those supplied by the Corporation and the Province agrees to rebate to the First Nation 100% of the Corporation's proceeds of sale of such break-open tickets net of the Corporation's cost of supplying such tickets.

6.03 The Province agrees to recommend to the Corporation that the Corporation broaden the variety of its break-open tickets for use on the Reserve.

7. **Use of Proceeds**

7.01 Consistent with the policy that the proceeds from Lottery Schemes under the jurisdiction of the Gaming Commission are to be used for a charitable or religious object or purpose, the specific objects and purposes for which proceeds from a Lottery Scheme are to be used shall be those identified by the particular applicant and approved by the Gaming Commission.

7.02 The identification of specific objects and purposes as falling within the category of "charitable or religious object or purpose" shall be the responsibility of the First Nation in conjunction with the Gaming Commission during the licensing process.

8. **Governing Law**

8.01 This agreement shall be governed in all respects by the laws of the Province of New Brunswick.

9. **Successors & Assigns**

9.01 This agreement shall enure to the benefit of and be binding upon the parties hereto, their respective heirs, executors, administrators, legal personal representatives, successors and assigns.

APPENDIX "F-1"

TERMS and CONDITIONS for LOTTERY LICENSING**DEFINITIONS**

In these Terms and Conditions for Lottery Licensing words defined in the Self-Licensing Agreement to which this is a Schedule shall have the same meanings, respectively, as therein set out. The following additional terms are defined for the purposes of this Schedule:

- a) "charitable or religious object or purpose" means any object for:
 - (i) the relief of poverty,
 - (ii) education,
 - (iii) advancement of religion, or
 - (iv) any purpose beneficial to the community;
- b) "charitable or religious organization" means an organization which performs services of public good or welfare without profit and includes an organization designated as such by the First Nation; and
- c) "purpose beneficial to the community" means an activity of benefit to the public or section thereof and includes amateur sport, social, community or fraternal activities.

TERMS AND CONDITIONS FOR LOTTERY LICENSING1) **Scope of Terms and Conditions**

These Terms and Conditions for Lottery Licensing apply to the following Lottery Schemes: raffles, bingo, break-open tickets and, with respect to Casino/Monte Carlo Nights offering blackjack and wheels of fortune.

2) **Eligibility for Licensing**

Commercial operations or individuals operating for personal profit are ineligible for licensing; only charitable or religious organizations or fairs and exhibitions are eligible.

3) **Games and Activities not Eligible for Licensing**

Games prohibited by the Criminal Code i.e. dice games, three card monte, punch boards, coin tables are not eligible for licensing.

4) **Disposal of Funds**

Proceeds of licensed gaming that has been licensed in accordance with these Terms and Conditions for Lottery Licensing must only be spent on the objectives specified in the application as approved. A minimum of 15% of Gross Proceeds from licensed gaming must be utilized for the objectives indicated at the time of licence application. Commercial and private interests must not be the prime beneficiaries of a licensed activity.

5) **Prize and Game Participation Limitations**

There is no set limit on the amount that can be charged for playing a game, however:

- a) No credit is allowed as payment at bingo games;
- b) No serial or installment prizes are allowed at bingo games;
- c) Total potential prizes for one or more bingo events (other than a giant bingo) including door and raffle prizes cannot exceed \$15,000
 - 1) in any 18 hour period;
 - 2) in any one location;
- d) No raffle can exceed a total prize limit of \$75,000 per event.

6) **Frequency of Allowable Events**

- a) 104 bingo events (not including giant bingos) per year per licence are permitted
- b) 2 casino licences per year are permitted for each licensee (the licence for a fair or an exhibition to expire on expiry of the period (which shall not exceed seven days) of the fair or exhibition)
- c) Only 4 bingo events (not including giant bingos) are allowed in any one location per week except when specifically approved at a fair or exhibition
- d) All double bingo events must be approved by the Gaming Commission.

Giant Bingo

- a) 24 giant bingo events (with total potential prizes in excess of \$15,000) per year per licence are permitted. Only 2 giant bingos per month may be held in any one location.
- b) No limits on total potential prizes for any giant bingo event provided all prizes are guaranteed in a commercially accepted manner approved by the Gaming Commission

7) **Casino or Monte Carlo Nights**

- a) Games at Casino and Monte Carlo Nights will be limited to blackjack tables and wheels of fortune.

- b) The maximum allowable number of blackjack tables is 20 per location and the maximum number of wheels of fortune is 10 per location.
- c) Games at Casino or Monte Carlo Nights will be played with scrip, tokens, or chips. Prizes shall not be in the form of cash.
- d) Prizes must be disposed of once only at a specified time each day after play has ceased.

8) **Applications**

Applications for gaming are available from the Gaming Commission. The applicant must apply at least two weeks prior to the commencement of events or ticket sales. Licences to hold a "giant" bingo must be applied for separately.

9) **Licence Period**

The expiry date appears on the issued licence and is determined by the requirements of the planned event:

Single Event

The licence expires after the last day of the event.

Series of Events

- (i) Less than one year duration - same as with single event.
- (ii) On-going events - one year duration. The licence expires one year from the date of issuance. New application is required for license renewals.

10) **Management of Lotteries**

- a) The Lottery Scheme must be managed and conducted in the manner described in the application as approved. If there are any discrepancies between the license and the application as approved, the license shall govern.
- b) Any changes or amendments to games which differ from those stated in the application, must be requested in writing and must be authorized in writing by a licensing officer.
- c) All applicable laws must be observed.
- d) The licence may be revoked if any term or condition of this or any other Lottery Scheme licence issued to the organization has not been complied with. It is an offence under the Criminal Code to conduct a Lottery Scheme without a valid licence.
- e) Conduct and management of the Lottery Scheme must not be delegated to another organization or to a person who is not a member of the organization. The Gaming Commission may give prior exception to this rule in special circumstances.

- f) All prizes described in the application as approved and/or publicly announced must be awarded.
- g) The licensee must maintain such books and records as may be necessary to indicate the amounts realized from the conduct of the Lottery Scheme and the disposition of the proceeds.

11) **General**

- a) The licence must be posted in a conspicuous place in the building where the Lottery is being held. Raffle tickets with a prize value above \$500 must have the Lottery Scheme licence number issued by the Gaming Commission prominently printed on all tickets.
- b) Inspectors of the Gaming Commission and/or peace officers must be afforded access to all areas of the premises in which the lottery activities are taking place.
- c) If more than one type of game is offered at a single event, a separate licence must be applied for and issued for each type of game.
- d) If two organizations co-operatively offer a gaming event, one application and licence are acceptable, but the application must note such an arrangement and list the responsible officers for both organizations. One organization and officer, to be noted on the application, shall assume the responsibility for maintaining the terms and conditions of the licence approval.
- e) All organizations must submit a financial report of their fund raising activities upon expiration of their gaming licence. A report should be forwarded to the Gaming Commission within 30 days after the expiry date of a single event. For a series of events, a report covering the previous 12 months of operation is required within 30 days of the licence expiry date. This report must be received before a renewal is issued.
- f) Licensed organizations can only sell break-open types of tickets directly at their events and locations. These tickets can only be obtained from a supplier approved by the Lotteries Commission.
- g) Bingo licensees must purchase bingo cards from a supplier approved by the Lotteries Commission.

12) **Cancellation and Suspension**

- a) "Cancellation" refers to the rescinding of all privileges granted under an approved licence. Continued operation after cancellation is illegal under the Criminal Code and as such, is a Commission and the organization at the time the licence was issued. To resume operations, an organization must remove the serious breach of the contract formed between the Gaming source of the cancellation and apply for a new licence.

- b) "Suspension" means the removal of future licensing privileges and is subject to reinstatement at the discretion of the Gaming Commission after specified conditions are met. Suspension may occur without the cancellation of an existing licence.
- c) Cancellation and/or Suspension may occur when it is evident the licence holder has not upheld the terms and conditions set out governing lottery operations.
- d) When the cause of "Suspension" is financial in nature, the Gaming Commission may require a "financial guarantee" of fees and/or prizes as a condition for continued operations. The condition may be applied to individuals and/or organizations.

13) **Fees**

- a) Bingo and raffles with a prize value above \$500 per event will be charged a flat fee of twenty-five dollars (\$25) for each license.
- b) A break-open type of Lottery Scheme will be charged a fee of ten dollars (\$10) per license.
- c) Other types of gaming, such as casinos, with a prize value above \$500 per event, will be charged a flat fee of twenty-five dollars (\$25) per day.
- d) Fairs and exhibitions will be charged a flat fee of twenty-five dollars (\$25) per day.
- e) All fees are payable at the time of application.