

**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) The Tribe has the legal authority to license and regulate consumer financial services businesses within its jurisdiction.

(d) Properly licensed and regulated 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) Establishment of a Tribal Consumer Financial Services Regulatory Authority to implement the purpose and intent of the Tribal Financial Services Regulatory Code within the Tribe's reservation is in the best interest of the Tribe.

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 to be exercised by a Tribal Financial Services

Regulatory Authority in relation to the regulation, control, and oversight of consumer financial services 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 consumer financial services laws are enforced.

### 1.3 Policy.

(a) Tribal Policy of Self-Government. The Tribe is firmly committed to the principle of Tribal self-government. Profits from consumer financial services shall be utilized and expended only 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.
- (4) To donate to charitable organizations.

(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 responsibility for the conduct of consumer financial services authorized by this Code.

(d) Consumer Financial Services Authorized. Consumer financial services are only authorized and permitted as described in this Code and any promulgated regulations.

## 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.

2.4 “Code” means this Tribal Consumer Financial Services Regulatory Code.

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

2.6 “Consumer Financial Services” means the business of providing goods, services, or credit to consumers in transactions subject to this Code in exchange for interest, finance charges, fees, rent, or other form of consideration through transactions originated from the Tribe’s reservation or Tribe’s jurisdiction. Goods, services, or credit to consumers offered by any tribally licensed gaming operator are not consumer financial services. The term includes, without limitation, loans, small loan transactions, payday loans, credit sales, pawn transactions, sale-leaseback transactions, rent-to-own transactions, guaranties, letters of credit, or other forms of consumer financial services.

2.7 “Personal Loan Transaction” means a transaction described by Section 11.

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

2.9 “Employee Licensee” means a person that is licensed by the Authority to be employed by a Financial Services Licensee.

2.10 “Financial Services Licensee” means a person that is licensed by the Authority to engage in the business of providing consumer financial services.

2.11 “Gross Revenues” means all consumer financial services revenues collected or received by a Licensee.

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

2.13 “License” means the official, legal, and revocable Financial Services License,

Vendor License, or Employee License, or other authorization as defined by promulgated regulation. A License is a revocable privilege.

2.14 “Person” means any natural person, partnership, joint venture, association, trust, firm, estate, club, society, receiver, assignee, trustee in bankruptcy, political entity, company, corporation or other group, however organized, and any owner, director, officer or employee of any such entity or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise, as well as any business entities that are wholly owned or operated by the Tribe, or any other entity whatsoever, who engages or seeks to engage in the business of consumer financial services pursuant to this Code. The term does not include the Federal Government or federal agency, any State government or state agency, or any Tribal government or tribal governmental agency, or any arm and instrumentality thereof.

2.15 “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.

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

2.17 “Vendor” means any Person who provides or seeks to provide services to a Licensee pursuant to this Code.

2.18 “Vendor Licensee” means a Person that is licensed by the Authority to provide services to a Financial Services Licensee in connection with the marketing, origination, processing, collection, or other services related to consumer financial services.

### **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 and Purpose. The Tribal Council hereby establishes the Authority as an independent governmental subdivision of the Tribe. The purpose of the Authority is to implement the Code and to promulgate and enforce regulations on behalf of the Tribe for the benefit and interests of the Tribe and its members.

4.2 Location and Place of Business. The Authority shall maintain its headquarters, principal place of business and office on the Tribe's reservation. The Authority may, however, with a majority vote from the Tribal Council, establish other places of business in such other locations as the Authority may from time to time determine to be in the best interest of the Tribe.

4.3 Duration. The Authority shall have perpetual existence and succession in its own name, unless dissolved by the Tribal Council.

4.4 Attributes. The Tribal Council hereby empowers the Authority to operate as an autonomous and independent governmental subdivision of the Tribe, with duties as described in this Code, to administer the Code to ensure fair and compliant consumer financial services and to protect consumers.

4.5 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 by an express request to Tribal Council that is 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 necessary to secure a substantial advantage or benefit to the Authority or the Tribe.
- (3) Limited Effect of Waiver. No duly authorized express 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.

4.6 Sovereign Immunity of the Tribe; Reserved Rights. All inherent sovereign rights of the Tribe as a federally-recognized Indian tribe are hereby expressly reserved, including sovereign immunity from suit in any federal, state, or tribal court. 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, or to the levy of any judgment, lien or attachment upon any property of the Tribe. Notwithstanding any legal authority delegated to the Authority under this Code, the Tribe reserves to itself the right to bring suit against any Person or entity in its own right, on behalf of the Tribe or on behalf of the Authority whenever the Tribe deems it necessary to protect the sovereignty, rights and interests of the Tribe or the Authority.

4.7 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 not assigned in writing to the Authority.

4.8 Regulatory Agent; Compensation, Duties.

(a) Regulatory Agent; Term of Office. The Authority shall be governed by at least one (1) Agent appointed by the Tribal Council. The Tribal Council may change the number of Agents by Tribal Council Resolution as the Tribal Council deems it necessary for the Authority to fulfill its duties. The Tribal Council shall determine an Agent's term of office upon appointment.

(b) 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.

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

- (1) Oversee and have responsibility for the day-to-day operations of the Authority, including supervision of Authority employees;
- (2) Conduct or oversee Authority meetings, including maintaining meeting

records, votes, and resolutions;

- (3) Conduct and oversee implementation of 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.

(d) Agent Qualifications. A candidate for appointment as an Agent shall meet the following qualifications:

- (1) The candidate must be an enrolled member of the Tribe.
- (2) The candidate 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 candidate must be at least twenty-one (21) years old;
- (4) The candidate must have graduated high school or obtained an equivalent certification.
- (5) No candidate shall be appointed to serve as an Agent if:
  - i. The candidate's activities, criminal record reputation, habits, or associations:
    - (A) Pose a threat to the public interest;
    - (B) Threaten the effective regulation and control of financial services; or
    - (C) Enhance the dangers of unsuitable, unfair, or illegal practices, methods, or activities in the conduct of financial services.
  - ii. The candidate 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; or
  - iii. The candidate, or any Immediate Family member of the candidate, (A) has an ownership, partnership or other direct monetary or financial interest in the conduct of any Licensee or (B) is in privity with a Licensee or one of its agents, contractors, or sub-contractors. Any interest in any Licensee by virtue of a person'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.

- iv. The candidate 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.
- v. For purposes of this subsection, "Immediate Family" includes spouse or significant other, parents, children, and siblings.

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

4.10 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(d)(5).

4.11 Removal of Regulatory 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) An Agent is not entitled to any notice of removal, hearing to protest removal, or opportunity to redress any basis for removal unless specifically granted by the Tribal Council.
- (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.

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



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

(b) To examine Licensees annually and more frequently if the Authority considers it necessary.

(c) To investigate any Licensee or Person to ensure compliance with this Code, promulgated regulations, applicable federal laws, or any order of the Authority, to determine whether an act, practice, or transaction constitutes an unsafe or unsound practice, a violation of this Code, promulgated regulations, or applicable federal law, or a violation of any order of the Authority.

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

(e) Upon prior explicit resolution and approval of the Tribal Council, to employ such advisors as it may deem necessary. Advisors may include, but are not limited to, lawyers, accountants, law enforcement specialists, and financial services professionals.

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

(g) 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, promulgated regulations, and applicable federal laws,

(h) 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.

(i) 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.

(j) To discipline any Licensee or Person for violating this Code, promulgated regulations, or applicable federal law, pursuant to Sections 8 and 5.4, after affording due process as required by Section 4.17.

(k) To sue or be sued in courts of competent jurisdiction within the United States and Canada, subject to the limits on waivers of sovereign immunity in Sections 4.5 and 4.6; provided, that the Authority shall not file any claims without the prior explicit written approval of the Tribal Council.

(l) To arbitrate, compromise, negotiate, or settle any dispute to which it is a party and relating to the Authority's authorized activities, subject to approval of the Tribal Council.

(m) To impose administrative fees for issuing and processing Applications; issuance and renewal of Licenses; for background and credit checks; for reasonable examinations of Licensees; for investigations; for hearings and for services rendered relating to transcripts and the furnishing or certifying of copies of proceedings, files, and records; and to impose the forgoing fees as applicable.

(n) To establish and maintain bank accounts as may be necessary or convenient for the operation of the Authority.

(o) 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.

(p) 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.

#### 4.13 Investigations; Right of Entrance.

(a) 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 Licensee or 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) The Authority shall not make any final decisions based on the results of any investigation without affording any affected party due process pursuant to Section 4.18.
- (3) This power to investigate does not authorize the Authority to manage the day-to-day operations of a Licensee.

(b) Right of Entrance. The Authority, and duly authorized employees or agents of the Authority, may reasonably enter upon any premises of any Licensee or Person engaging in or suspected to be engaging in consumer financial services in order to investigate or examine the premises, accounts, books, papers, and documents as allowed by this Code.

(c) 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 and examination. The Authority may take enforcement action upon any intentional interference with any investigation or examination.

4.14 Annual Budget. The Authority shall prepare an annual operating budget for all Authority activities and present it to the Tribal Council no less than thirty (30) days before the Tribal fiscal year begins.

4.15 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:

- (1) Interpretations to assist with the application and enforcement of this Code;
- (2) A system for overseeing the accounting, contracting, management, and supervision of any Licensee;
- (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 and products.

(b) Promulgation. The Authority may promulgate regulations as follows:

- (1) The Tribe or any Financial Services or Vendor 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) 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) For twenty-one (21) days after notice of the proposed regulation, the Tribe

and any Licensee may submit written comments that either support, oppose, or suggest amendments on the proposed regulation.

- (5) After twenty-one (21) days:
  - i. if the proposed regulation is unopposed, it will be promulgated; or
  - ii. if the proposed regulation is opposed, the Authority may abandon the proposed regulation, amend the proposed regulation and re-notify the Tribe and Licensees, 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.

4.16 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.

4.17 Notice of Violation; Opportunity to Cure; Due Process; Notices; Hearings; Examiner.

(a) Notice of Violation. Following an investigation or upon a reasonable suspicion that a Licensee or Person has violated this Code, any promulgated regulation, Tribal law, or any applicable federal law or regulation, 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;
- (3) a timeframe to cure or otherwise respond; and,
- (4) an explanation of the recipient's rights and any regulations or other hearing procedures.

(b) 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 sixty (60) days when enforcement action involves suspension or revocation of a License,

- ii. for all other enforcement actions, a reasonable cure period, as established within the discretion of the Authority,
- (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.

(c) Voluntary Resolution. Whenever all of the interested parties involved in any dispute or concern have agreed concerning the matter at hand, the Authority may dismiss any Notice of Violation and approve the voluntary resolution of the issue, as appropriate, without a hearing.

(d) Notice of Hearing. The Authority shall, within a reasonable length of time after issuing a Notice of Violation and upon written request from a recipient of a Notice of Violation, schedule a hearing and provide a written notice setting forth, with specificity, the issues to be resolved and the date, time and place at which a hearing shall be conducted. 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.

(e) Hearing. Except as determined by the Authority, a hearing shall be scheduled to take place no less than ten (10) and no more than thirty (30) 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 Person 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. Any such regulations and procedures shall be made available upon request.

(f) Decision. 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) 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 enforcement actions, including but not limited to any licensure actions, penalties, and fees.

(g) **Administrative Appeal.** Affected parties may appeal an Authority decision issued under Section 4.17(f) by filing a written petition for review with the Tribal Court within ninety (90) days after the Authority issued its decision and order.

- (1) 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.
- (2) The petitioner must mail or email a copy of the petition for review and all attachments to the Authority.
- (3) 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.
- (4) 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 in no way waives its sovereign immunity because an administrative appeal is not a suit against the Tribe.
- (5) Unless otherwise established by Tribal Court Rule, 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 give deference to the Authority's reasonable interpretation and application of the Code.
  - iii. 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.
  - iv. 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.

## **SECTION 5. LICENSES**

### 5.1 Applicability.

(a) Subject to the exemptions set forth in Section 5.1(c), any Person seeking to engage in consumer financial services, or to provide services to a Tribally-owned Licensee is required to have a current and valid License.

(b) Every Person employed by a Financial Services Licensee in a position that routinely has substantive interaction with the consumer financial services public, is required to have a current and valid Employee License issued by the Authority.

(c) 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 Twenty-Five Thousand (\$25,000) Dollars during any twelve (12) month period for services provided to a Financial Services 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, or savings and loan association organized under federal law or the laws of any foreign government;
- (4) A lender to the Tribe or to a Tribal entity engaged in consumer financial services.
- (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) A Person providing solely pre-origination services including but not limited to credit bureaus, lead generators, marketing companies, and similar third-party service providers to a Licensee.

- (d) A License is a revocable privilege to do business within the Tribe's jurisdiction.

5.2 Application Procedure.

(a) Submission to Authority. 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. At a minimum, the Application shall request the following information:

- (1) For Applicants that are other than natural persons, identify each of the Applicant's controlling persons, e.g., its owners, officers, directors, or any others; also, identify each principal management employee, including any chief executive officer, chief financial officer, chief operating officer, and general manager. Applicants shall attach an organization chart showing its personnel hierarchy.
- (2) If the Applicant is an unincorporated business, identify each of its owners or partners.
- (3) If the Applicant is incorporated or otherwise organized and has issued shares or ownership interests, identify each of its the Persons or entities who own more than ten (10) percent of the corporation.
- (4) For each natural person listed in sub-Sections 5.2(b)(1)-(3) above, and for all Applicants that are natural persons, an Application shall supply:
  - i. each person's criminal record, and an explanation of any crimes for which he has been convicted or civil suits in which a judgment has been entered against him or to which he has entered a plea of no contest in any jurisdiction and a complete disclosure of any pending or anticipated civil or criminal action in any jurisdiction against the Applicant;
  - ii. any history of civil litigation, including any participation in any bankruptcy proceedings;
  - iii. any history of state or federal administrative or other regulatory actions; and
  - iv. written permission giving the Authority the right to check each person's background, including his criminal record and credit report.
- (5) A list of all consumer financial services-related licenses the Applicant has



ever applied for, whether or not such licenses were issued.

(6) A list of any previous contractual relationships with any Indian tribe.

(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 sworn statement attesting that the Applicant will submit to the jurisdiction of the Tribe upon licensure; the Applicant will abide by all applicable Tribal and applicable federal laws, regulations and policies; authorizing any background checks or other investigation of the information supplied in the Application; attesting that the information contained in the Application is true and correct to the best of Applicant's knowledge; and, that the Applicant will update or amend the Application when necessary to ensure all information remains accurate.

### 5.3 Review, Issuance and Denial, Term.

(a) Consumer Financial Services License. A consumer financial services License shall automatically issue to any Applicant that is wholly owned by the Tribe 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 consumer financial services are authorized pursuant to this Code;

(3) The Applicant's organizing documents contain a purpose statement that includes operating a consumer financial services business and such organizing documents are authorized by a Tribal Council Resolution; and

(4) Under this Section, the Tribe is deemed to have sole ownership interest in the Applicant: (i) when the Applicant is unincorporated and directly controlled by the Tribal government; (ii) when the Applicant is owned by multiple Persons and the Tribe owns fifty-one percent (51%) of issued shares or ownership interests; (iii) when the Applicant is formally organized and the Tribe is the sole member; and, (iv) when the Applicant is a subsidiary of any other wholly owned Tribal entity as described in this subsection.

(b) Vendor License, Employee License. Upon compliance with Section 5.2, the Authority shall review the Application to make a determination of eligibility as required under this Code. The Authority may take any appropriate action to confirm the veracity of the information supplied in the Application. The Authority may request additional information or explanation when necessary.

(c) Issuance. Upon completion of any investigation, the Authority may issue a License on a temporary, conditional, or unconditional basis. Nothing herein creates a

property right in the License. A separate License is not required for each location that the Licensee operates, but each location must be identified to the Authority.

(d) Denial. The Authority, when it does not license an Applicant shall notify the Applicant in writing that provides the basis for the denial of the License. An Applicant may contest any denial under the procedures in Section 4.17, with the denial treated in the same manner as a Notice of Violation under that section.

(e) Term. Any License issued pursuant to this section shall be effective for a period of two (2) years from the date of issuance. A temporary License may be issued for such period of time as determined by the Authority, not to exceed sixty (60) days, with an optional one-time sixty-(60)-day renewal for cause.

(f) 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.

(g) 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.

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

(a) Application Denial; Suspension or Revocation. The Authority shall not unreasonably withhold issuance or renewal of a License. The Authority may deny an Application or may suspend or revoke a License after notice and an opportunity for a hearing pursuant to Section 4.17, if the Authority finds that an Applicant or Licensee:

- (1) Failed to pay initial Application or renewal fees;
- (2) Made a material misstatement or omission on the Application or on any document required to be filed with the Authority;
- (3) Withheld or provided incomplete or insufficient pertinent information;
- (4) Failed to update an Application with new, corrected, or current information;
- (5) Is not a Person of honesty, truthfulness, or good character;
- (6) Knowingly or recklessly violated, aided, abetted, conspired with another,

or otherwise participated in a violation of this Code, promulgated regulations, or applicable federal laws or regulations;

- (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, promulgated regulations, or applicable federal laws and regulations;
- (11) Failed to take reasonable measures to ensure that an agreement with a consumer is not breached;
- (12) Is charged in any jurisdiction with any crime involving breach of trust, misrepresentation, fraud, theft or dishonesty;
- (13) Has been convicted or pled no contest to any 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;
- (16) Employed any Person whom the Licensee knew or should have known would not qualify for licensure under this Code;
- (17) Refused to comply with any lawful order, inquiry, investigation, or directive of the Authority or the Tribal Council;
- (18) Attempted to bribe or offer something of value to any Person, Tribal Council member, or Agent in an attempt to avoid or circumvent Tribal law or applicable federal law;
- (19) Stole or attempted to steal funds or other items of value from the Authority, the Tribe, or a Licensee;

- (20) Poses a threat to the public interest or the effective regulation of consumer financial services;
- (21) Creates or enhances the danger of unsuitable, unfair, or illegal practices, methods, and activities;
- (22) Is unable to manage personal or business finances;
- (23) Is sufficiently indebted to cause concern over ability to fulfill any responsibilities under this Code;
- (24) Has ceased offering consumer financial services authorized by this Code;
- (25) Has ceased providing assistance to a Financial Services Licensee for 6 consecutive months; or,
- (26) Is otherwise determined by the Commission to be unsuitable for licensure.

(b) Acts of Controlling Persons. Any conduct of any person identified on an Application under Section 5.2 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 attributable to the Licensee. For purposes of this Subsection, “controlling person” means a person who owns more than twenty-five percent (25%) interest in the Licensee or Applicant or who has the ability to affect significant business decisions or operations of the Licensee or Applicant.

(c) Procedure for Suspension, Revocation.

- (1) 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 4.17.
- (2) Such notice shall state the reason for the suspension and otherwise comply with Section 4.17.
- (3) The Licensee shall have an opportunity to request a hearing under Section 4.17.

5.5 Renewal.

(a) Renewals. To renew a License, a Licensee shall apply for a renewal before the License expires. Unless another procedure is established by promulgated regulations, a renewal procedure is governed by Sections 5.2 and 5.3.

(b) Non-renewal. The Authority may deny renewal of a License according to Section 5.4(a).

5.6 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 singular basis for denial of any subsequent Application.

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

5.8 Deposits of Fees and Assessments. Application fees, renewal fees, late payment penalties other Application fees shall be paid directly to the Authority. The Authority shall deposit such proceeds into an account or fund designated by the Tribal Council.

## SECTION 6. LICENSEES

6.1 Compliance. Licensees shall at all times comply with the provisions of this Code, promulgated regulations, other Tribal law, and applicable federal laws and regulations.

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) Except as to the Authority, a Licensee's compliance under Section 6 does not waive any defenses a Licensee may have, does not waive immunity, and does not serve as consent by a Licensee to the applicability of federal law to the Tribe, to the Authority, to the Licensee, or to any consumer financial services authorized by this Code.

### 6.3 Prohibited Acts by Licensees.

(a) A Person 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) Use or cause to be published or disseminated any advertisement that contains false, misleading or deceptive statements or representations.
- (4) Engage in unfair, deceptive or fraudulent practices.

6.4 Compliance Management System. Each Financial Services Licensee and Vendor Licensee shall maintain a compliance management system addressing its compliance with applicable Tribal and federal law and regulation.

### 6.5 Books, Accounts, and Records; Examinations; Costs.

(a) A Financial Services Licensee and Vendor Licensee shall maintain all books, accounts and records that the Authority reasonably requires. Each Financial Services Licensee and Vendor Licensee shall:

- (1) Ensure that the books, accounts, and records are sufficiently detailed to comply with the Code and all applicable Tribal and federal laws.

- (2) Maintain the books, accounts, and records separately from any other business in which the Licensee is engaged and shall retain the books, accounts and records for at least three years.
- (3) Develop and adhere to a record retention schedule that complies with this Code and any applicable Tribal and federal laws.

(b) The Authority may examine each Financial Services Licensee and Vendor Licensee annually and more frequently if the Authority considers it necessary. In conducting such examination, the Authority may examine the books, accounts, and records to determine if the Licensee is compliant with this Code, promulgated regulations, and any applicable federal law.

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

#### 6.6 Reports.

(a) Annual Reports. Upon the Authority's request or according to a promulgated regulation, Financial Services Licensees and Vendor Licensees shall submit annual reports to the Authority that contain information specified by the Authority sufficient for the Authority to determine compliance with this Code.

(b) Monthly Reports. Upon the Authority's request or according to a promulgated regulation, every Financial Services Licensee shall file a monthly report with the Authority in a time and manner specified by the Authority that contains information specified by the Authority sufficient for the Authority to determine compliance with this Code. The report shall include, at a minimum, the following information:

- (1) The name, address and telephone number of the Licensee;
- (2) The names, addresses and titles of all of the current managers of the Licensee, the current number of full-time employees, and the current number of part-time employees, which may be presented in an organization chart;
- (3) A description of the consumer financial services conducted, the number of consumers loans originated, charged off loans, and current loans in that month, a summary of any consumer complaints, and a description of any substantive operational changes or practices related to the consumer financial services;
- (4) The name and address of the agent who will accept service of process on behalf of the Licensee and of the Licensees compliance personnel.

6.7 Independent Review and Audit Requirements; Reports.

(a) Each Financial Service Licensee shall engage an independent third-party auditor(s), at least annually, to review the Licensee's compliance with applicable laws and to audit the Licensee's financial and accounting records.

(b) Upon request of the Authority, each Financial Services Licensee shall provide the Authority with a copy of all independent audits related to compliance with applicable law.

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

6.8 Public Notice. Each Financial Services Licensee shall have a copy of this Code and any implementing regulations readily available for inspection by any person 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 according to the applicable License classification. All consumer financial services transactions must be confirmed by a written agreement between a Licensee and a Consumer.

7.2 General Terms, Conditions, and Practices.

(a) Preservation of Tribal sovereign immunity and exclusive jurisdiction. Any agreement with a consumer must provide a notice regarding the preservation of tribal sovereign immunity and the exclusive jurisdiction of the Tribe over the transaction. Any agreement with a consumer must explain a consumer's limited and exclusive rights to submit any complaints related to the Agreement or the Licensee through the Tribal dispute resolution process in this Code. Notices may be contained within the consumer credit agreement and need not be provided separately.

(b) Fees and charges. Except as otherwise specified in this Code, except as otherwise specified in this Code, a consumer financial services transaction 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 a loan agreement.

(c) Attorneys' fees and Costs. A consumer financial services agreement may provide for payment of any reasonable expenses, fees, costs, and attorney fees incurred in connection with origination, servicing, protecting, collecting, or enforcing any transaction or any rights.



(d) No oral agreements. A consumer financial services transaction 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. Such provisions are enforceable and disallow evidence of prior or contemporaneous oral agreements.

(e) Late charges. A consumer financial services transaction agreement may provide for a maximum late payment charge in an amount equal to the greater of five percent (5%) of the payment amount up to thirty dollars (\$30.00).

(f) Dishonor item fees. A consumer financial services transaction agreement may allow a dishonored payment fee of not more than fifty dollars (\$50).

(g) Enforcement of Licensee's rights and remedies. A Licensee may enforce its rights to payment under any agreement with a consumer.

## **SECTION 8. ENFORCEMENT**

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

(a) Jurisdiction over Licensees. By applying for and accepting a License issued under this Code, the Authority has jurisdiction over all Licensees to enforce this Code, any promulgated regulation, and any other applicable law. No Licensee may assert tribal sovereign immunity as a defense to the jurisdiction of the Authority or to any Authority enforcement action, including any subsequent appeal or Tribal Court action arising under this Code.

(b) Jurisdiction over Consumer Financial Services; Products; Violations. The Authority 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; Indian Lands. To the extent authorized by this Code, the Authority has jurisdiction over Members, including Tribal business entities organized under Tribal law. The Authority's jurisdiction encompasses all of the Tribe's Reservation and Indian lands.

(d) Jurisdiction over Consumers; Non-Members. The Authority has jurisdiction over Consumers who enter into consensual contractual relationships (e.g., commercial dealings, contracts, leases, or other arrangements) with the Tribe, with any Licensee, or with any Member when such relationship is authorized by this Code. For all matters arising under this Code, the Authority has jurisdiction over any Consumer or Non-Member who threatens the Tribe's political integrity, economic security, or health and welfare or otherwise as

delegated by Congress.

8.2 Guidelines. In imposing any administrative remedy or civil penalty provided for in this Code, the Authority shall take into account: the appropriateness of the remedy or penalty with respect to the size of the financial resources and good faith of the Licensee charged; 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 people into complying with this Code and Authority regulations and,
- (d) to compensate any wronged party.

8.4 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 not to exceed five thousand dollars (\$5,000) for each violation, but not to exceed one hundred thousand dollars (\$100,000) in the aggregate. 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.

8.5 Cumulative Fines. All civil fines accruing under this Code shall be cumulative and a suit for the recovery of one fine shall not bar or affect the recovery of any other fine, nor bar the power of a court of competent jurisdiction to enter an order of contempt, nor bar any criminal prosecution.

8.6 Civil Action for Penalties. The Authority may proceed, in the name of the Tribe, to enforce any civil penalties by filing a civil action or registering a 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 values its Consumers 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. The Tribe intends that in all instances of uncertainty, this Code is to be construed to the benefit of the Consumer. However, within the limits of Section 8.1, nothing in this Section constitutes or shall be construed as a waiver of tribal sovereign immunity or other immunity by any Person qualified to make such assertion.

9.2 Informal Dispute Resolution Procedure. Consumers who are aggrieved by an action or inaction of a Licensee, or have a reasonable basis to support the existence of an issue as to whether or not a Licensee has committed an act or practice that is unfair or deceptive, in violation of existing tribal consumer finance laws or regulations, or not in compliance with a loan agreement, may raise the complaint with the Financial Services Licensee in writing pursuant to the terms of the consumer's loan agreement.

(a) Making a Complaint. Consumers who are aggrieved by an action or inaction of a Licensee may raise the complaint as follow:

- (1) With their Financial Services Licensee pursuant to the terms of the Consumer's loan agreement; and
- (2) With the Authority by any means sufficient for the Authority to adequately understand and convey the complaint to the appropriate Licensee.

(b) Proposed Resolution. Upon receipt of a complaint, the Financial Services Licensee must expediently gather sufficient facts to make a determination about the complaint and respond to the Consumer in writing with its determination and proposed resolution as soon as is reasonably practicable, but no longer than thirty (30) days.

- (1) The Consumer may accept the proposed resolution, in which case the matter is deemed resolved; or,
- (2) The Consumer may reject the proposed resolution and either continue to seek an amicable resolution with the Financial Services Licensee or invoke the Formal Dispute Resolution Process in Section 9.3.

(c) Penalties for Delay. If the Financial Service Licensee fails to respond to a complaint within thirty (30) days, a Consumer may choose to initiate the Formal Dispute Resolution process in Section 9.3 and may subject the Financial Services Licensee to civil fines which shall equal the outstanding principal loan amount of the consumer or one thousand five hundred dollars (\$1,500.00), whichever is greater. The Financial Services Licensee may not appeal the Authority's decision to fine or otherwise penalize a Licensee's failure to respond within the timeframes in this subsection.

(d) The Financial Services Licensee must retain all records of all consumer complaints in accordance with a record retention schedule that complies with this Code and any applicable federal laws. Electronic storage of consumer complaint records is acceptable.

### 9.3 Formal Dispute Resolution Procedure.

(a) Consumers who are dissatisfied with a Financial Services Licensee's determination and proposed resolution may request that the Authority conduct an administrative review of the Financial Services Licensee's determination.

(b) A Consumer may request an Authority review by submitting a written request to the Authority within ninety (90) days of the Financial Services Licensee's determination. The Consumer's written request 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) A copy of the Licensee's determination or an explanation of why such copy cannot be supplied.
- (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) A Consumer may request an administrative review hearing before the Authority but is not obligated to do so and may rely on written submissions. If a hearing is requested, the consumer may appear in person or by telephone. The consumer must also 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.

(c) Authority Investigations. The Authority may investigate the dispute in any manner it chooses and may request a written response to the complaint from the Financial Services Licensee as well as additional information and argument from the Consumer. The Authority may also request additional documentation or information from the consumer or Licensee, conduct interviews as needed, require sworn statements, or take other action necessary or advisable to make its determination. A failure to respond to a request by the Authority may result in a default pursuant to Section 9.3(j).

(d) Request for Hearing. Either before or after the Authority makes its own inquiries, the Authority may grant a written request for an administrative review hearing to resolve a consumer's complaint. The administrative review hearing will occur within sixty (60) days after the Authority receives the consumer's written request. The Authority will send notice to the consumer and Licensee when a request for a hearing is granted or denied.

(e) Pre-hearing Procedure. When an administrative review hearing is granted, the Authority may schedule a prehearing conference with the interested parties to discuss such matters as motions, 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. 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.

(f) Hearing Procedure.

- (1) Every contested case hearing will be before the Authority. The Authority may designate one agent as the Presiding Officer, who will conduct the hearing, administer oaths, admit or refuse evidence, and control any other aspect of the hearing he deems necessary.
- (2) A Financial Services Licensee may appear and be represented by someone knowledgeable and capable of testifying about the consumer's complaint.
- (3) A Financial Services Licensee must provide the Licensee's records pertaining to the consumer.
- (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 post-hearing briefs or 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.

(g) 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 will include its factual findings and conclusions of law. Factual findings may be based on the Authority's investigation as well as the testimony and evidence presented by the parties. The decision and order must inform the consumer of the opportunity to appeal the Authority's decision and order pursuant to Section 9.4. The Authority will mail or email a copy of the decision and order to all parties.

(h) Relief. 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.

(i) 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.

(j) 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 investigatory requests;
- (2) a Financial Services Licensee fails to answer a Consumer's complaint; or
- (3) a party fails to appear at a prehearing conference or hearing.

A default and default judgment may not be set aside but may be appealed pursuant to Section 9.4.

#### 9.4 Administrative Appellate Procedure.

(a) 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.

(b) A petition for review must include a statement describing the Consumer's complaint, the Financial Services Licensee's determination, the Authority's decision and

order, include the type of relief the Consumer is requesting, and must otherwise comply with the Tribal Court rules.

(c) The Consumer must mail or email a copy of the petition for review and all attachments to the Financial Services Licensee and to the Authority. The Financial Services Licensee may file a response within fifteen (15) 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

(d) 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 in no way waives its sovereign immunity.

(e) If the Tribal Court determines it appropriate, it will schedule oral argument within a reasonable time.

(f) Appeal Standards.

- (1) The Tribal Court shall limit its review to the record created pursuant to Section 9.
- (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 findings 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, the Tribal Court shall reverse and remand the Authority's decision.

(g) 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. Upon issuance of the Tribal Court's opinion and order, 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. PERSONAL LOAN TRANSACTIONS**

### **11.1 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.

- 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.

## **SECTION 12. VEHICLE TRANSACTIONS. [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.

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

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
<p>§440.9501 Filing Office</p>	<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>
<p>§440.9612 Timeliness of notification before disposition of collateral</p>	<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>

Tribal Consumer Financial Services Regulatory Code

§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.
[Reserved for expansion]	