

**THE LAC VIEUX DESERT BAND OF LAKE SUPERIOR CHIPPEWA INDIANS  
TRIBAL CONSUMER FINANCIAL SERVICES REGULATORY CODE**

**SECTION 1. FINDINGS, INTENT AND POLICY**

1.1 Findings. The Tribal Council of the Lac Vieux Desert Band of Lake Superior Chippewa Indians, the primary governing body of the Tribe, finds that:

(a) The Tribe desires to expedite the development of the economy of the Tribe in order to: improve the Tribe's economic self-sufficiency; to enable the Tribe to better serve the social, economic, educational, and health and safety needs of its members and visitors; and, to provide its members with opportunities to improve their own economic circumstances.

(b) Tribal operation and licensing of consumer financial services businesses is a legitimate means of generating revenue to address the aforementioned needs and pursuing the Tribe's goals.

(c) As a sovereign nation, the Tribe has the legal authority to license and regulate consumer financial services businesses within its jurisdiction and according to its own laws.

(d) Properly licensed and regulated tribal consumer financial services are consistent with announced federal policy promoting tribal self-government and economic self-sufficiency.

(e) Tribal regulation and control of consumer financial services businesses within the Tribe's jurisdiction is essential for the protection of the public welfare.

(f) It is essential that the Tribal Council regulate consumer financial services in a manner commensurate with Tribal law and policy as well as with applicable Federal Law.

(g) It is essential that public confidence is maintained in consumer financial services that take place within the Tribe's jurisdiction.

(h) Adoption of this Tribal Consumer Financial Services Regulatory Code by the Tribal Council is a necessary condition for the legal operation of consumer financial services within the Tribe's reservation and is in the best interest of the Tribe.

(i) To ensure the purposes and intent of this Code are implemented, it is in the Tribe's best interests to establish the Tribal Consumer Financial Services Regulatory Authority as a tribal administrative agency.

1.2 Intent. The Tribal Council, on behalf of the Tribe, declares that the intent of this Code is to:

(a) Diversify and expedite the development of the economy of the Tribe for the purposes described in Section 1.1(a).

(b) Define general regulatory powers and administrative authority of the Tribal

Financial Services Regulatory Authority and its ability to regulate consumer financial services and conduct administrative hearings to resolve disputes between Consumers and Licensees.

(c) Ensure that all consumer financial services profits are used for the benefit of the Tribe and the Tribe's community.

(d) Ensure that consumer financial services are conducted appropriately by Licensees and remain free from corrupt, incompetent, unconscionable, and dishonest practices.

(e) Protect the public interests.

(f) Ensure the maintenance of public confidence in consumer financial services practices.

(g) Ensure that the Tribe provides a Tribal-based forum for the fair and orderly resolution of consumer financial services disputes in a manner consistent with the Tribe's sovereignty.

(h) Ensure that all applicable consumer financial services laws are enforced.

(i) To allow for intergovernmental relationships with the federal, state, and tribal governments to allow for coregulation of consumer financial services.

### 1.3 Policy.

(a) Tribal Policy of Self-Government. The Tribe is firmly committed to the principle of Tribal self-government. Profits the Tribe receives from tribal consumer financial services shall be utilized and expended by the Tribe for the following purposes:

(1) To fund the Tribe's government operations and programs.

(2) To provide for the public health and general welfare of the Tribe, Tribal members, and visitors to the Tribal community.

(3) To promote Tribal economic development and self-sufficiency.

(b) Tribal Consumer Financial Services Policy. The establishment, promotion, and operation of consumer financial services are critical to the Tribe's economic well-being, provided that such consumer financial services are regulated and controlled by the Tribe and the profits are used exclusively for the benefit of the Tribe.

(c) Responsibility for Regulation. The Tribe shall have sole proprietary interest in and the ultimate responsibility for the conduct of consumer financial services authorized by this Code.

## SECTION 2. DEFINITIONS

The following definitions apply:

2.1 “Applicant” means a Person who has applied for a License under the provisions of this Code.

2.2 “Application” means a request for the issuance of a License under the provisions of this Code.

2.3 “Authority” means the Tribal Financial Services Regulatory Authority, the regulatory authority established and described in Section 4 of this Code. The Authority is a tribal administrative agency.

2.4 “Code” means this Tribal Consumer Financial Services Regulatory Code and any duly promulgated regulations.

2.5 “Consumer” means an individual who acquires goods, services, or credit primarily for personal, family or household purposes. The term does not include an individual who acquires goods, services, or credit primarily for business, commercial, or investment purposes.

2.6 “Consumer Financial Services” means (a) services that are offered to individuals including loans, credit cards, insurance, mortgages, investment products, or other goods and services subject to this Code, and (b) the business of providing services to a consumer or a business wholly owned by the Tribe. Consumer Financial Services do not include goods, services, or credit to Consumers offered by any bank, credit union, or tribally licensed gaming operator.

2.7 “Electronic Funds Transfer” means a draft or agreement for an electronic debit authorized by a borrower and made payable to a Financial Services Licensee.

2.8 “Employee” means an individual employed by a Licensee.

2.9 “Federal Law” means any law passed by both houses of Congress, signed by the president or passed over a presidential veto, or allowed to become law without the president’s signature. For the purposes of this Code, unless stated otherwise, the term includes federal regulations duly promulgated according to Federal Law.

2.10 “Installment Period” means the time between Consumer scheduled payments as provided in their Loan agreement.

2.11 “License” means the official, legal, and revocable authorization to conduct activities regulated by this Code. A License is a revocable privilege.

2.12 “Licensee” means a Person that is licensed by the Authority to engage in the

business of providing Consumer Financial Services.

2.13 “Loan” means a sum of money lent by a Licensee to an individual for personal, family, or household use in exchange for future repayment of principal and interest.

2.14 “Person” means an individual, partnership, association, corporation, limited liability company, or other legal entity, however organized. The term does not include any government or government agency.

2.15 “Reservation” means all lands held in trust by the federal government and areas managed by the Tribe.

2.16 “Tribal Council” means the Lac Vieux Desert Band of Lake Superior Chippewa Indians Tribal Council, the governing body of the Tribe as defined and described in Article IV, Section 1 of the Tribe’s Constitution.

2.17 “Tribe” means the Lac Vieux Desert Band of Lake Superior Chippewa Indians.

2.18 “Vendor” means any Person who provides or seeks to provide services to a Licensee pursuant to this Code or acquires Loans for collection or sale.

2.19 “Wholly Owned by the Tribe” means an entity that is: (i) an unincorporated and directly controlled by the Tribal government; (ii) owned by multiple Persons and the Tribe owns at least fifty-one percent (51%) of issued shares or ownership interests; (iii) formally organized by the Tribe and the Tribe is the sole member; and, (iv) a subsidiary of any other wholly owned Tribal entity as described in this subsection.

### **SECTION 3. GENERAL PROVISIONS**

3.1 Authority. This Code is enacted pursuant to the inherent sovereign powers of the Tribe, the Tribal Legislative Procedure Code, and in accordance with Article IV(b) of the Tribe’s Constitution.

3.2 Construction. In construing the provisions of this Code, the following shall apply:

(a) The provisions of this Code, being necessary for the benefit of the Tribe and its members, shall be liberally construed to effectuate its purpose and to promote substantial justice.

(b) When the Authority exercises its discretionary powers to promulgate regulations, issue orders and declaratory statements, examine and supervise Licensees, and in all other regulatory and enforcement matters, the Authority shall adhere to the standards and expectations of the Findings, Intentions, and Policies stated in Section 1.

(c) Words of the masculine gender or neutral include masculine and feminine genders and or the neutral.

(d) Words in the present tense include the future and past tenses.

(e) Words in the singular number include the plural, and words in the plural number include the singular.

3.3 Severability. If any section of this Code is invalidated the remaining sections shall not be affected.

3.4 Effective Date. This Code, and subsequent amendments, shall take effect and be in full force and effect upon the final passage and approval by the Tribal Council.

#### **SECTION 4. TRIBAL FINANCIAL SERVICES REGULATORY AUTHORITY**

4.1 Establishment. The Tribal Council hereby establishes the Authority as an administrative agency, an independent governmental subdivision of the Tribe, The Authority is established to fulfill the duties as described in this Code, to administer the Code to ensure fair and compliant Consumer Financial Services, and to protect Consumers.

4.2 Purpose. The Authority's purpose is to implement and enforce the Code on behalf of the Tribe for the benefit and interests of the Tribe and its members.

4.3 Location and Place of Business. The Authority shall maintain its headquarters, principal place of business and office within the lands of the Tribe.

4.4 Sovereign Immunity of the Authority.

(a) Immunity from Suit. As a governmental subdivision of the Tribe, the Authority is entitled to all the privileges and immunities of the Tribe, including sovereign immunity from unconsented suit in any tribal, federal, or state court, unless otherwise specifically limited by this Code, by subsequent Tribal Council action, or waived pursuant to this Section.

(b) Waiver of Sovereign Immunity of the Authority. The Authority may request the Tribal Council waive its sovereign immunity. Any request shall be specific and limited as to duration, venue, the matter requiring waiver, the grantee of the waiver, any related property or funds, and any other appropriate limits. The Tribal Council may grant or reject the request.

- (1) Resolution Effecting Waiver. All waivers of sovereign immunity must be unequivocally expressed and memorialized by a Tribal Council resolution.
- (2) Policy on Waiver. Waivers of sovereign immunity are disfavored and shall be granted only when deemed necessary by the Tribal Council.
- (3) Limited Effect of Waiver. No waiver of sovereign immunity shall

constitute consent to the enforcement of any judgment, lien, or attachment upon property of the Tribe or the Authority other than property specifically pledged or assigned in the waiver.

- (4) Nothing in this Code nor any action of the Authority shall be deemed or construed to be a waiver of the Tribe's sovereign immunity or consent of the Tribe to any action, counterclaim, subpoena, case or controversy. All inherent sovereign rights of the Tribe are expressly reserved.

4.5 Assets of the Authority. The Authority shall have only those assets specifically assigned to it by the Tribal Council, acquired in its name by the Tribe, or acquired by the Authority on its own behalf. No activity of the Authority or any indebtedness incurred by it shall implicate or in any way involve any assets of tribal members or the Tribe.

4.6 Regulatory Agent; Compensation, Duties.

(a) Regulatory Agents. The Authority shall consist of at least one (1) Agent appointed by the Tribal Council. In the absence of an appointed Agent the Tribe's General Counsel shall serve as an interim Agent until the Tribal Council appoints a new agent.

(b) Term of Office; Reappointment. The Tribal Council shall determine an Agent's term of office upon appointment, but terms shall be no less than five (5) years. If there is more than one Agent, to the greatest extent possible, the Tribal Council shall stagger the Agents' terms. There shall be no limit on the number of terms an Agent may serve. An Agent's term shall automatically renew unless the Tribal Council appoints a replacement before the expiration of the Agent's term.

(c) Compensation. The Tribal Council shall set the Agent's compensation. Agent compensation may be based on full or part-time service and may include employment benefits. Agents are recognized as employees of the Tribe.

(d) Duties. The Agent(s) shall have the following responsibilities:

- (1) Conduct the day-to-day operations of the Authority, including supervision of unappointed Authority employees;
- (2) Develop an expertise in tribal laws applicable to business organization and Consumer Financial Services, applicable Federal Laws, applicable state laws and regulations, tribal sovereignty and jurisdiction, and administrative regulations and hearing procedures;
- (3) Regulate all Consumer Financial Services according to the Code, including licensure, enforcement, hearings, investigations, and any intra- and inter-governmental regulatory responsibilities; and
- (4) Report to the Tribal Council as required by this Code or as otherwise

required by the Tribal Council.

- (5) Exercise the powers bestowed by this Code, perform any other tasks and functions assigned by the Tribal Council, and perform any other tasks and functions not expressly stated or assigned but are necessary to ensure the Tribe's Findings, Intent, and Policy are met.

(e) Agent Qualifications. To be appointed as an Agent, an individual must meet the following qualifications:

- (1) The individual must be an enrolled member of the Tribe.
- (2) The individual must have expertise, experience, education or a combination thereof in any of the following areas: financial services, finance, management, business, governmental regulation, law, and/or Tribal policy.
- (3) The individual must be at least twenty-one (21) years old;
- (4) The individual must have graduated high school or obtained an equivalent certification.
- (5) No individual shall serve as an Agent if:
  - i. The individual's activities, criminal record reputation, habits, or associations:
    - (A) Pose a threat to the public interest;
    - (B) Threaten the effective regulation and control of Consumer Financial Services; or
    - (C) Enhance the dangers of unsuitable, unfair, or illegal practices, methods, or activities in the conduct of Consumer Financial Services.
  - ii. The individual has been convicted of or entered a plea of no contest in any jurisdiction (A) to any felony or (B) to any misdemeanor involving breach of trust or dishonesty;
  - iii. The individual (or the individual's spouse or significant other, parents, or children) has an ownership, partnership, or other direct monetary or financial interest in the conduct of any Licensee, its agents, contractors, or sub-contractors. Any interest in any Licensee by virtue of an individual's membership in the Tribe, or employment with a Licensee, is not a monetary or financial interest

in the conduct of any Licensee as described in this subsection. Upon disclosure, the Tribal Council may waive any conflict under this subsection.

- iv. The individual has any personal or legal relationship that presents a conflict of interest (A) with any Licensee or (B) with the duties and responsibilities of an Agent.

4.7 Operating Procedures; Officers. The Agents may establish internal operating procedures to ensure consistent operations.

4.8 Meetings. The Authority shall meet with the Tribal Council on quarterly basis and as otherwise necessary.

4.9 Prohibited Acts. Agents and Authority employees shall not do any of the following with respect to any Licensee under the jurisdiction of the Authority:

- (a) Be indebted, either directly or indirectly, to any Licensee *unless* such indebtedness was contracted before becoming an Agent or employed by the Authority and such indebtedness is fully disclosed to the Tribal Council before appointment.

- (b) Engage in any conduct described in Section 4.8(e)(5).

- (c) Accept gifts or items or services that have an aggregate value of more than \$100 (when calculated over the entirety of the Agent's term) from any Applicant or Licensee.

- (d) Violate the Tribe's Personnel Policy Handbook or other rules governing employee conduct, where applicable.

4.10 Removal of Agent; Vacancy.

- (a) Removal.

- (1) The Tribal Council may remove an Agent for any of the following reasons: serious inefficiency; neglect of duty; malfeasance, misfeasance, or nonfeasance; misconduct in office; any conduct which threatens the honesty and integrity of financial services or the Authority; conduct that violates the letter or intent of this Code; or, any conduct unbecoming a Tribal governmental official.

- (2) Unless specifically revoked by the Tribal Council, the Tribe's General Counsel shall send the Agent notice describing the basis for removal and a date for a removal hearing, where the Agent may dispute the basis for removal.

- (3) The decision of the Tribal Council concerning removal of a Regulatory



Agent shall be final.

(b) Vacancy. If an Agent dies, resigns, is removed, or for any reason is unable to fulfill the appointed term, the Tribal Council may, if necessary, may appoint another Agent to fill the position.

4.11 Powers of the Authority. The Authority has the following powers and duties:

(a) To enforce the Code and promulgate regulations and rules furthering the purpose and provisions of this Code.

(b) To enforce the federal Consumer Protection Act of 2010, 12 USC §§ 5301 et seq, as authorized by 12 USC 5552.

(c) To supervise and examine Licensees when the Authority considers it necessary to ensure compliance with this Code, applicable Federal Law, or any other applicable law, regulation, or court order; to obtain information about compliance systems and procedures; and, to detect and assess risk to consumers.

(d) Upon reasonable suspicion, to investigate any Licensee or Person to determine whether an act, practice, or transaction constitutes an unsafe or unsound practice, a violation of this Code or applicable Federal Law, or a violation of any order of the Authority.

(e) To establish procedures designed to permit detection of any noncompliance, irregularities, fraud, or the like that the Authority deems necessary and appropriate to safeguard the Tribe and Consumers.

(f) Upon approval of the Tribal Council, to employ such advisors, which may include, but are not limited to, lawyers, accountants, law enforcement specialists, and financial services professionals.

(g) To accept, review, approve or disapprove any Application for a License, including conducting or arranging for background investigations of Applicants.

(h) To conduct administrative hearings to resolve Consumer disputes with Licensees, among Licensees, or arising from a Person alleging or a Person suspected to be in violation of this Code.

(i) To examine under oath, either orally or in writing, in hearings or otherwise, any Licensee or Person with respect to any matters related to this Code and applicable Federal Laws.

(j) To compel any Licensee or Person, by subpoena or otherwise, the attendance of witnesses and the production of any books, records, and papers. Upon a refusal to appear or produce, the Authority may apply to a court of competent jurisdiction to compel appearance or production.

(k) To examine or investigate a Licensee or Person's place of business, equipment, facilities, and tangible personal property, as well as any books, records, papers, vouchers, accounts, documents, and financial statements relevant to ongoing or suspected Consumer Financial Services.

(l) Following an investigation or an administrative hearing, to make findings as necessary to implement the Authority's duties and powers, with such findings to be given deference as the legally binding findings of a governmental entity. However, the Authority shall not issue declaratory findings, orders, or rulings.

(m) After affording due process, to take appropriate enforcement action against any Licensee or Person for violating this Code or applicable Federal Law.

(n) To ensure adequate procedures are in place for administrative appeals following Authority hearings.

(o) To sue or be sued in courts of competent jurisdiction within the United States and Canada, subject to limits on waivers of sovereign immunity contained in this Code.

(p) To arbitrate, compromise, and negotiate any dispute to which it is a party and relating to the Authority's authorized activities. The Authority may not settle any such dispute without the approval of the Tribal Council.

(q) To impose administrative fees to recover the actual costs of performing duties under this Code.

(r) To enter into such cooperative arrangements and agreements, upon Tribal Council approval, to coordinate regulatory enforcement and resolve Consumer complaints as contemplated by the Consumer Financial Protection Act, 12 U.S.C. § 5481 et seq., or as may be appropriate with other Tribes and States.

(s) None of the powers in this section shall be construed to allow the Authority to manage or otherwise control the operation of any Licensee.

4.12 Annual Budget. The Authority shall prepare an annual operating budget as requested by the Tribal Council each fiscal year.

4.13 Regulations; Promulgation.

(a) Regulations. The Authority may promulgate regulations to carry out its duties and execute its powers. In addition to sections that specifically authorize regulations, regulations may include, but are not limited to:

(1) Interpretations to assist with the application and enforcement of this Code;

- (2) A system to review any Licensee for compliance with this Code and any applicable Federal Law and as otherwise necessary to protect the Tribe and the public;
  - (3) The conduct of inspections, investigations, hearings, enforcement actions, and other powers;
  - (4) Procedures to resolve Consumer complaints and address inquiries from co-regulatory entities;
  - (5) Standardization of fees, fines, and penalties;
  - (6) Application and licensing procedures, renewal procedures, and licensing fees; and
  - (7) Controls for Consumer Financial Services and products as well as criteria for new Consumer Financial Services
- (b) Promulgation. The Authority may promulgate regulations as follows:
- (1) The Tribe or any Licensee may propose a regulation by submitting a written draft to the Authority. The Authority may propose a regulation at any time;
  - (2) The Authority will review the proposal to ensure it does not conflict with this Code or any applicable law;
  - (3) Notice. The Authority will notify the Tribe and any Licensee that may be affected by the proposed regulation by means reasonably calculated to inform the Tribe and Licensees of the proposed regulation;
  - (4) Comment Period. Following notice, the Tribe and any Licensee shall have twenty-one (21) days to submit written comments that either support, oppose, or suggest amendments on the proposed regulation.
  - (5) After the Comment Period:
    - i. if the proposed regulation is unopposed, or if there are no comments or suggested amendments, it will be promulgated; or
    - ii. if the proposed regulation is opposed or if there are suggested amendments, the Authority may abandon the proposed regulation, amend the proposed regulation and send a new notice, conduct a hearing on the proposed regulation for additional input, or present the proposed regulation to the Tribal Council, along with all comments, for Tribal Council approval or rejection.

- (6) The Tribal Council may promulgate, rescind, or repeal a regulation at any time regardless of this promulgation procedure.

(c) Only regulations promulgated under this procedure are enforceable. In the event that any promulgated regulation conflicts with the Code, the Code shall control and any conflicting portion shall be severed.

4.14 Quarterly Report to the Tribal Council. The Authority shall file a quarterly report with the Tribal Council summarizing any licensing, enforcement, and Licensee reviews and other information necessary to keep the Tribal Council fully informed of the Authority's activities and the Tribe's Consumer Financial Services. The Authority may define by regulation or internal operating procedure the schedule and content for the submission of such reports.

## SECTION 5. LICENSES

### 5.1 Applicability.

- (a) Subject to the exemptions set forth in Section 5.1(b),

- (1) any Person operating from within the Reservation and seeking to engage in Consumer Financial Services is required to have a current and valid License
- (2) Any Vendor that does business with or provides services to business wholly owned by the Tribe, is required to have a current and valid License, unless otherwise exempt pursuant to 5.1(b).

(b) The following Persons are not required to obtain a License but are not otherwise exempt from any other provision or application of this Code:

- (1) A Vendor, that receives less than Fifty Thousand (\$50,000) Dollars during any twelve (12) month period for services provided to a Licensee.
- (2) A Person who engages in Consumer Financial Services without charging or collecting interest or other consideration for a transaction *or* charges or collects nominal or incidental consideration.
- (3) A bank, savings bank, savings and loan association, or credit union organized under Federal Law, state law, tribal law, or the laws of any foreign government;
- (4) A lender to the Tribe or to a Licensee.
- (5) A Person who provides financial services to a Licensee and who is licensed, registered, or otherwise subject to the regulatory supervision and

oversight of an agency of the United States in order to engage in such financial services.

- (6) A Person licensed or otherwise authorized to engage in payment processing, money transmission, tax preparation, or the practice of law.
- (7) Credit bureaus, lead generators, marketing companies, IT or software suppliers, and similar third-party service providers to a Licensee.
- (8) Any licensed gaming entity.
- (9) Utility companies, including internet and telephone utilities.
- (10) Any other Vendor to a Licensee that provides only administrative, human resources, or other services that do not access consumer financial information or result in the provision of Consumer Financial Services.
- (11) Employees.

(c) A License is a revocable privilege to do business within the Tribe's jurisdiction. Nothing in this Code creates any property right in a License.

## 5.2 Application Procedure.

(a) An Applicant seeking a License shall submit an Application to the Authority on such form as the Authority may require and with any such supporting materials that the Authority may require.

(b) Application Contents. The Application shall clearly explain what information and supporting materials are required. At a minimum, the Application shall require the following information:

- (1) Controlling Persons. The identity of each of the Applicant's controlling persons, e.g., its officers, directors, and other principal managers, including any chief executive officer, chief financial officer, chief operating officer, and general manager, and any independent contractor that may have authority to control the applicant. Applicants shall attach an organization chart showing its personnel hierarchy.
- (2) Ownership. The identity of any Person with an ownership or partnership interest in the Applicant. The Authority may waive or modify this requirement upon a demonstration that there are more than 20 Persons with an ownership interest in the Applicant. If an entity has an ownership interest in the Applicant, e.g., a parent company, the Authority may require the identity of the owner(s) of any such entity. For Applicants that are arms of the Tribe, the Tribe or Tribal entity may be identified as the

owner.

- (3) Background. For each individual identified on the Application, and for all Applicants that are individuals, an Application shall supply:
  - i. each individual 's criminal record for the past 5 years, and an explanation of criminal convictions or no contest pleas and a complete disclosure of any pending or anticipated criminal charges or actions;
  - ii. any history of civil litigation for the past 5 years, including any participation in any bankruptcy proceedings, a description of any civil judgments, and disclosure of any anticipated or pending civil lawsuits;
  - iii. any history of state or federal administrative or other regulatory actions for the past 5 years, a description of any regulatory judgment or decisions, and disclosure of any anticipated or pending regulatory actions; and
  - iv. written permission giving the Authority the right to check each individual 's background, including his criminal record and credit report.
  - v. Tribal Council members are exempt from this subsection (3).
- (4) The address of the Applicant's headquarters along with any other contact information, including the email address of the Applicant's primary contact.
- (5) The Applicant's organizing documents and the identity of the Applicant's registered agent.
- (6) A list of all websites operated by the Applicant.
- (7) A list of all Consumer Financial Services-related licenses the Applicant has ever applied for, whether or not such licenses were issued.
- (8) A list of any previous contractual relationships with any Indian tribe.
- (9) A detailed explanation of the Applicant's compliance management system and procedures along with an explanation of how the applicant's compliance goals comport with the Code.

(c) Each Application shall be accompanied by an application fee, the amount of which shall be set by the Authority.

(d) Each Applicant must execute a statement that the Applicant: submits to the jurisdiction of the Tribe and the Authority upon licensure; will abide by all applicable Tribal law and applicable Federal Laws; authorizes any background checks or other investigation of the information supplied in the Application; attests that the information contained in the Application is true and correct to the best of Applicant's knowledge; and, when necessary, will update or amend the Application to ensure all information remains accurate.

### 5.3 Review, Issuance and Denial.

(a) Issuance. Within 30 days after receiving an Application, the Authority shall issue a License when the following criteria are met:

- (1) The Applicant complied with the provisions of and supplied the information requested in Section 5.2;
- (2) The services the applicant seeks to provide fall under the scope of this Code;
- (3) The Applicant's organizing documents show the entity was duly organized under Tribal, Federal, or State law;
- (4) A background investigation does not reveal any basis to deny a License, as enumerated in Section 5.4

(b) Temporary and Conditional Licenses. The Authority may issue a License on a temporary, conditional, or unconditional basis.

(c) The Authority shall not unreasonably withhold issuance or renewal of a License.

(d) If the Authority is unable to make a determination on an Application within 30 days and the Authority has not communicated with the Applicant, a temporary License shall automatically issue to the Applicant in accordance with Section 5.3(g)(3) and remain effective until the Authority is able to make its determination.

(e) A separate License is not required for each location that the Licensee operates, but each location must be identified to the Authority.

(f) Denial. The Authority may deny an Applicant a License for any of the reasons described in Section 5.4. The Authority shall notify the Applicant in writing of the basis for the denial. An Applicant may contest any denial under the procedures in Section 8.4(h), with the denial treated in the same manner as a Notice of Violation under that section.

(g) Term.

- (1) Any License issued to an entity that is Wholly Owned by the Tribe

shall be effective until it is surrendered by the Licensee.

- (2) Any License issued to an entity that is not wholly owned by the Tribe shall be effective for a period of at least two (2) years from the date of issuance.
- (3) A temporary License may be issued for such period of time as determined by the Authority, not to exceed sixty (60) days unless issued in accordance with Section 5.3(d), with an optional one-time sixty-(60)-day renewal for cause.

(h) **Material Change.** All Licensees shall notify the Authority within thirty days after a material change is made to information provided in the Licensee's Application.

(i) **Renewal.**

- (1) A Licensee may renew a License by complying with the procedure in Section 5.1 before the License expires and paying a renewal fee; or,
- (2) a Licensee may submit a statement confirming that there are no changes to any of the information supplied by the Licensee on its previous Application, upon which only renewal fees shall be assessed.

#### 5.4 Denial, Suspension or Revocation of License.

(a) **Application Denial; Suspension or Revocation.** The Authority may deny an Application or may suspend or revoke a License pursuant to Section, if the Authority finds that an Applicant or Licensee:

- (1) Failed to pay Application or renewal fees;
- (2) Made a material misstatement or omission on the Application or on any document submitted to the Authority;
- (3) Withheld or provided incomplete or insufficient pertinent information from any submission to the Authority;
- (4) Failed to update an Application with new, corrected, or current information;
- (5) Is not an individual of honesty, truthfulness, or good character;
- (6) Violated, aided, abetted, conspired with another, or otherwise participated in a violation of this Code or applicable Federal Laws or Tribal laws;
- (7) Participated in Consumer Financial Services that were not authorized by this Code and not otherwise authorized by another federal, state, or tribal law;



- (8) Knowingly falsified books or records, or recklessly maintained books or records, that relate to any Consumer Financial Services transaction;
- (9) Failed to keep sufficient books and records to substantiate receipts, disbursements, and expenses incurred or paid by a Licensee authorized pursuant to this Code;
- (10) Failed to keep sufficient books and records to substantiate compliance with this Code or applicable Federal Laws;
- (11) Failed to take reasonable measures to ensure that an agreement with a Consumer is not breached;
- (12) Within the past 5 years, has been charged in any jurisdiction with any felony or crime involving breach of trust, misrepresentation, fraud, theft or dishonesty;
- (13) Has been convicted or pled no contest to any felony with in the past 5 years or crime involving breach of trust, misrepresentation, fraud, theft or dishonesty;
- (14) Has had an order entered against it by an administrative or other regulatory agency, in any jurisdiction, based on fraud, deceit or misrepresentation;
- (15) Has had a civil judgment ordered against it based on fraud, deceit, or misrepresentation, conspiracy, or otherwise impacting the ability to engage in Consumer Financial Services;
- (16) Refused to comply with any lawful order, inquiry, investigation, or directive of the Authority, Tribal Court, or the Tribal Council;
- (17) Attempted to bribe any Person, Tribal Council member, or Agent;
- (18) Stole or attempted to steal funds or other items of value from the Authority, the Tribe, or a Licensee;
- (19) Poses a threat to the public interest, to the Tribe, or to the effective regulation of Consumer Financial Services;
- (20) Creates or enhances the danger of unsuitable, unfair, or illegal practices, methods, and activities;
- (21) Has ceased offering Consumer Financial Services authorized by this Code;

- (22) Has ceased providing assistance to a Licensee for 6 consecutive months;
- (23) Is otherwise determined by the Authority to be unsuitable for licensure; or
- (24) Employed an individual that does not meet the standards in this Section 5.4 or whom the Licensee knew or should have known was not honest, truthful, or of good character.

(b) Acts of Controlling Persons. Any conduct of any individual identified on an Application, or of any other controlling person, that would be cause for denial of an Application or for the suspension or revocation of the License is conduct attributable to the Licensee. A Licensee has the burden to show that the acts of the controlling person should not be attributed to the Licensee.

(c) Procedure for Application Denials, License Suspension and Revocation.

- (1) Upon denial of an Application, the Applicant may request a hearing under Sections 8.4(h)-(i).
- (2) Upon reasonable basis for belief that a violation of the Code has occurred, the Authority may serve a Licensee a Notice of Violation under Section 8.4(h).
- (3) Such notice shall state the reason for the suspension and otherwise comply with Section 8.4(h).
- (4) The Licensee shall have an opportunity to request a hearing under Section 8.4(h)-(i).

5.5 License Substance; Classification; Posting. Licenses may be either in an electronic or document format. If issued in a document format, the License shall bear on its face the name of the Licensee, the Authority Logo, the issue date, the expiration date, the license number, and the type of License. If issued in an electronic format, the Licensee shall receive a License Number. The Licensee shall post its License issued pursuant to this Code at each location or, if the location is a website, said License shall be posted electronically on each website.

5.6 Record Retention. The Authority shall maintain all Applicant and License files, including Applications, any investigation reports, and any eligibility determination reports for no less than three (3) years after expiration and nonrenewal of any License or any denial of any Application.

5.7 Voluntary Surrender of License. Any Licensee may voluntarily surrender its License at any time by giving written notice of the surrender to the Authority. Voluntary surrender shall not be a basis for denial of any subsequent Application.

5.8 Assignment or Transfer. A Licensee may not sell, lend, transfer, or assign a License. Any License purchased, borrowed, received, or acquired through any stock or asset purchase or other device is void.

5.9 Deposits of Fees and Assessments. Application fees, renewal fees, late payment penalties other Application fees shall be paid directly to the Authority and deposited into an account or fund designated by the Tribe.

## SECTION 6. LICENSEES

6.1 Compliance. Licensees shall at all times comply with the provisions of this Code other Tribal law, and applicable Federal Laws that Congress, or controlling authority, has expressly stated that the law applies to Indian tribes.

6.2 Applicable Federal Consumer Protection Laws. A Licensee shall conduct business in a manner consistent with principles of federal consumer protection law, whether or not the federal consumer protection laws expressly govern Indian tribes, including, without limitation, the following:

(a) The Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. § 5301 et seq., including the Consumer Financial Protection Act, 12 U.S.C. § 5481 et seq., and, the restrictions on Unfair, Deceptive, or Abusive Acts or practices, 12 U.S.C. § 5531, et seq.;

(b) The Consumer Credit Protection Act, 15 U.S.C. Chapter 41, including the Truth in Lending Act, 15 U.S.C. § 1601 et seq., and related regulations at 12 C.F.R. § 1026; the Fair Credit Billing Act, 15 U.S.C. § 1666a; the Consumer Leasing Act, 15 U.S.C. § 1667 et seq., and related regulations at 12 C.F.R. § 1013; the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq., and related regulations at 12 C.F.R. § 222; the Equal Credit Opportunity Act, 15 U.S.C. § 1691 et seq., and related regulations at 15 C.F.R. § 1002; the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq., and related regulations at 12 C.F.R. § 1006; and, the Electronic Fund Transfer Act, 15 U.S.C. § 1693 et seq., and related regulations at 12 C.F.R. § 1005; and

(c) The Gramm-Leach-Bliley Act, 15 U.S.C. § 6801 et seq., and related regulations at 16 C.F.R. §§313 - 314; the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et seq.; the Controlling the Assault of Non-Solicited Pornography and Marketing Act, 15 U.S.C. § 7701, et seq.; the Military Lending Act, 10 U.S.C § 987, and related regulations at 32 C.F.R. § 232; the Servicemembers' Civil Relief Act, 50 U.S.C. § 3901 et seq.; the Telephone Consumer Protection Act, 47 U.S.C. § 227, and related regulations at 47 CFR § 64.1200; the Bank Secrecy Act, 31 U.S.C. § 5311 et seq.; 12 U.S.C. §§ 1829b, 1951-1959; the Anti-Money Laundering Act, 18 U.S.C. § 1960; and, the Telemarketing Sales Rule, 16 C.F.R. § 310.

(d) For all disputes raised pursuant to Section 9, the Authority shall have the ability to enforce all federal consumer protection laws against a Licensee. For all other lawsuits,

disputes, or claims of any kind, a Licensee's compliance under Section 6: (a) does not waive any defenses a Licensee may have; (b) does not waive immunity; and (c) does not serve as consent by a Licensee to the applicability of any Federal Law that Congress has not expressly applied to Indian tribes, to the Licensee, or to any Consumer Financial Services authorized by this Code.

(e) Nothing in this Code shall be construed as a prospective waiver of any Federal Law or to preclude any defense to any Federal Law.

### 6.3 Prohibited Acts by Licensees.

(a) A Person operating from within the Tribe's Jurisdiction shall not engage in the business of Consumer Financial Services subject to this Code without a License.

(b) A Licensee shall not:

- (1) Engage in any Consumer Financial Services other than those allowed under this Code.
- (2) Assess any interest, fee, or charge that is greater than any applicable limitation, if any, prescribed in this Code.
- (3) Assess any interest, fee, or charge that is greater than any applicable limitation, if any, prescribed within the jurisdiction where a Loan originates.
- (4) Use or cause to be published or disseminated any advertisement that contains false, misleading, or deceptive statements or representations.
- (5) Engage in unfair, deceptive, or fraudulent practices.

6.4 Compliance Management System. Each Licensee shall maintain a compliance management system addressing its compliance with applicable law and regulation. A compliance management system shall include procedures to screen and perform necessary diligence on employee applicants.

### 6.5 Books, Accounts, and Records.

(a) Records; Record Retention. A Licensee shall:

- (1) Ensure that its books, accounts, and records are sufficiently detailed to comply with the Code and all applicable laws.
- (2) Maintain the books, accounts, and records related to Consumer Financial Services separately from any other business in which the Licensee is engaged.

- (3) For all records, develop and adhere to a record retention schedule that complies with this Code and any applicable laws, or otherwise with industry standards. A record retention schedule must include retention policies for all Consumer complaints. Electronic storage of Consumer complaint records is acceptable

#### 6.6 Examinations; Reports

(a) The Authority may examine each Licensee when the Authority considers it necessary to ensure compliance with the Code. The Authority may retain a third party vendor to perform the examination(s).

(b) The examination may include the Licensee's consumer lending books, accounts, and records as well as the Licensee's organization documents, delegation documents, compliance management system, internal compliance reports, internal and external audits (if applicable), marketing materials, consumer loan agreements, business loan agreements, website(s), vendor contracts, and other relevant materials to determine if the Licensee is compliant with this Code and any applicable Federal Law.

(c) Upon Tribal Council approval or by consent of the Licensees, each Licensee shall provide the Authority with all financial and accounting audit reports as part of the examination.

(d) Upon completion of the examination, the Authority and Licensee shall receive a copy of the examiner's report, which shall include its findings and the bases for its findings. The Authority may follow up directly with the Licensee regarding any aspect of the report.

(e) The Authority may charge the cost of any examination to the Licensee.

(f) This section does not apply to Vendors.

6.7 Public Notice. Each Licensee shall have a copy of this Code readily available at each authorized Consumer Financial Services location and on any website.

### **SECTION 7. CONSUMER FINANCIAL SERVICES AGREEMENT AND TRANSACTION REQUIREMENTS**

7.1 Generally. A Licensee may engage in the business of providing Consumer Financial Services under this Code.

7.2 General Terms and Conditions. All Consumer Financial Services involving a transaction with a Consumer must be confirmed by a written agreement between a Licensee and a Consumer and shall contain the following:

- (a) Sovereignty; Choice of law. Any agreement between a tribally-owned Licensee

and a Consumer must explain that the Licensee is a wholly owned economic arm and instrumentality of the Tribe. Any agreement with a Consumer must explain that the Tribe is a sovereign government and has enacted laws that regulate the agreement, that no state laws regulate the agreement, and no portion of the agreement attempts to disclaim or prohibit the application of applicable Federal Laws. When applicable, the agreement must state that the Consumer Financial Services originate from the Reservation.

(b) Tribal sovereign immunity. Any agreement with a Consumer must state clearly that the agreement does not contain a waiver of tribal sovereign immunity. Any agreement with a Consumer shall explain that by entering into the agreement, the Consumer consents to the Tribe's jurisdiction.

(c) Forum selection. Consent to dispute resolution; Exclusive jurisdiction until exhaustion. Any agreement with a Consumer must explain that the Licensee consents to the Authority's jurisdiction to resolve all Consumer disputes, that the Consumer has a limited and exclusive right to submit any complaints related to the Agreement or the Licensee through the Tribal dispute resolution process in this Code. The agreement must explain that the dispute resolution procedure is a Tribal administrative procedure that includes the right to appeal to the Tribal Court. The agreement must explain that the Consumer agrees to fully exhaust the Code's dispute resolution procedure before bringing suit in any other court or jurisdiction.

(d) Fees and charges. Except as otherwise specified in this Code, an agreement with a Consumer may include a charge for interest and fees, including but not limited to fees for late payments, returned payments, and origination charges, as agreed upon by the parties and stated with specificity in an agreement.

(e) Entire agreements. Any agreement shall provide that it represents the entire agreement between the parties and may not be contradicted by evidence of prior or contemporaneous oral agreements of the parties.

(f) Late charges. Any Loan agreement may provide for a maximum late payment charge in an amount equal to the greater of five percent (5%) of the payment amount or up to thirty dollars (\$30.00).

(g) Dishonor item fees. Any Loan agreement may allow a dishonored payment fee of not more than fifty dollars (\$50).

(h) Enforcement of Licensee's rights and remedies. A Licensee may enforce its rights to payment under any agreement with a consumer in any court of competent jurisdiction.

## **SECTION 8. ENFORCEMENT**

8.1 Jurisdiction. Except as provided otherwise in this Code, Tribal law, or Congress, the Tribe shall have jurisdiction as follows:

(a) Jurisdiction over Licensees. By accepting a License Licensees consent to the Tribe's jurisdiction to enforce this Code and any other applicable law. No Licensee may assert tribal sovereign immunity as a defense (1) to the jurisdiction of the Tribe or (2) to any Tribal enforcement action, including any subsequent appeal or Tribal Court action arising under this Code.

(b) Jurisdiction over Consumer Financial Services; Products; Violations. The Tribe has jurisdiction over all Consumer Financial Services, transactions, agreements, and products authorized by this Code, including over violations related to Consumer Financial Services, transactions, agreements, and products by Licensees or unlicensed Persons.

(c) Jurisdiction over Members; Tribal Business Entities; Employees. The Tribe has jurisdiction over Members, including Tribal business entities organized under Tribal law and employees of Tribal business entities.

(d) Jurisdiction over Non-Members. The Tribe has jurisdiction over non-members (1) who enter into consensual contractual relationships (e.g., Loan agreements, service agreements, commercial dealings, contracts, leases) with the Tribe, its arms and instrumentalities, a Licensee, or with a Member; (2) that are within the Reservation or Indian lands; (3) who threaten the Tribe's political integrity, economic security, or health and welfare; and/or (iv) as delegated by Congress. Without limiting the foregoing:

(1) Obtaining any Consumer Financial Service authorized by this Code invokes and is consent to the Tribe's jurisdiction for the application of Tribal law, including, but not limited to, the Code, and constitutes the Consumer's express waiver of the applicability of any state law to the Consumer Financial Service and any rights bestowed by state law to the Consumer.

(2) Obtaining any Consumer Financial Service authorized by this Code is (i) consent to the Tribal Dispute Resolution procedures contained in this Code as well as (ii) to the exhaustion of tribal and administrative proceedings before any claim can be brought in any other court, and (iii) constitutes an express waiver to any right to bring any state law claims, in any court, before tribal administrative procedures are exhausted.

(3) Providing any services directly to a Licensee, the Tribe, or other tribally owned entity is consent to the Tribe's jurisdiction for the application of Tribal law including, but not limited to, the Code, and consent to the Authority's enforcement authority described in this Code.

(e) Jurisdiction over the Reservation and Indian lands. The Authority has jurisdiction over activities governed by this Code occurring within the Reservation and the Tribe's lands, property, and spaces whether owned, leased, or rented.

8.2 Guidelines for Penalties. Before imposing any administrative remedy or penalty

on any Person, the Authority shall take into account: the appropriateness of the remedy or penalty with respect to the size of the financial resources of the Person; good faith of the Person; the extent to which the violation was intentional; the gravity of the violation; the history or previous violations; and, such other matters as justice may require.

8.3 Purpose of Civil Penalties. The civil fines imposed under this Code are intended to be remedial and not punitive and are designed to be imposed as follows:

- (a) to compensate the Tribe for the damage done to the peace, security, economy and general welfare of the Tribe;
- (b) to compensate the Tribe for costs incurred by the Tribe in enforcing this Code;
- (c) to coerce all Persons into complying with this Code; and,
- (d) to compensate any wronged party.

8.4 Enforcement of Violations.

(a) This section shall not apply to Consumer Financial Services Applicants or Consumers.

(b) Investigations. The Authority, upon complaint or upon its own initiative, when necessary to perform its duties or exercise its powers, may investigate and examine any Person engaging, or suspected to be engaging, in Consumer Financial Services.

- (1) The Authority may request the assistance of law enforcement officials, legal counsel, and/or other third parties at any time during any investigation.
- (2) This power to investigate does not authorize the Authority to manage the day-to-day operations of a Licensee.
- (3) A Licensee consents to any investigation conducted pursuant to this subsection.

(c) Right of Entrance. In the course of any investigation, the Authority, and duly authorized employees or agents of the Authority, may enter upon any premises of any Licensee or Person engaging in or suspected to be engaging in Consumer Financial Services in order to examine the premises, accounts, books, papers, and documents. A Licensee consents to the Authority's right of entrance under this subsection.

(d) Aid to Entry. A Licensee or Person that is the subject of an Authority investigation or examination is expected to give every reasonable aid and accommodation to the Authority, and to any properly authorized officer or employee, during the course of the investigation. The Authority may take enforcement action upon any intentional interference



with any investigation or examination.

(e) **Violations; Notice.** Following an investigation or upon a reasonable suspicion that a Licensee or Person has violated this Code, Tribal law, or any applicable Federal Law, the Authority may issue a Notice of Violation, which may include a prospective injunctive order, to any suspected violator. A Notice of Violation must contain:

- (1) a description of the violation;
- (2) instructions to respond to the notice;
- (3) a timeframe to cure or otherwise respond; and,
- (4) an explanation of the recipient's rights and any regulations or other hearing procedures.

(f) **Opportunity to Cure.**

- (1) Unless there are exigent circumstances, the Authority shall provide a reasonable opportunity to cure any suspected violation
  - i. of at least ten (10) days when enforcement action involves suspension or revocation of a License;
  - ii. for all other enforcement actions, a reasonable cure period.
- (2) If exigent circumstances exist, the Authority may decline to extend an opportunity to cure but must explain the exigent circumstances in any Notice of Violation and allow an expedited hearing procedure as described below.

(g) **Voluntary Resolution.** A Person or Licensee that receives a notice of violation and the Person or Licensee voluntarily resolves the violation to the Authority's satisfaction the Authority may dismiss any Notice of Violation and approve the voluntary resolution of the issue, as appropriate, without a hearing.

(h) **Notice of Hearing.** Upon written request from a recipient of a Notice of Violation, or upon a written request for a hearing following a denial of an Application or revocation or suspension of a License under Section 5.4, the Authority shall schedule a hearing within a reasonable length of time. The notice shall set forth the issues to be heard, the date, time and place at which a hearing shall be conducted, all applicable laws, regulations, and rules, and the parties that shall appear. In the event that a Notice of Violation was issued under exigent circumstances, the Authority shall provide notice and an opportunity to be heard within fourteen (14) days of the Notice of Violation, or sooner if practicable.

(i) Hearing. A hearing shall be scheduled to take place no less than ten (10) and no more sixty (60) business days after a Notice of Hearing is delivered. At a hearing, the affected parties shall be provided the opportunity to present legal arguments, oral or written testimony, and evidence.

- (1) Examiner. The Authority may designate an Agent or other individual to act as examiner for the purpose of presiding over a hearing. An appointed examiner should be qualified in the law or possessing knowledge or expertise in the subject matter of the hearing. Any such appointment shall constitute a delegation to such examiner of the powers of the Authority under this Code with respect to any such hearing and solely for the purposes of any such hearing.
- (2) The Authority may promulgate regulations and adopt procedures to conduct hearings. No violation shall be heard under this section until hearing procedures and rules are promulgated.
- (3) At any hearing under this section, the Person or Licensee shall have an opportunity to be heard and present evidence.
- (4) Any attorney licensed to practice law in any United States tribe, state or territory, shall be authorized to practice law before the Authority without motion.

(j) Decision and Order. For every Notice of Violation issued, the Authority shall issue a written decision to all affected parties either: (1) upon cure, (2) upon the expiration of the time to cure if no hearing is requested; (3) upon the expiration of time to request a hearing if no hearing is requested, or (4) within thirty (30) days after the hearing. All decisions will provide the Authority's conclusions of fact, identify any evidence forming the basis for the decision, conclusions of law, and order enforcement actions, including but not limited to any licensure actions, penalties, and fees.

(k) Administrative Appeal. Any party may appeal an Authority decision and order issued under this section by filing a written petition for review with the Tribal Court within ninety (90) days after the Authority issued its decision and order.

- (1) The Tribal Court has jurisdiction over an administrative appeal under this section; the Authority shall not assert tribal sovereign immunity as a bar to the Tribal Court's jurisdiction.
- (2) A petition for review must include a statement describing the basis for the appeal, the type of relief sought, and a copy of the Authority's decision and order. The Tribal Court may require additional information by Tribal Court Rule or order.

- (3) The petitioner must mail or email a copy of the petition for review and all attachments to the Authority.
- (4) Unless otherwise established by Tribal Court Rule, the Authority may file a response within thirty (30) days of receiving the petition for review. The Authority must forward the record of the proceedings to the Tribal Court within thirty (30) days of receiving the petition for review.

An administrative appeal under this Section is not a matter before the Tribal Court as contemplated by LVD Tribal Court Rule 1.006 or an action as contemplated by LVD Tribal Court Rule 2.201. As such, an administrative appeal is not a suit against the Tribe, does not challenge the Tribe's sovereignty, and cannot be used as a means to circumvent the Tribe's sovereignty. By allowing an administrative appeal, the Tribe does not waive its sovereign immunity.

- (5) Unless otherwise established by Tribal Court Rule or waived by both parties, the Tribal Court will schedule oral argument within a reasonable time.
- (6) Appeal Standards.
  - i. The Tribal Court shall limit its review to the record below.
  - ii. The Tribal Court shall make a determination on its jurisdiction and the jurisdiction of the Authority.
  - iii. The Tribal Court shall give deference to the Authority's reasonable interpretation and application of the Code.
  - iv. If the Tribal Court concludes that the Authority's decision and order is arbitrary and capricious, or that it is not supported by the evidence, the Tribal Court may reverse and/or remand the Authority's decision and order. Mere disagreement with the Authority's factual findings is not a basis for reversal.
  - v. If the Tribal Court concludes that the Authority's conclusions of law conflict with Tribal law or the Tribal Constitution, the Tribal Court shall reverse and remand the Authority's decision.
- (7) Within a reasonable time after oral argument, the Tribal Court shall issue an opinion and order. The Tribal Court's opinion and order may not be appealed.

- (8) Exhaustion. Following an appeal under this section, these administrative procedures are deemed exhausted. Failing to appeal within the timeframes within this section constitutes a failure to exhaust administrative remedies.

8.5 Civil Violations. Any Licensee who is found to have committed a violation of this Code may be required to pay a civil fine to the Authority. A violation or series of violations related to the same act or omission may be treated as one violation. For knowing or willful violations, each day during which any such violation or failure to comply continues may be treated as a separate violation of this Code and without any maximum limit to any fine.

(a) In addition to any civil fines, a Licensee found responsible for a violation may also be subject to suspension or revocation of a License as well as any appropriate equitable or injunctive relief.

(b) If an officer or agent of a Licensee knowingly or recklessly participates in a violation of this Code, then the Authority may immediately revoke the License of the Licensee based on the officer or agent's conduct.

8.6 Civil Action for Penalties. The Authority may file a civil action or register an Authority decision and order or tribal judgment in a court of competent jurisdiction.

8.7 Seizure and Forfeiture of Property. Property of a Licensee utilized in violation of this Code shall be subject to seizure and forfeiture by order of the Authority pursuant to such implementing regulations as the Authority shall promulgate. However, following any seizure, under no circumstances may the Authority operate or otherwise conduct Consumer Financial Services other than to mitigate any effects of such seizure in the best interests of Consumers.

## **SECTION 9. RESOLVING BORROWER DISPUTES**

9.1 General Principles. The Tribe intends to protect the public and expects that Licensees will at all times promptly and dutifully respond to all Consumer questions, concerns, issues, and complaints in a fair and orderly manner. This Code is to be construed to the benefit of the Consumer. Nothing in this Section constitutes or shall be construed as a waiver of tribal sovereign immunity or other immunity.

9.2 For all disputes arising under this Section 9, the Authority is empowered to and shall enforce the federal Consumer Protection Act of 2010, 12 USC §§ 5301 et seq., to the extent expressly authorized by Congress under 12 USC § 5552.

9.3 Consent to Jurisdiction; Consent to Dispute Resolution Procedures. Under Section 8.1(a), a Licensee consents to the jurisdiction of the Authority and to the dispute resolution procedures described in this Section and any promulgated regulations for claims brought by Consumers and arising from the Consumer Financial Services regulated by this Code and applicable Federal Law

9.4 Consumer Contractual Relationship. A Consumer's Loan agreement is consummated and originates from the Reservation and constitutes a consensual contractual relationship with an arm of the Tribe. Accordingly, a Consumer and the Consumer's Loan agreement are within the Tribe's jurisdiction and exclusive authority to regulate. Any effort to impede or prohibit the Tribe's jurisdiction or ability to regulate its contracts and contractual relationships constitutes a direct threat to the inherent sovereign power of the Tribe, the political integrity of the Tribe, and the economic security and self-sufficiency of the Tribe.

9.5 Administrative Procedure; Exhaustion. The Formal Dispute Resolution Procedure, described in Section 9.4, is a Tribal administrative procedure, inclusive of the right to an administrative appeal to the Tribal Court, that must be exhausted before a Consumer may bring any suit in any court of competent jurisdiction.

(a) Unless superseded by later-enacted law, a Person exhausts Tribal administrative remedies by completing the Formal Dispute Resolution procedure described in this Code, including any administrative appeals.

(b) Upon exhaustion of Tribal administrative remedies, a Person may file suit in a court of competent jurisdiction.

(c) Exhaustion of Tribal administrative remedies do not abrogate or waive tribal sovereign immunity or any other rights or defenses available to the Tribe or arms and instrumentalities.

9.6 This administrative procedure is limited to adjudication of a Licensee's compliance with this Code, including applicable Federal Laws. This in no way limits or forecloses the exercise of any federal rights or remedies. Claims that are outside the jurisdiction of this administrative process may be raised in any court of competent jurisdiction upon exhaustion of this administrative procedure.

9.7 Informal Dispute Resolution Procedure. Consumers who are aggrieved by a Licensee, believe a Licensee has committed an unfair or deceptive act or practice in violation of this Code or applicable Federal Law, or has breached the Consumer's Loan agreement, may raise the complaint with the Licensee pursuant to the terms of the Consumer's Loan agreement.

9.8 Formal Dispute Resolution Procedure.

(a) Regardless of any condition or requirement in any Consumer Loan agreement, an aggrieved Consumer may invoke the administrative process in this section by submitting a written request to the Authority that must include the following information:

(1) The Consumer's full name, as it appears on the Consumer's Loan agreement, as well as the Consumer's address, email address, and phone number.

- (2) A copy of the Consumer's Loan agreement, or identification of the Loan agreement.
- (3) If the Consumer has attempted to resolve the grievance according to the terms of the Loan agreement or according to the informal procedure described in Section 9, a copy of the Licensee's determination.
- (4) A written request that summarizes with specificity the events and circumstances giving rise to the alleged wrongful action or inaction of the Financial Services Licensee and the relief requested.
- (5) The Consumer must indicate whether he will be represented by an attorney, in which case an attorney shall file an appearance with the Authority. An attorney does not need to be licensed by the Tribal Court to appear before the Authority on behalf of a Consumer.
- (6) Any other information the Consumer feels may be relevant to the complaint or that may assist the Authority evaluate the complaint.

(b) **Licensee Response.** A Licensee shall respond to a Consumer's grievance within 30 days. A Licensee may not assert tribal sovereign immunity in its defense. A failure to respond to a request by the Authority may result in a default pursuant to Section 9.3(h).

(c) **Right to Hearing; Request or Waiver.** A Consumer has a right to a hearing before the Authority to present argument and testimony unless the Consumer waives that right in writing filed with the Authority. The administrative hearing will occur within sixty (60) days after the Authority receives the Consumer's written request or as otherwise scheduled by a case management order following a prehearing conference.

(d) **Pre-hearing Procedure.** Upon a request or when ordered by the Authority, the Authority may schedule a prehearing conference with the Consumer and Licensee to discuss motion practice, discovery, witnesses, exhibits, and any other procedural matters the Authority deems necessary or advisable. Following a prehearing conference, the Authority will issue a case management order, which may include requirements to provide additional information or documentation to the Authority. If the parties agree a prehearing conference is unnecessary, the parties may file a signed stipulated proposed case management order before the scheduled date of a prehearing conference.

(e) **Hearing Procedure.**

- (1) The Authority may designate a Presiding Officer to conduct the hearing, administer oaths, admit or refuse evidence, and control any other aspect of the hearing he deems necessary. The Presiding Officer may be any individual qualified to conduct the hearing.

- (2) A Licensee may appear and be represented by someone knowledgeable and capable of testifying about the Consumer's complaint.
- (3) If not already supplied to the Consumer and the Authority, a Licensee must provide the Licensee's records pertaining to the Consumer more than 10 days before the hearing.
- (4) The parties may make opening and closing statements, call witnesses, and provide physical evidence. The Authority will administer an oath to any witness and the witness must confirm the testimony will be truthful. All physical evidence will be admitted and considered as long as it is the type of evidence a reasonable person would find relevant to the Consumer's complaints. Objections to evidence will be noted on the record. No Authority agent may be called to testify.
- (5) The Authority may request the parties submit pre-hearing briefs, post-hearing briefs, or additional evidence.
- (6) Hearings will be recorded by the Authority. The recording and all physical evidence will constitute the record. The Authority is responsible to preserve all hearing records for six (6) years after the Authority's decision is issued.

(f) Decision and Order; Notice of Right to Appeal; Service. Within a reasonable time after a hearing, the Authority will issue a written decision and order that shall include the following:

- (1) A statement of jurisdiction that explains the basis for jurisdiction, identifies all claims and parties upon which jurisdiction exists, and identifies all claims and parties for which there is no jurisdiction and are expressly reserved upon exhaustion of administrative remedies.
- (2) All factual findings, conclusions of law. Factual findings shall be based on the testimony and evidence presented by the parties. Conclusions of law shall identify controlling authority or the absence of controlling authority.
- (3) An order granting or denying relief.
  - i. The Authority may grant or deny any relief to the Consumer as the Authority determines appropriate. The Authority may also take enforcement actions under Section 8.
  - ii. The order must inform the Consumer of the opportunity to appeal to the Tribal Court pursuant to Section 9.

- iii. The order shall inform the Consumer of the requirement to exhaust all tribal administrative remedies before the Consumer may bring any lawsuit against the Licensee in any court.

(g) Rehearing. A Consumer or Financial Services Licensee may request a rehearing within thirty (30) days after the Authority issues a decision and order. A request for a rehearing must provide a justifiable reason for a rehearing. The Authority may grant or deny a request for a rehearing at its discretion. Requesting a rehearing shall not be required to exhaust tribal administrative remedies.

(h) Default. On its own or upon request, the Authority may issue a default decision under any of the following circumstances:

- (1) a party fails to comply with the Authority's orders or requests;
- (2) a Licensee fails to answer a Consumer's complaint as required by Section 9.7(b); or
- (3) a party fails to appear at a prehearing conference or hearing.

A default decision issued under subsections (1) and (3) may not be set aside but may be appealed pursuant to Section 9.8. A default decision issued under subsection (2) shall include a fine equal to the outstanding Loan amount of the Consumer or one thousand five hundred dollars (\$1,500.00), whichever is greater. The Licensee may not appeal a default under (2).

#### 9.9 Administrative Appellate Procedure.

(a) Until the Tribal Court adopts court rules to regulate administrative appellate procedures, the procedures in this subsection shall govern administrative appeals of Authority decisions and orders:

- (1) A Consumer may appeal an Authority decision and order by filing a written petition for review with the Tribal Court within ninety (90) days after the Authority issued its decision and order.
- (2) A petition for review must include a statement describing the Consumer's complaint, the Licensee's determination, the Authority's decision and order, and include the type of relief the Consumer is requesting.
- (3) The Consumer must mail or email a copy of the petition for review and all attachments to the Licensee and to the Authority.
- (4) The Licensee may file a response within fifteen (15) days of receiving the petition for review. A Licensee may not assert tribal sovereign immunity in its defense.



- (5) The Authority must forward the record of the proceedings to the Tribal Court within thirty (30) days of receiving the petition for review.
- (6) The Tribal Court will hold a hearing on the administrative appeal within 120 days after a petition is filed.

(b) An administrative appeal under this Section is not a suit against the Tribe and is not a matter before the Tribal Court as contemplated by LVD Tribal Court Rule 1.006 or an action as contemplated by LVD Tribal Court Rule 2.201. As such, an administrative appeal is not a suit against the Tribe, does not challenge the Tribe's sovereignty, and cannot be used as a means to circumvent the Tribe's sovereignty. By allowing an administrative appeal, the Tribe in no way waives its sovereign immunity.

(c) Appeal Standards.

- (1) The Tribal Court shall limit its review to the record created pursuant to Section 9 and other evidence judicially noticed or available upon appellate review under federal common law.
- (2) The Tribal Court shall give deference to the Authority's reasonable interpretation and application of the Code.
- (3) If the Tribal Court concludes that the Authority's decision and order is arbitrary and capricious, or that it is not supported by the evidence, the Tribal Court may reverse and/or remand the Authority's decision and order. Mere disagreement with the Authority's reasonable findings and conclusions is not a basis for reversal.
- (4) If the Tribal Court concludes that the Authority's conclusions of law conflict with Tribal law or the Tribal Constitution, or Federal Law or the United States Constitution, the Tribal Court shall reverse and remand the Authority's decision.

(d) Within a reasonable time after oral argument, the Tribal Court shall issue an opinion and order. The Tribal Court's opinion and order may not be appealed. The Tribal Court shall transmit its opinion and order to the Authority and the parties within 15 days after issuance.

(e) Upon receipt of the opinion and order, the Authority shall either (1) continue proceedings according to any remand and instruction, or (2) issue a final decision. Upon issuance of a final decision, a Consumer's administrative remedies are exhausted.

## **SECTION 10. SECURED TRANSACTIONS WITH RESPECT TO TRIBAL CONSUMER FINANCIAL SERVICES**

10.1 Short Title. This Section 10 may be referred to as the “Tribal UCC9.”

10.2 Adoption by Reference; Exceptions. The Tribe adopts and incorporates by reference Article 9 of the Michigan Uniform Commercial Code, MCL §440.9101 et seq., as it may be amended from time to time (the “Michigan UCC9”), but subject to the exceptions and qualifications provided in this Code, Appendix 1.

10.3 Conflict. In the event of any conflict between this Code and Michigan UCC9, this Code shall control.

10.4 References. All references to the State of Michigan in the Michigan UCC 9 shall mean the Tribe for purposes of Tribal UCC9. Citations to sections in the Michigan UCC 9 may be cited with the prefix 10, instead of 440, for the purposes of this Code. For example, Section 404.9101 of the Michigan UCC9 may be cited as Section 10.9101 of this Tribal UCC9.

10.5 Characterization of transactions. Any characterization in this Code of a transaction as a sale, lease, pawn, or other transaction shall control over any contrary provision in the Tribal UCC9 and Michigan UCC9.

10.6 Preservation of Sovereign Immunity and Exclusive Jurisdiction. Nothing in the Section shall be construed as a waiver of the Tribe’s sovereign immunity, the Tribe’s exclusive jurisdiction, or to grant jurisdiction to any other governmental agency or entity other than the Tribe.

## **SECTION 11. CONSUMER FINANCIAL SERVICES; PRODUCTS**

11.1 A Licensee may offer Consumer Financial Services that comply with this Code. Consumer Financial Services and products are not limited to those described in this Code. For any Consumer Financial Service or product not specifically described in this Code, the Consumer Financial Service or product is permitted as long as the Consumer Financial Service or product is not abusive, deceptive, unfair, predatory, or violates applicable law. The Authority may regulate and may promulgate regulations for any Consumer Financial Service or product not specifically described in this Code.

11.2 Personal Loan Transactions amounts, finance charges and other requirements.

(a) Transaction amount. A Financial Services Licensee may issue Personal Loan Transactions in an amount of at least fifty dollars (\$50.00) but not more than five thousand dollars (\$5,000.00), excluding the finance charges, fees and other charges permitted in this Code.

(b) Finance Charge. A Financial Services Licensee may not enter into a Personal Loan Transaction with a Consumer in which the annual percentage rate exceeds 699%. The finance charge may be calculated, earned and scheduled for payment as agreed by the Parties.

(c) Number of transactions at one time. A Licensee may enter into no more than three Personal Loan Transactions with any Consumer at any time.

(d) Term. A Licensee may not provide Personal Loan Transactions for a term of less than ninety-one (91) days or more than forty-eight (48) months.

11.3 Vehicle Transactions [Reserved]

11.4 [Reserved]

## Legislative History

Originally Enacted Pursuant to Tribal Council Resolution 2011-030

Amended Pursuant to Tribal Council Resolutions 2011-043, 2011-053 and 2012-055; October 9, 2012, Motion to allow amendments to §§7.2(e) and 12.2 (g) as an addition to Resolution 2012-055; Tribal Council Resolutions 2012-073, T2013-039, T2014-019 and Tribal Council Resolution T2015-073.

Amended on November 2018 by Tribal Council Resolution T2018-081.

Amended on December 26, 2018, by Tribal Council Resolution T2018-092

Amended on December 20, 2022 by Tribal Council Resolution T2022-157

## Appendix 1

The Tribe's adoption of the Michigan UCC9 as set forth in Section 10 of this Code is subject to the exceptions and comments listed in this Appendix 1.

Michigan UCC 9 Reference	Tribal UCC9 Exception or Comment
§440.9501 Filing Office	<p>Tribal UCC 9 §10.9501 shall read as follows:</p> <p>Sec. 9501.</p> <p>(1) Unless otherwise provided by Tribal law, the office in which to file a financing statement to perfect any security interest is the office of the Tribal Secretary of in all cases. The Tribal Secretary shall mark any security interests so filed with the date and time such security interest was received and maintain any such recorded interests in searchable files so that members of the public may reasonably research the priority of security interests with respect to any property subject to the Tribe's jurisdiction that has also been the subject of some financing statement filed with the Tribal Secretary.</p> <p>(2) If the Tribal Secretary receives a financing statement under subsection (1) for filing, and any debtor identified on the financing statement is an individual, the Tribal Secretary shall provide written notice of the filing of the financing statement to that debtor. The Tribal Secretary shall determine the form of the written notice and the written notice shall contain at least all of the following information:</p> <p>(a) The debtor's name and address as shown on the financing statement.</p> <p>(b) The secured party's name and address as shown on the financing statement.</p> <p>(c) The remedies available to the debtor under this act if he or she believes that the financing statement is erroneously or fraudulently filed.</p> <p>(3) In addition to the written notice described in subsection (2), the Tribal Secretary shall provide at no charge to a debtor described in that subsection a copy or image of the filed financing statement and any attachments. If the debtor requests additional copies or searches, the fees provided in section 9525 apply to that request.</p> <p>(4) A person shall not knowingly or intentionally file a false or fraudulent financing statement with the office of the secretary of state under subsection (1). A violation of this subsection is punishable under Tribal law and/or other applicable laws.</p>
§440.9612 Timeliness of notification before disposition of collateral	<p>Tribal UCC 9 §10.9612 shall read as follows:</p> <p>Timeliness of notification before disposition of collateral.</p> <p>Sec. 9612. A notification of disposition sent after default and 10 days or more before the earliest time of disposition set forth in the notification is sent within a reasonable time before the disposition.</p>

§440.9620 Acceptance of collateral in full or partial satisfaction of obligation; compulsory disposition of collateral.	Tribal UCC 9 §10.9620 shall not include subsections (5) or (7) and any related references to those subsections.
§440.9624 Waiver	Tribal UCC9 §440.9624 shall not include any special treatment with respect to consumer-goods transactions.
§440.9625 Remedies for secured party's failure to comply with article	Tribal UCC9 does not incorporate §440.9624.
§440.9626 Action in which deficiency or surplus is in issue.	Tribal UCC9 does not incorporate §440.9626.
PART 7 TRANSITION	Tribal UCC9 does not incorporate Part 7.
§ 440.9102 Definitions and index of definitions.	Tribal UCC9 specifically defines “security interest” as an interest in personal property or fixtures which secures payment or performance of an obligation. This definition does not include a consumer’s authorization for future electronic funds transfers.