

# 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 one (1) or more consumer financial services businesses is a legitimate means of generating revenue to address the aforementioned needs and pursuing the Tribe's goal of self-sufficiency and self-determination.

(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 is 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 jurisdiction of the Tribe 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 and applicable federal law.

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

(h) Adoption of a Tribal Consumer Financial Services Regulatory Code by the Tribal Council is a necessary condition for the legal operation of consumer financial services within the Band'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 Band'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 Lac Vieux Desert Band of Lake Superior Chippewa Indians for the purposes described in section 1.1(a) above.

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) to be included under Resolution 2012-055, Tribal Council Resolution 2012-073, Tribal Council Resolution T2013-037, Tribal Council Resolution T2014-019; and Tribal Council Resolution T2014-091

(b) Define general regulatory powers to be exercised by a Tribal Financial Services Regulatory Authority (“Authority”) in relation to the regulation, control, and oversight of consumer financial services businesses and their vendors.

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

(d) Ensure that consumer financial services is conducted appropriately by Licensees and borrowers and that it remains free from corrupt, incompetent, unconscionable and dishonest practices.

(e) Protect the interests of the public in the offering of consumer financial services.

(f) Ensure the maintenance of public confidence in Tribal 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 consistent with the Tribe’s preservation of sovereign immunity.

(h) Ensure that Tribal consumer financial services laws are enforced by the Tribe upon Persons involved in Tribal 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 from consumer financial services shall be utilized and expended only for the following purposes:

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

(2) To provide for the public health and general welfare of the Tribe and its 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 necessary, provided that such consumer financial services are regulated and controlled by the Tribe pursuant to this Code and the profits of such consumer financial services 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.

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) to be included under Resolution 2012-055, Tribal Council Resolution 2012-073, Tribal Council Resolution T2013-039; and Tribal Council Resolution T2014-019, Tribal Council Resolution T2014-091

(d) Consumer Financial Services Authorized. Consumer financial services that are subject to licensing under this Code are authorized and permitted only as described in this Code and any regulations of the Authority adopted under this Code.

## SECTION 2. DEFINITIONS

In this Code, except where otherwise specifically provided or unless the context otherwise requires, the following terms and expressions shall have the following meanings:

2.1 "Applicant" means any 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 "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.

2.4 "Consumer financial services" or "Tribal 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 on the Band's reservation or within the Tribe's jurisdiction, including transactions originated from the Band's reservation or Tribe's jurisdiction. The term includes, without limitation, loans, payday loans, credit sales, pawn transactions, sale-leaseback transactions, rent-to-own transactions, guaranties, letters of credit, or other forms of consumer financial services.

2.5 "Small Loan Transaction" means any form of consumer financial services transaction provided by a financial services provider to a consumer, in an amount of at least \$50.00 but no more than \$5,000 that is secured, at the time the transaction is entered into, in whole or in part, by a check, Electronic Funds Transfer, or other payment device. A Small Loan Transaction does not include a Vehicle Transaction.

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

2.7 "Employee Licensee" means a person that is licensed by the Authority to be employed by a Financial Services Licensee.

2.8 "Gross Revenues" means all consumer financial services revenues collected or received by a Licensee.

2.9 "Financial Services Licensee" means a person that is licensed by the Authority to engage in the business of providing Tribal consumer financial services.

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2.10 "License" means the official, legal and revocable Financial Services License, Vendor License or Employee License, issued by the Authority. A License relating to consumer financial services is a revocable privilege.

2.11 "Licensee" means any Financial Services Licensee, Vendor Licensee, and Employee Licensee whenever used generally in this Code.

2.12 "Code" means this Tribal Consumer Financial Services Regulatory Authority

2.13 "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, the government of the Tribe, any governmental entity of the Tribe or any of the above listed forms of 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; provided, that the term does not include the Federal Government or any agency thereof.

2.14 "Title Transaction Business" means the activities of a financial services provider in providing Vehicle Transactions and other related financial services to consumers or other persons.

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 "Tribal Financial Services Regulatory Authority" or "Authority" means the regulatory authority established and described in Section 4 of this Code.

2.17 "Tribe," "Band" or "LVD" means the Lac Vieux Desert Band of Lake Superior Chippewa Indians.

2.18 "Vendor" 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, who engages or seeks to engage in the business of providing services to a Licensee pursuant to this Code.

2.19 "Vendor Licensee" means a Person or entity that is licensed by the Authority to provide services to a Financial Services Licensee in connection with the marketing, origination, processing, or collecting consumer financial services.

2.20 "Vehicle Transaction" means any form of consumer financial services transaction provided by a financial services provider to a consumer that is secured, in whole or in part, by a

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motor vehicle, regardless of whether title is held in the name of the consumer financial services provider or consumer. The term includes, without limitation, a transaction in which title, a security interest, or other interest is obtained in favor of a financial services provider, in and to a motor vehicle. A Vehicle Transaction is not a Small Loan Transaction even if the Vehicle Transaction is secured in part by a check or Electronic Funds Transfer. The term does not include a consumer financial services transaction financing the purchase of a motor vehicle.

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

3.1 Authority. This Code is enacted pursuant to the inherent sovereign powers of the Lac Vieux Desert Band of Lake Superior Chippewa Indians 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) The Findings, Intentions, and Policies stated in Section 1 constitute the standards to be observed by the Authority in the exercise of its discretionary powers under the Code, in the adoption of implementing regulations, in the issuance of orders and declaratory statements, in the examination and supervision of Licensees, and in all matters of construction and application of the Code required for any determination or action by the Authority.

(c) No Person acting, or who has acted, in good faith reliance upon a rule, order, or declaratory statement issued by the Authority shall be subject to any criminal, civil, or administrative liability for such action, notwithstanding a subsequent decision by a court of competent jurisdiction invalidating the rule, order, or declaratory statement. In the case of an order or a declaratory statement that is not of general application, no Person other than the Person to whom the order or declaratory statement was issued is entitled to rely upon it, except upon material facts or circumstances that are substantially the same as those upon which the order or declaratory statement was based.

(d) Words of the masculine gender or neuter include masculine and feminine genders and or the neuter.

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

(f) 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 by a court of competent jurisdiction, the remaining sections shall not be affected thereby.

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3.4 Effective Date. This Code shall take effect and be in full force and effect from and after the date of its final passage and approval by the Tribal Council.

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

4.1 Establishment and Purpose. The Tribal Council hereby charters, creates and establishes the Tribal Financial Services Regulatory Authority as a governmental subdivision of the Tribe. The Authority has charge of the implementation of the Code and regulations of the Tribe relating to consumer financial services activities and associated licensing requirements.

4.2 Location and Place of Business. The Authority may maintain its headquarters, principal place of business and office within the Tribal offices. 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 pursuant to Tribal law.

4.4 Attributes. As a governmental subdivision of the Tribe, the Authority is under the direction and control of the Tribal Council, and it is the purpose and intent of the Tribal Council that the operations of the Authority be conducted on behalf of the Tribe for the sole benefit and interests of the Tribe, its members and residents of and visitors to the Tribe's reservation.

(a) Arm of Tribe. In carrying out its purposes under this Code, the Authority shall function as an arm of the Tribe.

(b) Tribal Actions. Notwithstanding any 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.

4.5 Sovereign Immunity of the Authority.

(a) Immunity from Suit. The Authority is cloaked by Tribal and federal law with all the privileges and immunities of the Tribe, except as specifically limited by this Code, including sovereign immunity from suit in any tribal, federal or state court.

(b) No Waiver. Nothing in this Code shall be deemed or construed to be a waiver of sovereign immunity of the Authority from suit, which shall only be waived pursuant to subsection 4.5.

(c) No Consent to Jurisdiction. Nothing in this Code shall be deemed or construed to be consent of the Authority to the jurisdiction of the United States or of any state or of any other tribe with regard to the business or affairs of the Authority.

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(d) Waiver of Sovereign Immunity of the Authority. Sovereign immunity of the Authority may be waived upon the recommendation of the Authority and only by express resolution of the Tribal Council.

(1) Resolution Effecting Waiver. All waivers of sovereign immunity must be preserved with resolutions of continuing force and effect issued by the Tribal Council.

(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 Nature to Waiver. Waivers of sovereign immunity shall not be general but shall be specific and limited as to duration, grantee, transaction, property or funds, if any, of the Authority subject thereto, and the court having jurisdiction pursuant thereto and law applicable thereto.

(4) Limited Effect of Waiver. Neither the power to sue and be sued provided in subsection 4.12 herein, nor any express waiver of sovereign immunity by resolution of the Tribal Council shall be deemed a consent to the levy of any judgment, lien or attachment upon property of the Authority other than property specifically pledged or assigned, a consent to suit with respect to any land within the exterior boundaries of the Tribe's reservation, or a consent to the alienation, attachment or encumbrance of any such land.

4.6 Sovereign Immunity of the Tribe. With respect to the existence and activities of the Authority, all inherent sovereign rights of the Tribe as a Federally-recognized Indian Tribe are hereby expressly reserved, including sovereign immunity from suit in any state, Federal or Tribal court. Nothing in this Code nor any action of the Authority shall be deemed or construed to be a waiver of sovereign immunity from suit or counterclaim of the Tribe, a consent of the Tribe to the jurisdiction of the United States, any state or other tribe with regard to the business or affairs of the Authority or the Tribe, a consent of the Tribe to any cause of action, counterclaim, case or controversy, or to the levy of any judgment, lien or attachment upon any property of the Tribe, a consent to suit or counterclaim in respect to any land within the exterior boundaries of the Tribe's reservation, or to be a consent to the alienation, attachment or encumbrance of any such land.

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 initially be governed by one (1) Agent appointed by the Tribal Council. The Tribal Council may increase the number of Agents by Resolution as it deems necessary to conduct the governmental

operations of the Authority. The Tribal Council shall determine an Agent's term of office.

(b) Compensation. The compensation of the Agent shall be established from time to time by the Tribal Council.

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

(2) Oversee and have responsibility for the day-to-day operations of the Authority, including supervision of Authority employees;

(3) Serve as the agent for service of process; and

(4) Conduct or oversee the conduct of any meetings or hearings held by the Authority in accordance with this Code or further directive of the Tribal Council.

(c) Agent Qualifications. Any person appointed as an Agent of the Authority shall meet the following qualifications:

(1) The Agent shall be an enrolled member of the Tribe.

(2) The Agent shall have expertise, experience, education or a combination thereof in the following areas: financial services, finance, management, business, governmental regulation, law, and/or Tribal policy.

(3) The Agent shall be at least twenty-one (21) years of age and show proof of High School Diploma or equivalent.

(4) No person shall serve as Regulatory Agent if:

A. His/her prior activities, criminal record, if any, or reputation, habits or associations:

i. Pose a threat to the public interest; or

ii. Threaten the effective regulation and control of financial services; or

iii. Enhance the dangers of unsuitable, unfair, or illegal practices, methods, or activities in the conduct of financial services.

B. He/she has been convicted of or entered a plea of no contest to any felony or to a misdemeanor involving breach of trust or dishonesty in any jurisdiction; or

4.9 He/she, or any member of his or her Immediate Family has an ownership, partnership or other direct monetary or financial interest in the conduct of any Licensee or is in privity with a Financial Services Licensee, Vendor Licensee or one of its agents, contractors, or sub-contractors; or if he or she has any other personal or legal relationship



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that places him/her in a conflict of interest with any Licensee. For purposes of this subsection, "Immediate Family" includes spouse or significant other, parents, children, and siblings. Ownership of a Licensee by virtue of membership in the Tribe is not a per se monetary or financial interest in the conduct of any Licensee.

4.10 Meetings. The Authority shall hold or participate in such meetings with the Tribal Council as are necessary and appropriate.

4.11 Prohibited Acts. The Agent 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, as borrower, accommodation endorser, surety or guarantor to any Licensee unless such indebtedness was contracted before becoming employed by or appointed to the Authority and is fully disclosed to the Authority. Notwithstanding the foregoing, an employee of the Authority other than a Commissioner may become so indebted; provided that, while the debt is outstanding, the borrower shall not participate in any examination of any Licensee conducted by the Authority and the indebtedness is:

(1) Incurred on terms no more favorable than those available to the general public, and

(2) Fully disclosed to and approved by the Chairperson before funding, including the following information:

- A. The date of the indebtedness;
- B. The amount;
- C. The interest rate; and
- D. Security.

(b) Be an officer, director, or employee of any Licensee.

(c) Own or deal in, directly or indirectly, the shares or obligations of any Vendor Licensee.

(d) Be interested in, directly or indirectly, or receive from any Licensee or any officer, director, or employee of any Licensee any salary, fee, compensation or other valuable thing by way of gift, donation, credit, or compensation for services or otherwise; except that an Agent or Authority employee is permitted to receive his or her pro-rata share of revenue that has been generated by a Licensee and is distributed among all eligible Tribal members by virtue of membership in the Tribe.

4.12 Removal of Regulatory Agent / Vacancy.

(a) Removal. The Agent may be removed by the Tribal Council for the following reasons: serious inefficiency, neglect of duty, malfeasance, misfeasance, nonfeasance,

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misconduct in office, or for any conduct which threatens the honesty and integrity of financial services or the Authority or violates the letter or intent of this Code. The decision of the Tribal Council concerning removal of a Regulatory Agent shall be final.

(b) Vacancy. If the Regulatory Agent shall die, resign, be removed or for any reason be unable to serve as an Agent, the Tribal Council shall declare his or her position vacant and shall appoint another qualified Tribal member to fill the position within thirty (30) days of the vacancy. The term of office of the person appointed to replace the Agent shall be for the balance of the unexpired term for the position.

4.13 Powers of the Authority. The Authority has the authority and responsibility for the discharge of all duties imposed by law and this Code on the Authority. In furtherance, but not in limitation of, the Authority's purposes and responsibilities, and subject to any restrictions contained in this Code or other applicable law, the Authority shall have, and is authorized to exercise the following powers and responsibilities in addition to all powers already conferred by this Code:

(a) To promulgate, adopt, and enforce regulations and rules furthering the purpose and provisions of this Code; provided that such regulations shall take effect only upon approval of the Tribal Council.

(b) To examine or inspect or cause to be examined or inspected each Licensee annually and more frequently if the Authority considers it necessary.

(c) To make or cause to be made reasonable investigations of any Licensee or Person as it deems necessary to ensure compliance with this Code or any order of the Authority, to determine whether any Licensee or Person has engaged, is engaging or is about to engage in any act, practice or transaction that constitutes an unsafe or unsound practice or violation of this Code or any order of the Authority; or to aid in adopting rules or regulations pursuant to this Code.

(d) To establish procedures designed to permit detection of any irregularities, fraud, or the like.

(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, or agent, officer or employee of any Licensee or Person, or any other witness with respect to any matters related to this Code and to compel by subpoena the attendance of witnesses and the production of any books, records, and papers with respect thereto. Upon refusal to appear or produce, the Authority may apply to a court of competent

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jurisdiction to compel appearance or production.

(h) To make, or cause to be made by its agents or employees, an examination or investigation of the place of business, equipment, facilities, tangible personal property and the books, records, papers, vouchers, accounts, documents and financial statements of any Licensee or Person engaging or participating in, or suspected to be engaging or participating in, consumer financial services.

(i) To discipline any Licensee or Person engaging or participating in consumer financial services in violation of this Code by ordering immediate compliance, issuing fines and sanctions, and suspending or revoking any License pursuant to the hearings and due process required by Section 4.18 of this Code.

(j) To sue or be sued in courts of competent jurisdiction within the United States and Canada, subject to Section 4.6 herein; provided, that no suit shall be brought by the Authority without the prior explicit written approval of the Tribal Council.

(k) To arbitrate, compromise, negotiate or settle any dispute to which it is a party relating to the Authority's authorized activities, subject to any approval of the Tribal Council that may be required by the Tribal Council.

(l) To adopt a schedule of fees to be charged for the processing, issuance and renewal of Licenses, including fees or charges associated with conducting background checks; for reasonable examinations of Licensees; 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.

(m) To establish and maintain such bank accounts as may be necessary or convenient.

(n) To make such findings as may be 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.

#### 4.14 Investigations, Right of Entrance.

(a) Investigations. The Authority, upon complaint or upon its own initiative or whenever it may deem it necessary in the performance of its duties or the exercise of its powers, may investigate and examine the operation and premises of any Licensee or Person engaging or suspected to be engaging in consumer financial services within its jurisdiction.

(1) In undertaking such investigations, the Authority may request the assistance of federal or local law enforcement officials, legal counsel and/or other third parties.

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(2) In conducting such investigation, the Authority shall make no order or final decisions without affording any affected party notice and a hearing pursuant to Section 4.18 of this Code.

(3) This power to investigate does not authorize the Authority to manage the day-to-day operations of a Licensee or Vendor Licensee.

(b) Right of Entrance. The Authority and duly authorized employees or agents of the Authority, during regular business hours, may reasonably enter upon any premises of any Licensee, Vendor Licensee, or Person engaging in or suspected to be engaging in Tribal consumer financial services for the purpose of making inspections and examining the accounts, books, papers and documents relating to consumer financial services of any such Licensee, Vendor Licensee, or Person.

(c) Aid to Entry. The staff of the Licensee, Vendor Licensee, or Person engaging in or suspected to be engaging in Tribal consumer financial services shall facilitate such inspection or examinations by giving every reasonable aid to the Authority and to any properly authorized officer or employee.

4.15 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 prior to the commencement of each operating year or part thereof.

4.16 Authority Regulations.

(a) Regulations necessary to carry out the implementation and orderly performance of the Authority's duties and powers shall include, but shall not be limited to, the following:

(1) The making of findings or other information required by or necessary to implement this Code;

(2) Interpretation and application of this Code, as may be necessary to enforce the Authority's duties and exercise its powers;

(3) A regulatory system for overseeing consumer financial services, including accounting, contracting, management and supervision;

(4) The conduct of inspections, investigations, hearings, enforcement actions and other powers of the Authority authorized by this Code; and

(5) Specification of the amount and the schedule of applicable Licensing and examination fees that shall be imposed by the Authority.

(b) No regulation of the Authority shall be of any force or effect unless it is adopted by the Authority by written resolution and subsequently approved by a resolution of the Tribal Council.

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4.17 Quarterly Report to the Tribal Council. The Authority shall file a quarterly report with the Tribal Council summarizing reports received from each Licensee and make such comments as it deems necessary to keep the Tribal Council fully informed as to the status of the Authority's activities. The Authority shall define by regulation, subject to the approval of the Tribal Council, the schedule for the submission of such reports.

4.18 Notice and Opportunity to Cure; Due Process; Notice; Hearings; Examiner. The Authority shall provide notice and a reasonable opportunity of at least sixty (60) days to cure when enforcement action of the Authority involves suspension or revocation of a License, for all other enforcement actions a reasonable cure period, as established within the discretion of the Authority, before it initiates any action to utilize any of its enforcement capabilities in the administration of its powers and duties hereunder absent exigent circumstances or other good cause. If the matter is not satisfactorily cured within that period, the Authority shall provide notice and the opportunity for a hearing comporting with notions of due process if it is to utilize any of its enforcement capabilities in the administration of its powers and duties hereunder. If enforcement action is taken based upon a showing of exigent circumstances or good cause, an aggrieved party shall be given an opportunity to object to the enforcement action and the Authority shall provide notice and an opportunity to be heard within fourteen (14) days of the occurrence of such enforcement action.

(a) No Hearing, Voluntary Resolution. Whenever it shall appear to the satisfaction of the Authority that all of the interested parties involved in any dispute or concern have agreed concerning the matter at hand, the Authority may dismiss or approve resolution of the issue, as appropriate, without a hearing.

(b) Notice of Hearing. The Authority shall, within a reasonable length of time after learning of the event giving rise to the concern, provide a written notice setting forth, with specificity, the issues to be resolved and the date and time at which a hearing shall be conducted.

(c) Hearing. Except as determined by the Authority, the hearing shall be scheduled to take place no less than ten (10) and no more than thirty (30) business days after the notice of hearing is delivered. At the hearing, the affected parties shall be provided the opportunity to present oral or written testimony to all people interested therein as determined by the Authority.

(d) Examiner. The Authority's Agent shall act as examiner for the purpose of holding any hearing, or the Agent may appoint an examiner qualified in the law or possessing knowledge or expertise in the subject matter of the hearing for the purpose of conducting any 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.

(e) Decision. The Authority shall issue a written decision to all affected parties

within thirty (30) days after the hearing.

(f) **Administrative Appeal.** Pursuant to Section 4.18 of the Code affected parties 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.

- 1) A petition for review must include a statement describing the Licensee's complaint, the determination of the Authority and must include the type of relief the consumer is requesting and a copy of the Authority's decision and order.
- 2) The Licensee must mail a copy of the petition for review and all attachments to the Authority. The Authority 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.
- 3) 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.
- 4) The Tribal Court will schedule oral argument within a reasonable time.
- 5) 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.
- 6) 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 5. LICENSES

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) to be included under Resolution 2012-055, Tribal Council Resolution 2012-073, Tribal Council Resolution T2013-039; and Tribal Council Resolution T2014-019, Tribal Council Resolution T2014-091

### 5.1 Applicability.

(a) Subject to the exemptions set forth in Section 5.1(b) herein, any Person seeking to engage in consumer financial services subject to this Code or, when applicable, any Vendor seeking to provide services to a Licensee, shall apply for and receive all required licenses prior to engaging in consumer financial services, providing services to a Financial Services Licensee, or being employed by a Financial Services Licensee.

(1) Every Vendor that receives, or is likely to receive at least Twenty-Five Thousand (\$25,000) Dollars in any twelve (12) month period from a Financial Services Licensee in exchange for directly providing origination, processing, or collection services relating to consumer financial services subject to this Code is required to have a current and valid Vendor License as issued by the Authority.

(2) 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.

(b) The following Persons are not required to obtain a License to aid a Financial Services Licensee in the provision of consumer financial services; however, said Persons are not otherwise exempt from any other provision or application of this Code:

(1) A Person or Vendor 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.

(2) A Person or Vendor who is a bank, savings bank, or savings and loan association organized under the laws of the United States.

(3) A Person or Vendor 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.

(4) A or Vendor Person licensed or otherwise authorized to engage in payment processing, money transmission, tax preparation, or the practice of law.

(5) Any Person or Vendor providing solely pre-origination services including but not limited to credit bureaus, lead generators, marketing companies or similar third-party service providers to a Licensee.

(c) A License is a revocable privilege to do business within the jurisdiction of the Lac Vieux Desert Band of Lake Superior Chippewa Indians.

### 5.2 Application Procedure.

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) to be included under Resolution 2012-055, Tribal Council Resolution 2012-073, Tribal Council Resolution T2013-037, Tribal Council Resolution T2014-019; and Tribal Council Resolution T2014-091

(a) Submission to Authority. An Applicant seeking a License shall submit an Application to the Authority on such form as the Authority may require.

(b) Application Contents. At a minimum, the Application shall contain the following information:

(1) For Applicants that are other than natural persons, each of the Applicant's owners, officers and/or directors; and principal management employees, including any chief executive officer, chief financial officer, chief operating officer, and general manager;

(2) Each of its owners or partners, if an unincorporated business;

(3) Each of its shareholders who own more than ten (10) percent of the shares of the corporation;

(4) For each person listed in sub-Sections 5.1(a) above, and for all Applicants that are natural persons, an Application for a Financial Services License, Vendor Licensee, or Employee License shall include each person's criminal and civil record, if any, 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. The Applicant shall provide written permission giving the Authority or its designees the right to the Applicant's background, including his criminal record;

(5) An Applicant for an Employee License shall provide all necessary information and written permission for the Authority or its designee to obtain the Applicant's credit history and/or credit score;

(6) A list of all consumer financial services-related licenses the Applicant has ever applied to the Authority for, whether or not such licenses were issued;

(7) The disclosure of whether there is a previous contractual relationship with an Indian tribe; and

(8) A sworn statement that if the License applied for is issued, the Applicant will submit to the jurisdiction of the Tribe; the Applicant will abide by all applicable Tribal and Federal laws, regulations and policies; and the information contained in the Application is true and correct to the best of Applicant's knowledge.

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

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



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(a) Consumer Financial Services License. A consumer financial services License shall automatically issue if the following criteria are met:

(1) The Applicant complied with the provisions of Section 5.2;

(2) No owner, partner, officer and/or director; or principal management employee of the Applicant or a shareholder who owns more than ten percent (10%) of the shares of Applicant has been, in any jurisdiction, charged with a felony or any other crime involving breach of trust or dishonesty; been convicted or entered a plea of no contest of any felony or any other crime involving breach of trust or dishonesty; had an order entered against it by an administrative agency based on conduct that involved fraud, deceit or misrepresentation by the Applicant; or had a financial judgment ordered against it in a civil action based on fraud, deceit or misrepresentation;

(3) The consumer financial services are authorized pursuant to this Code;

(4) The consumer financial services are authorized by a Tribal Council Resolution; and

(5) The Tribe has the sole ownership interest in the Tribal enterprise that provides the consumer financial services.

(b) Vendor License, Employee License. Upon compliance with Section 5.2, the Authority shall review the qualifications of the Applicant sufficient to make a determination of eligibility as required under this Code.

(c) Issuance. Upon completion of any necessary background investigation, the Authority may issue a License on a conditional or unconditional basis. The Authority shall have the final word on whether to license an Applicant. Nothing herein creates a property right in the License. The Authority may in its discretion grant a temporary License after submission of a completed application and a preliminary determination of suitability by the Authority.

(d) Denial. The Authority, when it does not license an Applicant shall notify the Applicant in writing, provide the basis for the denial of the License, and otherwise comply with the procedural requirements of section 4.18 of this Code.

(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, but not to exceed sixty (60) days, with a possible sixty-(60)-day renewal for cause.

(f) License Substance and Classification. The License shall bear on its face the name of the Licensee, the Tribal Logo, the issue date, the license number, and the applicable classification of the License. Subject to this Code, the Authority may issue Licenses that

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authorize a Licensee to provide all types of consumer financial services under this Code or a limited-purpose License that only authorizes certain types of consumer financial services under this Code. Each License shall specify its scope.

(g) Record Retention. The Authority shall maintain the Applicant's file, including applications, background investigation reports, and eligibility determination reports for no less than three (3) years from the date of termination of the relationship with Applicant.

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

(a) Denial; Temporary Suspension or Revocation. The Authority shall not unreasonably withhold issuance or renewal of a License. The Authority may deny a License or suspend or revoke a License, after notice and an opportunity for a hearing pursuant to Section 4.18 herein, 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; Withheld or provided incomplete or insufficient pertinent information;
- (3) Is not a Person of honesty, truthfulness or good character;
- (4) Violated or aided, abetted, or conspired with another Licensee or Person or knowingly or knowingly caused any Licensee or Person to or otherwise participated in violate this Code or the rules and regulations of the Authority;
- (5) Participated in consumer financial services that was not authorized by this Code;
- (6) Knowingly falsified books or records that relate to a transaction connected with the operation of consumer financial services;
- (7) Failed to keep sufficient books and records to substantiate receipts, disbursements, and expenses incurred or paid by a Licensee authorized pursuant to this Code or to substantiate, by the Authority, compliance with this Code;
- (8) Failed to take reasonable measures to ensure that an agreement with a consumer is not materially breached;
- (9) Is insolvent;
- (10) Is charged in any jurisdiction with a felony or any other crime involving breach of trust or dishonesty, so long as any temporary suspension is removed if the charges are subsequently dismissed;
- (11) Has been convicted or has entered a plea of no contest in any jurisdiction of any felony or any other crime involving breach of trust or dishonesty;
- (12) Has had an order entered against it by an administrative agency of any

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jurisdiction and the order is based on conduct that involved fraud, deceit or misrepresentation by the Applicant or Licensee and it entered after notice and an opportunity to be heard;

(13) When the Licensee is a Licensee or Licensee Applicant, has had a financial judgment ordered against it in a civil action based on fraud, deceit or misrepresentation;

(14) Employed any Person in a consumer financial services business whom the Licensee knew or should have known was convicted of fraud, theft, or embezzlement;

(15) Refused to comply with any lawful order, inquiry or directive of the Authority or the Tribal Council;

(16) Attempted to bribe or offer something of value to any Person, Tribal Council member, or a Commissioner in an attempt to avoid or circumvent Tribal law;

(17) Stole or attempted to steal funds or other items of value from the Authority or the Tribe;

(18) Poses a threat to the public interest or the effective regulation of Tribal consumer financial services;

(19) Creates or enhances the danger of unsuitable, unfair or illegal practices and methods and activities in the conduct of Tribal consumer financial services;

(20) Was a former Licensee pursuant to this Code whose License was suspended or revoked and not subsequently reinstated; or

(21) Has demonstrated an inability to manage the Applicant's personal or business finances or demonstrates a sufficient indebtedness in relation to income so as to cause concern for the Applicant's ability to fulfill its responsibilities under this Code.

(b) Acts of Controlling Persons. It is sufficient cause for denial, suspension or revocation of a License if an officer, director, partner, employee or controlling person of the Licensee or Applicant acted or failed to act in a manner that if the Licensee or Applicant acted or failed to act in that manner would be cause for denial, suspension or revocation of the License. For purposes of this Subsection, "controlling person" means a person who owns more than twenty-five percent (25%) equity interest in the Licensee or who has the ability to affect one or more significant business decisions of the Licensee or Applicant

(c) Procedure for Suspension or Revocation.

(1) Upon reasonable basis for belief that a violation of the Code has occurred, the Authority or its designee may either undertake an investigation of the Licensee, or

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serve upon such Licensee an order to show cause why the Licensee's License should not be suspended or revoked, or why the Licensee should not be enjoined from conducting consumer financial services under this Code.

(2) Such notice shall state the reason for the suspension and/or order, and the time and place for the hearing before the Authority pursuant to Section 4.18 herein.

(3) The Licensee shall have an opportunity to present testimony and cross-examine opposing witnesses, and to present any other evidence as to why a suspension, revocation order or injunction should not be issued.

(4) The hearing shall be governed in all respects in accordance with Tribal law and Authority regulations. Any suspension or revocation decision of the Authority after hearing may be appealed in accordance with the provisions of Section 4.18.

#### 5.5 Renewal.

(a) Renewals. A Licensee shall petition to have the License renewed by applying to the Authority for a renewal before the License expires. Applicants may be required to provide updated material as requested.

(b) Non-renewal. The Authority may deny renewal of a License or suspend or revoke a license with prior written notice to Licensee if the Authority finds the existence of any circumstance listed in section 5.4(a) above, or that any other fact or condition exists that, if it had existed at the time of the original application for the License, would have warranted the Authority to refuse to issue the License.

5.6 Voluntary Surrender of License. Any Licensee registered pursuant to this Code may voluntarily surrender its License at any time by giving written notice of the surrender to the Authority.

5.7 Assignment or Transfer. A License is not salable, lendable, transferable or assignable and control of a License shall not be acquired through any stock purchase or other device without the prior written consent of the Authority. The Authority shall not give consent if the Authority finds that the acquiring Person does not meet the qualifications described in this Code. For the purposes of this Subsection, "control means the power to vote more than twenty-five percent (25%) of the outstanding voting shares of a licensed corporation, partnership, association or trust.

5.8 Deposits of Fees and Assessments. Application fees, renewal fees, late payment penalties, civil penalties, administrative fines and other fees or penalties provided for in this Code shall in all cases be paid directly to the Authority. The Authority shall deposit such proceeds into an account or fund designated by the Tribal Council.

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## SECTION 6. LICENSEES

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

6.2 Federal Consumer Protection Laws. A Licensee shall conduct business in a manner consistent with principles of federal consumer protection law, including, without limitation, the following, as applicable: Truth in Lending Act, 15 U.S.C. § 1601 *et seq.*, and related regulations at 12 C.F.R. Part 226; Consumer Leasing Act, 15 U.S.C. §§ 1667 *et seq.*, and related regulations at 12 C.F.R. Part 213; Fair Credit Billing Act, 15 U.S.C. § 1666a; Equal Credit Opportunity Act, 15 U.S.C. § 1691 *et seq.*, and related regulations at 15 C.F.R. Part 202; Electronic Fund Transfer Act, 15 U.S.C. § 1693 *et seq.*, and related regulations at 12 C.F.R. Part 205; Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.* and related regulations at 12 C.F.R. Part 222); privacy provisions of Title V of the Gramm-Leach-Bliley Act, 15 U.S.C. §§ 6801 *et seq.*, and related regulations at 16 C.F.R. Part 313 and 16 C.F.R. Part 314; Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.*, and related regulations at 16 C.F.R. Part 901; Talent Amendment, 10 U.S.C § 987, and related regulations of the Department of Defense at 32 C.F.R. part 232; and Servicemembers' Civil Relief Act, 50 U.S.C. App. §§ 501-596. Notwithstanding the above, the Authority has in no way waived any defenses or position related to the applicability of the above laws to the Tribe or any Financial Services Licensee.

### 6.3 Prohibited Acts by Licensees.

(a) A Person shall not engage in the business of consumer financial services subject to this Code without first obtaining a License pursuant to this Code. A separate License is not required for each location that the Financial Services Licensee operates and deals in person with the consumers, but each location must be approved in advance by the Authority. The Financial Services 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. For purposes of this Section 6.3, the term "location" or "a location" includes a website maintained for the purpose of participating in consumer financial services pursuant to this Code.

(b) A Licensee shall not:

(1) Engage in any Tribal 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.

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- (4) Engage in unfair, deceptive or fraudulent practices.

6.4 Minimum Internal Control Systems. Each Financial Services Licensee and Vendor Licensee shall maintain a system of minimum internal control systems as specified by regulation promulgated by the Authority.

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.

(b) The Authority may examine or cause to be examined each Financial Services and Vendor Licensee annually and more frequently if the Authority considers it necessary. In conducting such examination, the Authority or its agent may examine the books, accounts and records to determine if the Licensee has complied with this Code and any implementing regulations adopted pursuant to this Code. The Licensee shall pay the cost of the examination as may be required by the Authority in accordance with its regulations. In connection with the foregoing, the Authority may include direct examination of a Financial Services Licensee or Vendor Licensee.

6.6 Reports.

(a) Annual Reports. Every Financial Services Licensee and Vendor Licensee shall file an initial report with the Authority containing the information below in 6.6(a) in a time and manner specified by the Authority and thereafter annually at the end of each calendar year if changes are made to said information. Each report shall contain information specified by the Authority sufficient for the Authority to determine compliance with this Code including, at a minimum, the following:

- (1) The name, address and telephone number of the Licensee;

- (2) The name, address and title of the principal employee of the Licensee;

- (3) A sworn statement that the Licensee has complied and will continue to comply with all applicable Tribal and federal laws applicable to consumer financial services; and

- (4) The name, address and signature of the agent who will accept service of

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process on behalf of the Licensee.

(b) Monthly Reports. Every Financial Services Licensee shall file a monthly report with the Authority in a time and manner specified by the Authority. Each report shall contain 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;
- (3) A description of the consumer financial services conducted, its Gross Revenue from the consumer financial services operation, the number of consumers served, a summary of any consumer complaints and other problems experienced by the Financial Services Licensee, and a description of any substantive changes in management personnel or practices related to the consumer financial services;
- (4) The number of full-time equivalent people, on an annualized basis, employed by the operation during the past twelve (12) months, together with a projection of the number of full-time equivalent people who are expected to be employed during the next license period;
- (5) A sworn statement that the Licensee, to the best of its knowledge, has complied and will continue to comply with all Tribal and federal laws applicable to consumer financial services;
- (6) The name, address and signature of the agent who will accept service of process on behalf of the Licensee; and
- (7) The name and address of the individual appointed by the Financial Services Licensee to perform or oversee the Financial Services Licensee's compliance function.

6.7 Audit requirements. Each Financial Services Licensee, or Vendor Licensee, with the exception of those Vendor Licensees who solely provide funds to a Financial Services Licensee for the operation of the business, shall provide to the Authority annually a copy of an independent audit designed to reflect compliance with applicable law, including such information and in a format required by the Authority.

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 site.

## **SECTION 7. AUTHORIZED CONSUMER FINANCIAL SERVICES TRANSACTIONS**

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) to be included under Resolution 2012-055, Tribal Council Resolution 2012-073, Tribal Council Resolution T2013-037, Tribal Council Resolution T2014-019; and Tribal Council Resolution T2014-091

7.1 General Authority. Subject to this Code, a Licensee may engage in the business of providing Tribal consumer financial services as provided in this Code according to the applicable License classification.

7.2 General Terms, Conditions, and Practices.

(a) Preservation of Tribal sovereign immunity and exclusive jurisdiction. The consumer must be provided a notice in a form approved by the Authority regarding preservation of tribal sovereign immunity and exclusive jurisdiction and a consumer's limited and exclusive rights to submit complaints to a Tribal dispute resolution process in accordance with this Code and regulations of the Authority. The notice 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, a consumer financial services transaction may provide for such price, interest, time price differential, rent, fees, filing fees, and other charges as agreed upon by the parties.

(c) Attorneys' fees and Costs. A consumer financial services licensee may provide for payment by the consumer of any reasonable expenses incurred by the Licensee in connection with origination, servicing, protecting, collecting or enforcing any transaction, or any rights with respect to property or security for the transaction, including, without limitation, attorneys' fees and reasonable costs to insure, recover, store, or fix-up, or dispose of any property or security.

(d) No oral agreements. A consumer financial services transaction may provide that it represents the entire agreement of 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 may provide for a late payment charge of the amount equal to the greater of 5% of the payment amount or \$30.00 whichever is greater.

(f) Dishonor item fees. A consumer financial services transaction may provide that, on return of a payment device to a holder of a consumer financial services obligation following dishonor of the payment device, the holder, the holder's assignee, agent, or representative, or any other person retained by the holder to seek collection of the dishonored payment device, may charge the drawer or endorser a reasonable processing fee of not more than fifty dollars (\$50). For purposes of this section, "payment device" means any check, item, paper or electronic payment, or other payment device used as a medium for payment.

(g) Enforcement of Licensee's rights and remedies. In any proceeding in which a Licensee is a party in interest with respect to any transactions with a consumer under this Code, the Licensee's rights and remedies shall be granted based upon prima facie proof and entitlement based upon the terms of the written transaction documents and the payment and



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business records maintained by the Licensee in the ordinary course of business. The consumer may only defend on the basis of payment. Except for payment, any claims or defenses whatsoever asserted by or on behalf of a consumer shall be subject to the sole and exclusive jurisdiction of the Tribal Dispute Resolution Procedure under this Code.

## **SECTION 8. ENFORCEMENT**

8.1 Jurisdiction. Except as provided otherwise in this Code, the Authority shall have jurisdiction over all violations of this Code.

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 Financial Services Licensee or Vendor 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 Civil Violations. Any Financial Services Licensee or Vendor Licensee who violates or fails to comply with any provision of this Code or who fails or neglects to comply with any final order of the Authority may be charged with a violation and given due process pursuant to Section 4.18 herein. If the Financial Services Licensee or Vendor Licensee is found to have committed a violation, he/it may be required to pay a civil fine to the Authority not to exceed Five Thousand Dollars (\$5,000) for each violation. Each day during which any such violation or failure to comply continues may be treated as a separate violation of this Code, but not to exceed \$100,000. A violation or series of violations related to the same act or omission may be treated as one violation.

(a) A Financial Services Licensee, Vendor Licensee, or Employee Licensee found responsible for a material violation pursuant to this Section may also be subject to revocation of the Licensee's License.

(b) If an officer or agent of a Licensee knowingly or recklessly participates in a material violation of this Code, then the Authority may immediately revoke the License of the Licensee thereby terminating said relationship. .

8.4 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, or judgment, penalty, forfeiture or damages nor bar the power of a court of competent jurisdiction to enter an order of contempt, nor bar any criminal prosecution against any officer, director, agent, or employee of any Licensee, or any other Person.

8.5 Purpose of Civil Penalties. The civil fines imposed under this Code are intended to be remedial and not punitive and are designed to compensate the Tribe for the damage done to the peace, security, economy and general welfare of the Tribe, and to compensate the Tribe for costs incurred by the Tribe in enforcing this Code. The civil fines under this Code are also

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intended to coerce all people into complying with this Code and Authority regulations and not to punish such people for violation of such laws and regulations.

8.6 Civil Action for Penalties. In enforcing the civil infraction provisions of this Code, the Authority may proceed, in the name of the Tribe against a Person for violation of such provision by civil complaint in a court of competent jurisdiction pursuant to the provisions of this Code.

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.

## SECTION 9. RESOLVING BORROWER DISPUTES

9.1 General Principles. The Tribe values its customers and intends, at all times, to see that questions, concerns, issues, and/or complaints raised by consumer borrowers are addressed in a fair and orderly manner. However, nothing in this Section shall be construed as a waiver of the Tribe's, the Authority's, a Financial Services Licensee's, its managers', or its employees' sovereign immunity or any of the rights and privileges attendant thereto.

### 9.2 Informal Dispute Resolution Procedure.

(a) Consumers who are aggrieved by an action or inaction of a Licensee may raise the complaint with the Financial Services Licensee in writing pursuant to the terms of the consumer's loan agreement.

(b) Upon receipt of a written complaint the Financial Services Licensee must expediently gather sufficient facts to make a determination about the complaint. The Financial Services Licensee must respond to the consumer in writing with its determination as soon as is reasonably practicable. If the Financial Service Licensee fails to respond to a written complaint within thirty (30) days, a consumer may choose to initiate the Formal Dispute Resolution process in Section 9.3. Such a failure to respond may subject the Financial Services Licensee to fines as determined by the Authority to be reasonable under the circumstances which shall equal the outstanding principal loan amount of the consumer or \$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.

(c) The Financial Services Licensee must retain all records of all consumer complaints in accordance with applicable law. Electronic storage of consumer complaint records is acceptable.

### 9.3 Formal Dispute Resolution Procedure.

(a) Consumers who have followed the informal dispute resolution procedure described in Section 9.2 and who are dissatisfied with a Financial Services Licensee's determination may request an administrative review by the Authority of the Financial Services Licensee's determination of compliance with the Code by submitting a written request to the Authority

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within ninety (90) days of the Financial Services Licensee's determination. The Consumer's written request must include the following information:

- i. The consumer's full name, as it appears on the consumer's loan contract, as well as the consumer's address, email address, and phone number.
- ii. A copy of the consumer's loan agreement, or otherwise identify the loan agreement.
- iii. A copy of the Licensee's determination.
- iv. 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.
- v. A statement requesting an administrative review hearing before the Authority. If a hearing is requested, the consumer must indicate whether he will appear personally or if he would prefer to appear by telephone. The consumer must also indicate whether he will be represented by an attorney or if he will represent himself.
- vi. Any other information the consumer feels may be relevant to the complaint or that may assist the Authority evaluate the complaint.

(b) 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. 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(h).

(c) 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. At a hearing, a consumer may be represented by legal counsel at the consumer's own expense. 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.

(d) 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.

(e) Hearing Procedure.

- i. 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

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oaths, admit or refuse evidence, and control any other aspect of the hearing he deems necessary.

- ii. A Financial Services Licensee may appear and be represented by someone knowledgeable and capable of testifying about the consumer's complaint.
- iii. A Financial Services Licensee must provide the Licensee's records pertaining to the consumer.
- iv. 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.
- v. The Authority may request the parties submit post-hearing briefs or evidence.
- vi. 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) Within a reasonable time after an administrative review 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 Authority will mail a copy of the decision and order to all parties. The Authority may grant or deny any relief as the Authority determines appropriate. The decision and order must inform the consumer of the opportunity to appeal the Authority's decision and order pursuant to Section 9.4.

(g) 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.

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

- i. a party fails to comply with the Authority's investigatory requests;
- ii. a Financial Services Licensee fails to answer a consumer's complaint; or
- iii. a party fails to appear at a prehearing conference or hearing.

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

(i) No attorney fees or costs incurred may be awarded.

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 at the contested case hearing, and must include the type of relief the consumer is requesting and include a copy of the Authority's decision and order.

(c) The consumer must mail 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 because an administrative appeal is not a suit against the Tribe.

(e) The Tribal Court will schedule oral argument within a reasonable time.

(f) Appeal Standards.

- i. The Tribal Court shall limit its review to the record created pursuant to Section 9.
- 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.

(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.

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

10.1 Adoption by Reference. The Tribe adopts and incorporates by reference Article 9 of the Michigan Uniform Commercial Code, MCL §440.9001 *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. In the event of any conflict between this Code and Michigan UCC9, this Code shall control. This Section 10 may be referred to as the “Tribal UCC9.”

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

10.3 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.

10.4 Exceptions. The Tribe’s adoption of the Michigan UCC9 is subject to the exceptions and comments listed in Appendix 1 to this Code.

10.5 Preservation of Sovereign Immunity and Exclusive Jurisdiction. Nothing in the Section or the Michigan UCC9 as adopted in this Section shall be construed: (a) as a waiver of the Tribe’s sovereign immunity or exclusive jurisdiction, including, but not limited to the immunity of its entities, agents, officers, employees, or elected officials; or (b) to grant jurisdiction to any other governmental agency or entity other than the Tribe.

## **SECTION 11. SMALL LOAN TRANSACTIONS**

11.1 Applicability. This Section applies to Small Loan Transactions.

11.2 Regulations. The Authority is authorized to adopt regulations with respect to Small Loan Transactions. Any Financial Services Licensee, Vendor Licensee, or Employee Licensee must comply with any regulations adopted by the Authority.

11.3. Small Loan Transactions amounts, finance charges and other requirements.

(a) Transaction amount. A Financial Services Licensee may issue Small 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 Small Loan Transaction with a consumer in which the scheduled finance charges exceed fifty dollars (\$50.00) per one hundred dollars (\$100.00) of principal per installment period. The finance charge may be calculated, earned and

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scheduled for payment as agreed by the parties as long as the finance charges as originally scheduled for payment do not exceed the maximum allowable amount set forth above.

- (c) Number of transactions at one time. A Licensee may enter into no more than three internet-based Small Loan Transactions with any consumer at any time.
- (d) Duration. A Licensee may not provide Small Loan Transactions for a term of less than three (3) days or more than forty-eight (48) months.

11.4. Reserved.

## **SECTION 12. VEHICLE TRANSACTIONS**

12.1 Applicability. This Section applies to Vehicle Transactions.

12.2 Vehicle Transactions amounts; interest; fees; and other requirements.

- (a) Transaction amount. A Financial Services Licensee may provide a Vehicle Transaction in an amount of not more than twenty thousand dollars (\$20,000.00), excluding the interest and fees permitted in this Code.
- (b) Maximum interest rate. A Financial Services Licensee shall not charge a rate of interest on a Vehicle Transaction greater than three hundred ninety percent (390%) simple interest per annum.
- (c) Processing fee. A Financial Services Licensee may charge a processing fee of up to one hundred and twenty-five dollars (\$125.00). This fee does not constitute interest.
- (d) Number of transactions at one time. A Licensee may enter into no more than three Vehicle Transactions with any consumer at any time.
- (e) Duration. Vehicle Transactions shall not exceed thirty six (36) months in duration.

12.3 Regulations. The Authority is authorized to adopt regulations with respect to Vehicle Transactions in accordance with this Section. Any Financial Services Licensee, Vendor Licensee, or Employee Licensee must comply with any regulations adopted by the Authority.

12.4 Types of Vehicle Transactions.

- (a) Title Pawns. A Licensee may engage in vehicle pawn transactions in which a loan is made upon the pledge of a motor vehicle or a motor vehicle certificate of title. It is not required that the Licensee hold possession of the motor vehicle in order to

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constitute a valid vehicle pawn transaction provided the Licensee holds possession of the certificate of title to the motor vehicle. For purposes of this Section, a “Vehicle Pawn Transaction” means any loan on the security of a pledged motor vehicle or any purchase of a pledged motor vehicle on the condition that the pledged goods may be redeemed or repurchased by the consumer pledgor or seller for a fixed price within a fixed period of time. The term does not include a Vehicle- Secured Loan or a Vehicle Sale-Leaseback Transaction. Unless otherwise agreed, a Licensee in a Vehicle Pawn Transaction has upon default the right to take possession of the motor vehicle. In taking possession, the Licensee or its agent may proceed without judicial process if this can be done without breach of the peace or may proceed by action. A pledgor shall have no obligation to redeem the pledged motor vehicle or make any payment on a Vehicle Pawn Transaction. A Vehicle Pawn Transaction not redeemed by the pledgor within the time specified in the transaction documents, or any renewal, or extension, shall automatically be forfeited to the Licensee, and unqualified right, title, and interest in and to the goods shall automatically vest in the Licensee. The Licensee shall provide the consumer with a disclosure regarding any time limit for redemption.

(b) Vehicle Secured Loans. A Licensee may engage in the business of making vehicle secured loans. For purposes of this Section, a “Vehicle Secured Loan” means a loan in which the consumer has an absolute obligation to repay, whether or not with full or limited recourse for any deficiency, and that is secured, in whole or in part, by a security interest in favor of the Licensee in a motor vehicle. A Vehicle Secured Loan does not include a Vehicle Pawn Transaction or a Vehicle Sale-Leaseback Transaction. Unless otherwise agreed, a Licensee in a Vehicle Secured Loan has upon default the right as a secured party to take possession of the motor vehicle in accordance with Tribal UCC9. In taking possession, the Licensee or its agent may proceed without judicial process if this can be done without breach of the peace or may proceed by action.

(c) Vehicle Sale-Leaseback Transactions. A Licensee may engage in vehicle sale-leaseback transactions. For purposes of this Section, a “Vehicle Sale-Leaseback Transaction” is a transaction in which a Licensee purchases a motor vehicle from a consumer for a price agreed upon the parties and then leases the motor vehicle to the consumer for rentals and other terms agreed upon by the parties. The term does not include a Vehicle Secured Loan or a Vehicle Pawn Transaction. A Vehicle Sale- Leaseback Transaction must be documented with a bill of sale from the consumer to the Licensee and transfer of title. The consumer lessee shall have no obligation to purchase the leased motor vehicle at the end of the lease term. A consumer lessee may be required to maintain the leased motor vehicle in good condition and repair, normal wear and tear excepted, and may be assessed by the Licensee based upon the condition of the leased vehicle as returned. A consumer lessee may be required to maintain insurance on the leased vehicle at the lessee’s expense. Unless otherwise agreed, a Licensee in a Vehicle Sale-Leaseback Transaction has upon default the right to take possession of the motor vehicle. In taking possession, the Licensee or its agent may proceed without judicial process if this can be done without breach of the peace or may proceed by action. A



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consumer may be provided an option to purchase the leased motor vehicle at the end of the lease upon such terms as may be agreed upon by the parties. Any repurchase by the consumer must be documented by a bill of sale from the Licensee to the consumer.

(d) Other Vehicle-Secured Transactions. A Licensee is authorized to engage in other forms of Vehicle Secured Transactions, subject to any regulations adopted by the Authority.

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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>

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Appendix 1

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) to be included under Resolution 2012-055, Tribal Council Resolution 2012-073, Tribal Council Resolution T2013-039; and Tribal Council Resolution T2014-019, Tribal Council Resolution T2014-091

§440.9612 Timeliness of notification before disposition of collateral	Tribal UCC 9 §10.9612 shall read as follows: Timeliness of notification before disposition of collateral. 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.
§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]	