

**SETTLEMENT AGREEMENT BETWEEN THE STATE OF  
OKLAHOMA AND THE COMANCHE NATION**

This Settlement Agreement and Release of All Claims is made by and between the COMANCHE NATION, a federally recognized Indian Tribe, NUMUNU PAHMU, a limited liability company, and Tobacco Retailers licensed by the Comanche Nation Tax Commission (hereinafter collectively referred to as "Nation") in the first part; and GOVERNOR MARY FALLIN and the STATE OF OKLAHOMA (hereinafter collectively referred to as "State") in the second part. This Settlement Agreement is entered into by and between the Nation and the State through their authorized representatives.

**RECITALS**

WHEREAS, the Nation is a federally recognized Indian Tribe with inherent sovereign powers of self-government;

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

WHEREAS, the Nation and the State entered into a Tobacco Tax Compact ("2008 State-Comanche Nation Compact") that was filed with the Oklahoma Secretary of State on June 26, 2008;

WHEREAS, the "2008 State-Comanche Nation Compact" was set to terminate, upon proper notice, on June 30, 2013;

WHEREAS, the State gave the Nation notice of its intent to terminate the "2008 State-Comanche Nation Compact" on or about December 21, 2012;

WHEREAS, the State and the Nation, on or about June 27, 2013, agreed to extend the termination date of the "2008 State-Comanche Nation Compact" to September 30, 2013. The agreed extension was filed with the Oklahoma Secretary of State on June 28, 2013;

WHEREAS, the State and the Nation, on or about September 28, 2013, agreed to a second extension of the "2008 State-Comanche Nation Compact." This agreement further extended the termination date of the "2008 State-Comanche Nation Compact" to October 31, 2013. This second extension was filed with the Oklahoma Secretary of State on October 1, 2013;

WHEREAS, the "2008 State-Comanche Nation Compact" contains a "most favored nations" clause at paragraph 13, page 6;

WHEREAS, the State and the Chickasaw Nation entered into a Tobacco Tax Compact on

or about October 30, 2013. The Tobacco Tax Compact that the State entered into with the Chickasaw Nation is entitled “Tobacco Tax Compact Between the State of Oklahoma and the Chickasaw Nation” (“State-Chickasaw Nation Compact”). The “State-Chickasaw Nation Compact” was filed with the Oklahoma Secretary of State on October 31, 2013;

WHEREAS, the Nation asserts that, prior to the second extended termination date of the “2008 State-Comanche Nation Compact,” it invoked the “most favored nations” clause of that Compact to adopt the “State-Chickasaw Nation Compact” and all of its terms that are inconsistent with the “2008 State-Comanche Nation Compact” ;

WHEREAS, the State contends that the Nation did not properly invoke the “most favored nations” clause of the “2008 State-Comanche Nation Compact” to adopt the “State-Chickasaw Nation Compact” and all of its terms;

WHEREAS, the State has disputed whether the Nation has invoked the “most favored nations” clause of the “2008 State-Comanche Nation Compact” allowing it to operate under the “State-Chickasaw Nation Compact” and all of its terms, and the Nation has asserted that it lawfully and properly invoked the “most favored nations” clause of the “2008 State-Comanche Nation Compact” allowing it to operate under the “State-Chickasaw Nation Compact” and all of its terms that are inconsistent with the “2008 State-Comanche Nation Compact” (“the dispute”);

WHEREAS, the Nation filed a “Demand for Arbitration” dated November 10, 2013, thereby initiating an arbitration proceeding with the American Arbitration Association (“AAA”) against the State to resolve “the dispute” (*Comanche Nation et al. v. Governor Mary Fallin and The State of Oklahoma*, AAA Case No. 71-181-00639-13 02 KASL-R). The Nation also filed a “Motion for Emergency Injunctive Relief” with AAA pursuant to Rule 38 of the AAA Commercial Arbitration Rules;

WHEREAS, the State objected to the arbitration proceeding in general, and further objected to the AAA administering the arbitration at all;

WHEREAS, the AAA, over the State’s objection, appointed a single emergency arbitrator to resolve the Nation’s “Motion for Emergency Injunctive Relief.” The emergency arbitrator entered an “Order and Interim Award” on November 18, 2013. In the “Order and Interim Award,” the emergency arbitrator found that he had jurisdiction over the dispute and ordered “the State to recognize, honor and implement” the Nation’s adoption of the “State-Chickasaw Nation Compact” and all of its terms. The emergency arbitrator’s “Order and Interim Award” stated that it was to remain in effect until the issuance of a final arbitration award;

WHEREAS, following the emergency arbitrator’s “Order and Interim Award,” the Nation, on or about November 19, 2013, filed a civil action in the United State District Court for the Western District of Oklahoma against the State (*Comanche Nation et al. v. Governor Mary Fallin and the State of Oklahoma*, In the United States District Court for the Western District of

Oklahoma, Case No. CIV-13-1228-C) seeking to confirm the “Order and Interim Award” of the emergency arbitrator, and also seeking a temporary restraining order and preliminary injunction pending confirmation;

WHEREAS, the State, on or about November 19, 2013, filed a Motion to Vacate the “Order and Interim Award” of the emergency arbitrator in the United States District Court for the Western District of Oklahoma (*Comanche Nation et al. v. Governor Mary Fallin and the State of Oklahoma*, In the United States District Court for the Western District of Oklahoma, Case No. CIV-13-1228-C);

WHEREAS, the Honorable Robin Cauthron, United States District Judge, ordered a hearing on the Nation’s Motion for Temporary Restraining Order, which was held on November 20, 2013, where the Nation and the State were represented by counsel and presented evidence and argument (*Comanche Nation et al. v. Governor Mary Fallin and the State of Oklahoma*, In the United States District Court for the Western District of Oklahoma, Case No. CIV-13-1228-C); and

WHEREAS, on November 20, 2013, at the conclusion of the hearing, the Honorable Robin Cauthron granted the Nation’s request for a temporary restraining order and directed the State, pending further order of the Court, to honor the Nation’s claim that it is entitled to operate under the “State-Chickasaw Nation Compact” and all of its terms that are inconsistent with the “2008 State-Comanche Nation Compact” and ordered the Nation to post a bond in the amount of Twenty-Five and no/100 Dollars (\$25.00), which the Nation posted on November 22, 2013.

#### **TERMS OF SETTLEMENT OF THE DISPUTE**

NOW, THEREFORE, the Nation, by and through its government, and the State, by and through its Governor, do hereby enter into this Settlement Agreement to resolve “the dispute” for the mutual benefit of the Nation and the State:

1. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of “the dispute,” and in consideration of the mutual promises and obligations of this Settlement Agreement, the State and the Nation agree and covenant as follows:

(a) The State will draft and provide to the Nation for signature a copy of a new Compact (“New State-Comanche Nation Compact”). The “New State-Comanche Nation Compact” will contain precisely the same language and terms, and all of the terms, as those contained in the “State-Chickasaw Nation Compact.” The only difference that will exist in the “New State-Comanche Nation Compact” and the “State-Chickasaw Nation Compact” is that all references to “Chickasaw Nation” in the “State-Chickasaw Nation Compact” will be replaced by “Comanche Nation” in the “New State-Comanche Nation Compact.” Other than the specific

references to the “Comanche Nation,” the language of the “New State-Comanche Nation Compact” will be a verbatim recital of the “State-Chickasaw Nation Compact.” A copy of the “New State-Comanche Nation Compact” is attached hereto as Exhibit “A.”

(b) In consideration for the State entering into the “New State-Comanche Nation Compact,” the Nation covenants, promises, and agrees that it will dismiss the arbitration proceeding it initiated with AAA (*Comanche Nation et al. v. Governor Mary Fallin and The State of Oklahoma*, AAA Case No. 71-181-00639-13 02 KASL-R) with prejudice to the refiling of same, but without prejudice to arbitration of any future controversies under the New State-Comanche Compact as provided therein. As further consideration for the State entering into the “New State-Comanche Nation Compact,” the Nation also covenants, promises, and agrees that it will file a notice of dismissal in accordance with Federal Rule of Civil Procedure 41(a)(1)(A)(i) in the civil action it filed in the United States District Court for the Western District of Oklahoma (*Comanche Nation et al. v. Governor Mary Fallin and the State of Oklahoma*, In the United States District Court for the Western District of Oklahoma, Case No. CIV-13-1228-C). The notice of dismissal will specifically provide that the Nation is dismissing the claims it asserted in the action it filed in the United States District Court for the Western District of Oklahoma (*Comanche Nation et al. v. Governor Mary Fallin and the State of Oklahoma*, In the United States District Court for the Western District of Oklahoma, Case No. CIV-13-1228-C) with prejudice to the refiling of same.

(c) Also in consideration for the State entering into the “New State-Comanche Nation Compact,” the Nation hereby covenants, promises, and agrees that it will be solely responsible for any and all costs, charges, invoices, and/or bills of the AAA related in any way to the arbitration proceeding (*Comanche Nation et al. v. Governor Mary Fallin and The State of Oklahoma*, AAA Case No. 71-181-00639-13 02 KASL-R). The Nation expressly covenants, promises, and agrees that the State will not be responsible for, and will not owe anything for, any costs, charges, invoices, and/or bills of the AAA that are related in any way to the arbitration proceeding (*Comanche Nation et al. v. Governor Mary Fallin and The State of Oklahoma*, AAA Case No. 71-181-00639-13 02 KASL-R).

(d) The State and the Nation both agree that, upon execution of this Settlement Agreement and the “New State-Comanche Nation Compact,” they will, together, release a Joint Press Release. A copy of the Joint Press Release is attached hereto as Exhibit “B.”

2. Upon the execution of this Settlement Agreement by both parties, the Nation, on behalf of itself and any and all members, divisions, bodies, committees, assignees, and

successors, releases and forever discharges all named Respondents in the AAA Arbitration (*Comanche Nation et al. v. Governor Mary Fallin and The State of Oklahoma*, AAA Case No. 71-181-00639-13 02 KASL-R), together with the State's current and former officers, directors, employees, agents, servants, divisions, agencies, commissions, boards, subsidiaries, affiliates, predecessors, successors, transferees and assigns, individually and collectively, from any claims, suits, demands, or liability it asserted, or could have asserted, in the AAA Arbitration it initiated (*Comanche Nation et al. v. Governor Mary Fallin and The State of Oklahoma*, AAA Case No. 71-181-00639-13 02 KASL-R); without prejudice to claims arising under this agreement or the "New State-Comanche Nation Compact".

3. Upon execution of this Settlement Agreement by both parties, the Nation, on behalf of itself and any and all members, divisions, bodies, committees, assignees, and successors, releases and forever discharges all named Defendants in the civil action it filed in the United States District Court for the Western District of Oklahoma (*Comanche Nation et al. v. Governor Mary Fallin and the State of Oklahoma*, In the United States District Court for the Western District of Oklahoma, Case No. CIV-13-1228-C) together with the State's current and former officers, directors, employees, agents, servants, divisions, agencies, commissions, boards, subsidiaries, affiliates, predecessors, successors, transferees and assigns, individually and collectively, from any claims, suits, demands, or liability it asserted, or could have asserted, in the civil action it filed in the United States District Court for the Western District of Oklahoma (*Comanche Nation et al. v. Governor Mary Fallin and the State of Oklahoma*, Case No. CIV-13-1228-C) ; without prejudice to claims arising under this agreement or the "New State-Comanche Nation Compact".

4. Upon execution of this Settlement Agreement by both parties, the Nation, on behalf of itself and any and all members, agencies, divisions, bodies, committees, assignees, and successors, fully and finally releases the State and its respective agencies, commissions, boards, employees, servants and agents from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that the Nation has asserted, or could have asserted related to "the dispute" ; without prejudice to claims arising under this agreement or the "New State-Comanche Nation Compact".

5. Upon execution of this Settlement Agreement by both parties, the State, on behalf of itself and its respective agencies, commissions, boards, and other governmental entities, fully and finally releases the Nation, its members, agencies, divisions, bodies, committees, assignees, and successors, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that the State has asserted, or could have asserted related to "the dispute" ; without prejudice to claims arising under this agreement or the "New State-Comanche Nation Compact".

6. The Nation and the State hereby expressly agree that each party is solely responsible for their own attorney fees.

7. This settlement of “the dispute” is made in compromise of disputed claims. This Settlement Agreement is neither an admission of facts or liability by the State nor a concession by the Nation that its claims are not well founded.

8. This Settlement Agreement may be executed in counterparts. Electronically transmitted, facsimile or photocopied signatures shall be considered valid as of the date delivered, although the original signature pages shall thereafter be provided through the United States Mail to the following addresses:

TO THE STATE:

Governor of the State of Oklahoma  
Attention Steve Mullins/Jeffery Cartmell  
2300 N. Lincoln Blvd., Room 212  
Oklahoma City, Oklahoma 73105-4890

TO THE NATION:

Wallace Coffey, Chairman  
Comanche Nation  
c/o D. Michael McBride III  
Crowe & Dunlevy, P.C.  
500 Kennedy Building  
321 South Boston Avenue  
Tulsa, OK 74103

9. The executed Settlement Agreement shall be accompanied by a letter from counsel for the Nation certifying that it has been executed in compliance with tribal law and was obtained in accordance with all necessary legal and procedural requirements.

10. Neither party shall be deemed the drafter of this Settlement Agreement in the event of any action to interpret its terms. Therefore, the rule of construction that in the case of an ambiguity, the ambiguity is construed against the author is not applicable.

11. This Settlement Agreement comprises the entirety of the agreement between the parties hereto. Any and all prior or contemporaneous representations, predictions, warranties or other inducements, however denominated, are merged within the terms of this Settlement Agreement, and shall not survive its execution. There are no representations, promises, predictions, warranties, inducements or other agreements, however denominated, between the parties other than as set forth herein.

***-[SIGNATURES CONTAINED ON FOLLOWING PAGE]-***



