

SAC & FOX TRIBE OF THE MISSISSIPPI IN IOWA

and all of its enterprises, agencies, corporations, departments, subdivisions, and instrumentalities, including but not limited to the

MESKWAKI•BINGO•CASINO•HOTEL

PURCHASE AGREEMENT TERMS AND CONDITIONS

PLEASE READ THIS DOCUMENT! IT CONTAINS INFORMATION ABOUT CONTRACTUAL & OTHER RIGHTS, OBLIGATIONS, LIMITATIONS, & EXCLUSIONS.

- 1. Definitions.** “Buyer” means the Sac & Fox Tribe of the Mississippi in Iowa and its enterprises, agencies, corporations, departments, subdivisions, and instrumentalities, including but not limited to the MESKWAKI•BINGO•CASINO•HOTEL. “Seller” means the vendor from whom the Buyer is purchasing Equipment. “Equipment” means the goods, services, equipment, material, and all items purchased pursuant to this Purchase Agreement. “Agreement” means this Purchase Agreement. “Gaming” means the business conducted by the MESKWAKI•BINGO•CASINO•HOTEL subject to the Compact and the Indian Gaming Regulatory Act. “Compact” means The Compact Between the Sovereign Indian Nation of the Sac & Fox Tribe of the Mississippi in Iowa and the Sovereign State of Iowa in compliance with the Indian Gaming Regulatory Act.
- 2. Sales & Use Tax Exemption.** Buyer is a sovereign Indian Tribe recognized by the federal government and it is Buyer’s position that as a matter of federal law no State or County sales or use taxes may be imposed on certain purchases. Seller represents and warrants that Seller has not and shall not collect any sales or use taxes on the Equipment purchased with this Agreement.
- 3. Transfer of Title.** At the conclusion of the Term herein or when all payments have been made the Seller shall, without further consideration or provision of notice by Buyer, provide Buyer with a bill of sale, affidavit, license, or other document satisfactory to Buyer as evidence of Buyer’s clear title to the Equipment purchased herein.
- 4. Risk of Loss or Damage.** Seller shall bear full risk of loss to Equipment prior to delivery, inspection, and acceptance by Buyer. Buyer shall assume full risk of loss or damage to Equipment only after delivery at the location specified by Buyer, completion of inspection and acceptance of Equipment by Buyer, but in no case later than fifteen [15] business days after the date of delivery which is the date of receipt of Equipment by Buyer except as otherwise provided herein.
- 5. Delivery, Inspection, Acceptance, Rejection of Equipment.** Seller shall deliver the Equipment sold pursuant to this Agreement in a commercially reasonable manner to Buyer’s facilities as instructed by Buyer in writing and/or as set forth in this Agreement. Buyer shall, upon delivery of Equipment promptly inspect such Equipment in a manner which shall include testing as is commercially reasonable and customary. Failure to inspect pursuant to this paragraph shall not limit, modify, or cancel any express or implied warranty. Buyer shall notify Seller in writing within fifteen [15] business days of the date of delivery to Buyer of Equipment of any failure of Equipment to meet the terms of this Agreement, including but not limited to deficiencies in quantity, or insufficiency or failure of Equipment to meet reasonable business standards for similar equipment, of failure of mechanical, electrical and other components, or any other aspect of Equipment which does not conform to Buyer’s requirements or is not in compliance with applicable law, and of the rejection of the same. Failure of Buyer to state a particular defect shall not operate to waive Buyer’s right to claim a breach for defective goods; provided, however, Buyer shall be prohibited from relying on any unstated defect wherein Seller could have cured such defect had Seller had notice of such particular defect. Failure to identify defects with particularity shall not limit, modify, or waive any express or limited warranty or any terms and conditions for breach of warranty. Seller and Buyer may agree to third party inspection of Equipment to determine the condition of and/or conformity or lack thereof with Buyer’s requirements. Seller accepts that the quality of the Equipment is a condition of this Agreement, the breach of which shall give Buyer the right to reject such Equipment and require replacement by Seller of defective Equipment or parts thereof and further accepts that the difficulty of discovery of any defect in the Equipment shall be considered material to Buyer’s rights hereunder, and accepts that if the defect is one which might reasonably be considered a latent defect, then the fifteen [15] business day period for notice shall begin to run from the date of the discovery of the defect, and that Buyer shall be entitled to a revocation of acceptance upon discovery of the latent defect, but only for those latent defects discovered within ninety [90] days of the date of delivery. Acceptance of any part of the shipment of Equipment by Buyer shall not constitute acceptance of the entire shipment. Seller shall bear the cost of transportation and inspection of any Equipment Buyer rejects provided that Buyer shall notify Seller in writing within fifteen [15] business days of rejection of any Equipment not conforming to the conditions of this Agreement. Buyer shall not be liable for failure to take delivery of Equipment subject to this Agreement for any of the specified or other causes if such causes render it commercially impractical for Buyer to receive said Equipment. Time is of the essence to this Agreement and failure of Seller to tender the Equipment as of the time of delivery shall constitute a breach, subject to Seller’s right to cure within a commercially reasonable time [but in no case shall such commercially reasonable time exceed ten [10] business days], and Seller shall notify Buyer immediately that there will be a delay in delivery or non-delivery if such is the case.
- 6. Force Majeure.** Force Majeure means any event or condition not existing as of the date of signature of this Agreement nor reasonably foreseeable as of such date and not reasonably within the control of the party seeking to excuse delay, failure, which prevent in whole or in material part the performance by the party of its obligations hereunder or which render the performance of such obligations so difficult or costly as to make such performance commercially unreasonable. Without limiting the foregoing the following shall constitute events or conditions of Force Majeure: acts of State or governmental actions, riots, disturbances, war, strikes, lockouts, slowdowns, prolonged shortage of energy supplies, epidemics, fire, flood, hurricane, typhoon, earthquake, lightning or explosion. If either of the parties’ performance is affected by an event of Force Majeure that party shall give prompt notice thereof to the other party. Such notice shall include a description of the nature of the event of Force Majeure and its cause and probable consequences. Upon giving notice to the other party, the party subject to Force Majeure shall be released without any liability on its part from the performance of its obligations under this Agreement but only to the extent and for the period of time that its performance of such obligations is precluded by the event of Force Majeure.

7. Installment Contract. Each purchase order shall be construed as a separate Agreement and shall be governed by the terms and conditions herein. Should a purchase order or a combination of purchase orders call for delivery of Equipment in installments each shipment of a complete installment constitutes a separate sale and the Seller's failure to make any separate delivery shall not effect this Agreement as to any other delivery. In the event a purchase order or a combination of purchase orders are construed as an installment contract substantial performance shall not be acceptable by either party and complete performance shall in all cases be required.

8. Warranties & Equipment Warranties. Seller represents and warrants that Seller is a corporation, sole proprietorship, or other business entity duly organized, validly existing and legally in good standing under all applicable laws; that Seller has full power and authority to enter into this Agreement and to perform as contemplated herein; and that this Agreement constitutes a valid, binding legal obligation of Seller and is enforceable as to Seller in accordance with the terms and conditions herein. With regard to Equipment purchased by or for Gaming, the Seller warrants that Seller shall provide Equipment which conforms in all respects to all applicable technical standards including without limitation those established by the Compact and Indian Gaming Regulatory Act in effect at the time of signing this Agreement and that Seller has complied with all applicable laws and regulations pertaining to or governing the conduct of a distributor of gaming equipment and with all license requirements imposed by applicable state, federal and tribal law. If required to be licensed pursuant to the Sac & Fox Tribe of the Mississippi in Iowa Gaming Ordinance, Seller warrants it is duly licensed by the Sac & Fox Tribe of the Mississippi in Iowa Gaming Commission as well as by the State of Iowa with respect to the sale of the Equipment. All statements, representations, covenants, and warranties of Seller made herein shall be considered material and shall be deemed representations, covenants, and warranties of Seller and shall survive the performance of this Agreement. Buyer represents and warrants that it has full power and authority to enter into this Agreement and to perform as contemplated herein. This Agreement constitutes a valid, binding, legal obligation of Buyer and is enforceable in accordance with the terms and conditions herein. Seller agrees that Seller shall provide, and hereby does provide the warranties described herein for a period of ninety [90] days following delivery of Equipment by Seller and acceptance by Buyer unless otherwise provided by a manufacturer or other warranty for a longer duration of time. Seller hereby provides a warranty of merchantability and of fitness for a particular purpose, and warrants Equipment against failure from manufacturing defects. Seller warrants Equipment is fit for the uses intended. Seller warrants that any description of the Equipment which is made part of the basis of the bargain creates an express warranty that the Equipment shall conform to the description. Any and all affirmations of fact made after execution of this Agreement shall be binding on Seller as express warranties to Buyer or its appropriate entities. Seller also warrants that any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of Equipment shall conform to the sample or model. Any warranty provided herein shall not be modified by course of dealing, usage of trade, or course of performance unless otherwise agreed to by the parties in writing nor shall any warranty provided herein be limited, modified or disclaimed. Seller hereby adopts all manufacturer's warranties. Seller agrees that Seller shall immediately notify the manufacturer if necessary of all claims of alleged breach of manufacturer warranty. If Seller fails to notify manufacturer of such claims, Seller agrees to assume liability for any breach of manufacturer warranty claims if such warranty is found breached. With regard to Equipment purchased by or for Gaming, Seller will reimburse Buyer for expenses incurred by Buyer in connection with examination of Equipment by a recognized gaming test laboratory and will cooperate with the test laboratory to permit laboratory to conduct such testing. With regard to Equipment purchased by or for Gaming, Seller covenants that Seller shall provide Equipment which conforms in all respects to all applicable technical standards, including without limitation, those established by the Compact and the Indian Gaming Regulatory Act in effect at the time of signing the Agreement as to all Gaming Equipment. Seller further covenants that Seller shall immediately replace or repair defective or non-conforming Equipment still under warranty; immediately notify Buyer of any information which becomes known to Seller subsequent to acceptance by Buyer regarding defects, malfunctions or other problems with design or operation of the Equipment; be exclusively responsible for providing conforming Equipment; and fulfill all covenants written and implied.

9. Installation of Equipment, Training. Unless otherwise specifically modified in writing, Seller shall provide installation assistance at no cost if requested by Buyer, and Seller shall provide Equipment training for Buyer's employees at Buyer's site upon delivery of Equipment which training shall be sufficient to prepare Buyer's personnel to install, operate, and maintain Equipment.

10. Termination, Remedies. This Agreement may be terminated in whole by either party in the event of substantial failure by the other party to fulfill its obligations under the Agreement through no fault of the terminating party upon ten [10] days written notice to the party in default and failure of that party to cure the default. Notice shall be in writing and delivered to the defaulting party in person or by certified mail, return receipt requested. Such termination shall be effective the date the written notice is mailed or personally delivered to the receiving party. The Buyer and Seller agree to full performance of the covenants contained herein. This Agreement may be terminated by either party if the other party becomes insolvent or seeks protection voluntarily or involuntarily under any bankruptcy law. This Agreement may be terminated by Buyer for Seller's violation of the Compact or for failure by Seller to comply with all covenants herein or to observe all warranties or to provide goods conforming to this Agreement within the time specified. In the event of termination for cause where Seller is at fault, Seller shall be entitled to compensation only for Equipment already delivered and accepted by Buyer, but which remains unpaid, and Seller shall remain responsible to service all warranties. In the event of expiration, termination or cancellation hereof, provisions hereof which are intended to continue and survive, including without limitation, representations, warranties, confidentiality, and obligations of Seller for latent defects discovered by Buyer during the period herein provided for, shall so continue and survive. If either party fails or neglects to comply with any term or condition of this Agreement or defaults in performance of any duty or obligation hereunder, the non-defaulting party shall have the right to assert all remedies available at law or equity together with the right of specific performance of the defaulting party's obligations hereunder together with the right to damages. No right or remedy herein conferred upon or reserved to either party is intended to be exclusive of any other right or remedy. In an event of default every right or

remedy shall, to the extent permitted by law, be cumulative in addition to every other right or remedy now and hereafter existing at law or equity or

otherwise. To the extent not in conflict with other provisions herein, no delay or omission by the parties to exercise any available right or remedy accruing upon an event of default shall impair such right or remedy or constitute a waiver of such default or an acquiescence therein, and shall not preclude the exercise of such right or remedy. No single or partial waiver by the parties of any provision of this Agreement or any supplement thereto, or breach or default thereunder, or of any right or remedy which the parties may have shall operate as a waiver of the same or any other provision, breach, default, right or remedy on a future occasion. The failure of either party to enforce at any time or for any period of time the provisions of this Agreement shall not be construed as a waiver of such provisions or right of such party thereafter to enforce every such provision. The parties agree in the event of breach of this Agreement the breaching party will pay the other party's costs and reasonable attorney's fees arising from the breach whether a lawsuit is instituted or not.

11. Compliance with Laws. Seller shall comply with all federal, State of Iowa, local laws, ordinances, rules, regulations and lawful orders of public authorities applicable to performance herein. Both parties shall comply with all laws of the Tribe, including all laws enacted during the term of this Agreement. Seller shall give notices as required by law.

12. Indemnification. Seller shall assume absolute liability for, and shall indemnify and hold harmless the Buyer/Tribe and its departments, agencies, officers, agents, and/or employees, and will defend (with legal counsel acceptable to the Tribe), the Buyer/Tribe from and against any and all demands, claims, lawsuits, losses, damages, judgments, awards, assessments, liabilities, costs, fees or expenses of whatever kind or nature (including attorney's fees), arising out of, resulting in any way from or in any way related to, violation of applicable law, any negligent, reckless, intentional, fraudulent, criminal, or illegal act, failure to act, error, or mistake of Seller, its subcontractors and any person employed by Seller or anyone for whose acts the Seller is legally liable.

13. Confidential Information. Seller acknowledges that during the term of this Agreement the Seller may have access to or become aware of confidential information concerning the Buyer/Tribe. All information received in performing this Agreement, no matter the form, including but not limited to verbal and written information, shall be considered nonpublic, confidential, unique and valuable. Seller agrees it will not in any manner, with or without cause, directly or indirectly divulge, disclose or communicate, or use for the benefit of any third party any secret or confidential information, knowledge, or data acquired by virtue of its relationship with Buyer without prior written approval of Buyer. The parties agree that Seller's unauthorized use, release, disclosure of, or failure to protect secret or confidential information as required herein shall cause Buyer/ Tribe certain and irreparable harm and that money damages and the remedy at law for such breach is inadequate and not readily susceptible to being measured in monetary terms. Seller agrees that Buyer is entitled to protection from such violations including immediate protection by injunctive relief in addition to all other remedies available under law, and in such event Seller shall pay no less than \$1,000.00 to the Buyer as liquidated damages for release of confidential information. The parties agree that the obligations of this section shall survive the expiration or termination of this Agreement.

14. Tribal Property. All documents created in performance of this Agreement are the property of Buyer and protected by Tribal laws. All documents and rights thereto (if applicable) are to be delivered to Buyer before final payment is made to Seller. Nothing in this paragraph shall be construed as granting Seller any right, title, or interest to property, real or personal, of Buyer or as granting Seller any right or privilege to use, possession, control, or occupancy of property of Buyer, real, personal or otherwise.

15. Third Party Beneficiaries. There shall be no third-party beneficiaries of this Agreement, this Agreement is not intended to create any third-party beneficiaries, and this Agreement is entered into solely for the benefit of Buyer and Seller and shall not be deemed to create or evidence any right or remedy of a third party.

16. Choice of Law, Forum and Immunity. The Seller and Buyer affirm that the transaction represented by this Agreement has taken place on Indian lands within the jurisdiction of the Meskwaki Settlement and that the negotiations, execution and delivery of this Agreement occurred on Indian lands. This Agreement is governed exclusively by the laws of the Sac & Fox Tribe of the Mississippi in Iowa; except that to the extent required by the Compact this Agreement is governed by applicable federal and/or state law. All disputes shall be resolved first through good faith efforts by each party to meet and confer to attempt resolution of disputes and then exclusively through the Tribal Court of the Sac & Fox Tribe of the Mississippi in Iowa; except that to the extent required by the Compact the matter shall proceed by applicable federal and state jurisdiction. Nothing in this Agreement shall be construed to effect, modify, limit, or waive the sovereign immunity of the Tribe, its departments, agencies, enterprises, corporations, organizations, officers, agents, and/or employees, except to the extent required by the Compact. The application of federal and state law and jurisdiction is solely for the purposes of the Compact and shall not constitute a precedent for any other purpose. The parties shall comply with all applicable tribal laws, and when applicable with federal and state laws including the terms and conditions of the Indian Gaming Regulatory Act [IGRA], P.L. 100-497, and the Compact. In the event of an inconsistency or conflict between the terms of this paragraph and any other provision in any document made a part of this transaction the terms of this paragraph shall control and prevail.

17. Self-Dealing and Kickbacks. Seller warrants that no money, fee, commission, credit, gift, gratuity, benefit, thing of value, or compensation of any kind was provided directly or indirectly to any person for the purpose of this Agreement or other favorable treatment in connection with this Agreement and that no money, fee, commission, credit, gift, gratuity, benefit, thing of value, or compensation of any kind is included in the price or other consideration provided for in this Agreement.

18. Captions, Ambiguities and Severability. Captions and paragraph headings used in this Agreement are for convenience and shall not be deemed to limit or alter any provisions of the Agreement and shall not be deemed relevant in construing the Agreement. The parties agree that any rule of construction requiring ambiguities to be construed against the drafter of an agreement shall not apply to this Agreement. The terms and conditions and provisions of this Agreement shall control and supercede any and all terms, conditions and provisions of any addendum, invoice, statement or other document of any kind whatsoever of the Seller. If any provision or portion of this Agreement is declared void and unenforceable by a court of competent jurisdiction then such provision or portion of such provision shall be deemed severed from this Agreement which shall otherwise remain in full force and effect. Further, if any such provision or portion of such provision may be reduced and/or narrowed in scope, such provision or portion of such provision shall be reduced, narrowed and so enforced. The same shall apply to any portion of any provision.

19. Non-Assignability and Successors and Assigns. This Agreement and any duty hereunder may not be assigned or transferred in whole or in part, expressly or by operation of law, by either party without the written consent of the other party. All rights, obligations and liabilities herein, given to or imposed upon a party shall extend to and bind the several and respective heirs, executors, administrators, successors, and assigns of said party, subject to other provisions set forth herein, provided, however, that no assets of the Buyer/Tribe shall be affected by reason of any liability which the Buyer/Tribe or any successor in interest may have under this Agreement.

20. Entire Agreement, Merger, Notices, and Modifications. This Agreement contains the complete agreement and understanding between the Buyer and Seller and no statements, promises or inducements made by either party or agent of either party that are not contained in the documents comprising the written Agreement shall be valid or binding. No waiver, modification, or amendment of this Agreement or of any covenant, condition or limitation contained in this Agreement shall be valid unless in writing and duly executed by the parties. The parties further agree that the provisions of this paragraph may not be waived, except as set forth in this paragraph. All notices required to be made in connection with this Agreement shall be in writing and delivered personally or by certified mail to the appropriate party.