

**BIG VALLEY BAND OF POMO INDIANS OF THE BIG VALLEY RANCHERIA  
CONSUMER FINANCIAL SERVICES REGULATORY ORDINANCE**

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

1.1 Findings. The primary governing body ("Tribal Business Committee") of the Big Valley Band of Pomo Indians of the Big Valley Rancheria ("Tribe"), finds that:

(a) the Tribal Business Committee 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) conducting Consumer Financial Services is a legitimate means of generating revenue to address the Tribe's aforementioned needs and 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 is consistent with announced federal policy promoting tribal self-government and economic self-sufficiency;

(e) Tribal regulation and control of Consumer Financial Services within the jurisdiction of the Tribe is essential for the protection of the public welfare;

(f) it is essential that the Tribe regulates 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 Consumer Financial Services Regulatory Ordinance ("Ordinance") by the Tribal Business Committee is a necessary condition for the legal operation of consumer financial services within the Tribe's jurisdiction and is in the best interest of the Tribe;

(i) establishment of a Consumer Financial Services Regulatory Authority ("Regulatory Authority") to implement the purpose and intent of the Ordinance within the Tribe's jurisdiction is in the best interest of the Tribe;

1.2 Intent. the Tribal Business Committee, declares that the intent of this Ordinance is to:

(a) diversify and expedite the development of the economy of the Tribe;

(b) define general regulatory powers to be exercised by the Regulatory Authority in relation to the regulation, control, and oversight of Consumer Financial Services;

- (c) ensure all revenues generated through conducting Consumer Financial Services are used for the benefit of the Tribe;
- (d) ensure that Consumer Financial Services is conducted appropriately and 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 Consumer Financial Services practices;
- (g) ensure that the Tribe provides a dispute resolution forum for the fair and orderly resolution of disputes brought by Consumers;
- (h) ensure that laws are enforced by the Tribe upon Persons involved in Consumer Financial Services.

### 1.3 Policy.

(a) Tribal Policy of Self-Government. The Tribe is firmly committed to the principle of Tribal self-government. Revenues from Consumer Financial Services shall be utilized and expended only for the following purposes to:

- (1) fund the Tribe's government operations or programs;
- (2) provide for the public health and general welfare of the Tribe and its members and visitors of the Tribe;
- (3) promote economic development and self-sufficiency; or
- (4) donate to charitable organizations.

(b) 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 Ordinance and the revenues of such Consumer Financial Services are used exclusively for the benefit of the Tribe.

(c) Responsibility for Regulation. The Tribe shall have the sole responsibility for the conduct of Consumer Financial Services authorized under this Ordinance.

(d) Consumer Financial Services Authorized. Consumer Financial Services are subject to licensing under this Ordinance are authorized and permitted only as described in this Ordinance and any regulations of the Regulatory Authority promulgated pursuant to this Ordinance.

## SECTION 2. DEFINITIONS

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

“Collection Agency” means any Person, who is licensed by the Regulatory Authority solely to engage in Debt Collection. “Collection Agency” does not mean a Person whose collection activities are confined to and directly related to the operation of another business, including, but not limited to, any Lender collecting on its own accounts.

“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.

“Consumer Financial Services” means Debt Collection and Lending collectively.

“Debtor” means a Consumer who has an obligation or alleged obligation to pay money arising out of a transaction with a Lender, whether such obligation has been reduced to judgment.

“Debt Collection” means an action, conduct, or practice in collecting, or in soliciting for collection, consumer debts that are due or alleged to be due.

“Key Participant” means a Person who has direct or indirect interest in the Collection Agency or Lender, such as executives and high-level management.

“Lender” means a Person licensed by the Regulatory Authority engaged in the business of providing Consumers with Loans.

“Lending” means the offering of an extension of credit within the Tribe’s jurisdiction.

“Licensee” means any license issued by the Regulatory Authority to a Collection Agency, Lender, Key Participant, or Vendor.

“Person” means a natural person or an organization.

“Regulatory Authority” means the governmental sub-division of the Tribe charged with implementation of this Ordinance.

“Vendor” means a Person licensed by the Regulatory Authority to provide services directly related to Consumer Financial Services, including but not limited to management services, customer service support, marketing services and software services.

## SECTION 3. GENERAL PROVISIONS

3.1 Authority. This Ordinance is enacted pursuant to the Tribe’s inherent sovereign powers and in accordance with the Tribe's Constitution.

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

(a) the provisions of this Ordinance, 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 provided in Section 1 constitute the standards to be observed by the Regulatory Authority in the exercise of its discretionary powers under the Ordinance, promulgating regulations, in the issuance of orders and declaratory statements, in the examination and supervision of Consumer Financial Services, and in all matters of construction and application of the Ordinance required for any determination or action by the Regulatory Authority.

(c) words of the masculine gender or neuter include masculine and feminine genders and are the neuter;

(d) words in the present tense include the future and past tenses; and

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

3.3 Severability. If any part of this Ordinance is invalidated by a court of competent jurisdiction, the remaining sections shall not be affected thereby.

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

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

4.1 Establishment and Purpose. The Tribal Business Committee hereby establishes the Regulatory Authority as a governmental subdivision of the Tribe. The Authority is charged with implementation of the Ordinance.

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

4.3 Duration. The Regulatory Authority shall have perpetual existence and succession in its own name, unless dissolved by the Tribal Business Committee pursuant to Tribal law.

4.4 Attributes. As a governmental subdivision of the Tribe, the Regulatory Authority is under the direction and control of the Tribal Business Committee, and it is the purpose and intent of the Tribal Business Committee that the operations of the Regulatory 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.

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

(b) Tribal Actions. Notwithstanding any powers delegated to the Regulatory Authority under this Ordinance, the Tribe reserves to itself the right to bring suit against any Person in its own right, on behalf of the Tribe or on behalf of the Regulatory Authority whenever the Tribe deems it necessary to protect the sovereignty, rights and interests of the Tribe or the Regulatory Authority.

#### 4.5 Sovereign Immunity of the Regulatory Authority.

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

(b) No Waiver. Nothing in this Ordinance shall be deemed or construed to be a waiver of sovereign immunity of the Regulatory Authority from suit in tribal, state or federal court.

(c) No Consent to Jurisdiction. Nothing in this Ordinance may be deemed or construed to be a consent of the Regulatory 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 Regulatory Authority.

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

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

(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 Regulatory 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 Regulatory 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, nor any express waiver of sovereign immunity by resolution of the Tribal Business Committee shall be deemed a consent to the levy of any judgment, lien or attachment upon property of the Regulatory 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 jurisdiction, or a consent to the alienation, attachment or encumbrance of any such land.

4.6 Sovereign Immunity of the Tribe. Unless otherwise specified in this Ordinance, 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.

4.7 Assets of the Authority. The Regulatory Authority shall have only those assets specifically assigned to it by the Tribal Business Committee, acquired in its name by the Tribe, or acquired by the Regulatory Authority on its own behalf. No activity of the Regulatory 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 Regulatory Authority.

4.8 Regulatory Agent; Compensation, Duties.

(a) Regulatory Agent; Term of Office. The Regulatory Authority shall initially be governed by Regulatory Agent(s) (or "Agents") appointed by the Tribal Business Committee. The Tribal Business Committee may increase the number of Agents by Resolution as it deems necessary to conduct the governmental operations of the Authority. Agents shall serve for a term of at least three (3) years from their appointment unless an Agent is otherwise replaced by the Tribal Business Committee. The Tribal Business Committee shall not replace more than one Agent per calendar year unless necessitated by subsection 4.11 based on events beyond the control of the Tribal Business Committee.

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

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

(1) oversee and have responsibility for the day-to-day operations of the Regulatory Authority, including supervision of Regulatory Authority employees;

(2) serve as the agent for service of process; and

(3) conduct or oversee the conduct of any meetings or hearings held by the Regulatory Authority in accordance with this Ordinance or further directive of the Tribal Business Committee.

(d) Agent Qualifications. Any Person appointed as an Agent shall meet the following qualifications:

(1) 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;

(2) the Agent shall be at least twenty-one (21) years of age and show proof of High School Diploma or equivalent;

- (3) no person may serve as Agent if
- (5) his/her prior activities, criminal record, if any, or reputation, habits or associations:
- A. pose a threat to the public interest;
  - B. threaten the effective regulation and control of Consumer Financial Services; or
  - C. enhance the dangers of unsuitable, unfair, or illegal practices, methods, or activities in the conduct of Consumer Financial Services;
- (6) 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 in the last ten (10) years from the date of appointment; or
- (7) he/she, or any member of his or her immediate family has an ownership, partnership or other direct monetary or financial interest in the conducting of Consumer Financial Services, or one of its agents, contractors, or sub-contractors; or if he/she has any other personal or legal relationship 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.

4.9 Meetings. The Regulatory Authority shall hold or participate in such meetings at least quarterly with the Tribal Business Committee.

4.10 Prohibited Acts. The Agent and Regulatory Authority employees may not do any of the following:

- (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/hired to the Regulatory Authority and is fully disclosed to the Regulatory Authority;
- (b) be an officer, director, or employee of any Licensee;
- (c) 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.

4.11 Removal of Regulatory Agent / Vacancy.

(a) Removal. The Agent may be removed by the Tribal Business Committee for the following reasons: serious inefficiency, neglect of duty, malfeasance, misfeasance, nonfeasance, misconduct in office, or for any conduct which threatens the honesty and integrity of Consumer

Financial Services or the Regulatory Authority or violates the letter or intent of this Ordinance. The decision of the Tribal Business Committee concerning removal of a Agent shall be final.

(b) Vacancy. If the Agent shall die, resign, be removed or for any reason be unable to serve as an Agent, the Tribal Business Committee shall declare his or her position vacant and shall appoint another qualified Person 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.

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

(a) to promulgate, adopt, and enforce regulations and rules furthering the purpose and provisions of this Ordinance; provided that such regulations shall take effect only upon approval of the Tribal Business Committee;

(b) to examine or inspect or cause to be examined or inspected each Licensee annually and more frequently if the Regulatory 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 Ordinance or any order of the Regulatory 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 Ordinance or any order of the Regulatory Authority; or to aid in adopting rules or regulations pursuant to this Ordinance;

(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 Business Committee, 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 any other witness with respect to any matters related to this Ordinance 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 Regulatory Authority may apply to a court of competent 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 Ordinance by ordering immediate compliance, issuing fines and sanctions, and suspending or revoking any License pursuant to the hearings and due process required by Section 4.17 of this Ordinance;

(j) to arbitrate, compromise, negotiate or settle any dispute to which it is a party relating to the Regulatory Authority's authorized activities, subject to any approval of the Tribal Business Committee that may be required;

(k) to adopt a schedule of fees, attached hereto as Exhibit A, 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;

(l) to establish and maintain such bank accounts as may be necessary or convenient;  
And

(m) to make such findings as may be necessary to implement the Regulatory Authority's duties and powers, with such findings to be given deference as the legally binding findings of a governmental entity.

#### 4.13 Investigations, Right of Entrance.

(a) Investigations. The Regulatory 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.

(2) In conducting such investigation, the Regulatory Authority shall make no order or final decisions without affording any affected party notice and a hearing pursuant to Section 4.17 of this Ordinance.

(b) Right of Entrance. The Regulatory Authority and duly authorized employees or Agents of the Regulatory Authority, during regular business hours, may reasonably enter upon any premises of any Licensee, or Person engaging in or suspected to be engaging in Consumer

Financial Services for the purpose of making inspections and examining the accounts, books, papers and documents of any such Licensee, or Person.

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

4.14 Annual Budget. The Regulatory Authority shall prepare an annual operating budget for all Authority activities and present it to the Tribal Business Committee no less than thirty (30) days prior to the commencement of each operating year or part thereof.

4.15 Authority Regulations.

(a) Regulations necessary to carry out the implementation and orderly performance of the Regulatory 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 Ordinance;

(2) Interpretation and application of this Ordinance, as may be necessary to enforce the Regulatory 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 Regulatory Authority authorized by this Ordinance; and

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

(b) No regulation of the Regulatory 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 Business Committee.

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

4.17 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 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(s) is not satisfactorily cured within that period, the Regulatory 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.

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

(b) Notice of Hearing. The Regulatory Authority shall, within ten (10) days 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 Regulatory 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 Regulatory Authority.

(d) Examiner. The 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 Ordinance with respect to any such hearing.

(e) Decision. The Agent shall issue a written decision to all affected parties within thirty (30) days after the hearing.

(f) Appeals. Affected parties may appeal an Agent's decision by filing a written appeal to the Tribal Business Committee within twenty (20) days of receiving the Agent's opinion. The Tribal Business Committee shall place the matter on the agenda of its next regularly scheduled meeting. Any decision of the Tribal Business Committee on appeal shall be final and not subject to further appeal.

## SECTION 5. LICENSES

5.1 Applicability. Any Person seeking to engage in Consumer Financial Services, Key Participants and Vendors shall apply for and receive all required licenses prior to engaging in Consumer Financial Services, providing services, or being employed as a Key Participant by a Person conducting Consumer Financial Services.

(a) 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 is not required to obtain a license to engage in Consumer Financial Services, but is required to otherwise comply with the provisions of the Ordinance.

(b) A license is a revocable privilege to do business within the jurisdiction of the Tribe.

5.2 Application Procedure.

(a) Submission to Authority. An applicant seeking a license shall submit an application to the Regulatory Authority on such form as the Regulatory 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 Key Participants such as 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) to (c) above, and for all Applicants that are natural persons, an application for a license an application for Vendor license, or Key Participant 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 Regulatory Authority or its designees the right to the applicant's background, including his criminal record;

(5) an applicant for a Key Participant license shall provide all necessary information and written permission for the Regulatory 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;

(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; and

(9) each application shall be accompanied by an application fee, the amount of which shall be set by the Regulatory Authority.

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

(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, convicted of or entered a plea of no contest to a felony or any other crime involving breach of trust or dishonesty in the last (10) years from the date of application; 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 Ordinance;

(4) the Consumer Financial Services are authorized by a Tribal Business Committee Resolution; and

(5) the Tribe has the sole ownership interest in business conducting Consumer Financial Services.

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

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

(d) Denial. The Regulatory 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 4.17 of this Ordinance.

(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 for such period of time as determined by the Regulatory 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 Ordinance, the Regulatory Authority may issue

licenses that authorize a Licensee to provide all types of Consumer Financial Services, act as a Key Participant, or act as a Vendor under this Ordinance or a limited-purpose license that only authorizes certain types of Consumer Financial Services under this Ordinance. Each license shall specify its scope.

(1) Record Retention. The Regulatory 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 employment.

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

(a) Denial; Temporary Suspension or Revocation. The Regulatory Authority shall not unreasonably withhold issuance or renewal of a license. The Regulatory Authority shall deny a license or suspend or revoke a license, after notice and an opportunity for a hearing pursuant to Section 4.17 herein, if the Regulatory 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 Regulatory Authority;
- (3) withheld or provided incomplete or insufficient pertinent information;
- (4) is not a Person of honesty, truthfulness or good character;
- (5) violated or aided, abetted, or conspired with another Licensee or Person or knowingly caused any Licensee or Person to violate this Ordinance or the rules and regulations of the Regulatory Authority;
- (6) Participated in Consumer Financial Services that was not authorized by this Ordinance;
- (7) Knowingly falsified books or records that relate to a transaction connected with the operation of Consumer Financial Services;
- (8) Failed to keep sufficient books and records to substantiate receipts, disbursements, and expenses incurred or paid by a Licensee authorized pursuant to this Ordinance or to substantiate, by the Regulatory Authority, compliance with this Ordinance;
- (9) Failed to take reasonable measures to ensure that an agreement with a consumer is not materially breached;
- (10) is insolvent;

(11) 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;

(12) 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;

(13) has had an order entered against it by an administrative agency of any 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;

(14) has had a financial judgment ordered against it in a civil action based on fraud, deceit or misrepresentation;

(15) employed any Person in a Consumer Financial Services business whom the Licensee knew or should have known was convicted of fraud, theft, or embezzlement;

(16) refused to comply with any lawful order, inquiry or directive of the Regulatory Authority or the Tribal Business Committee;

(17) attempted to bribe or offer something of value to any Person, Tribal Business Committee member, or a Agent in an attempt to avoid or circumvent Tribal law;

(18) stole or attempted to steal funds or other items of value from the Regulatory Authority or the Tribe;

(19) Poses a threat to the public interest or the effective regulation of Consumer Financial Services;

(20) Creates or enhances the danger of unsuitable, unfair or illegal practices and methods and activities in the conduct of Consumer Financial Services;

(21) Was a former Licensee pursuant to this Ordinance whose license was suspended or revoked and not subsequently reinstated; or

(22) 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 Ordinance.

(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 Ordinance has occurred, the Regulatory Authority or its designee may either undertake an investigation of the Licensee, or 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 Ordinance.

(2) Such notice shall state the reason for the suspension and/or order, and the time and place for the hearing before the Regulatory Authority pursuant to Section 4.17 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 Regulatory Authority regulations. Any suspension or revocation decision of the Regulatory Authority after hearing may be appealed in accordance with the provisions of Section 4.17.

5.5 Renewal.

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

(b) Non-renewal. The Regulatory Authority may deny renewal of a license or suspend or revoke a license if the Regulatory 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 Regulatory Authority to refuse to issue the license.

5.6 Voluntary Surrender of License. Any Licensee registered pursuant to this Ordinance may voluntarily surrender its license at any time by giving written notice of the surrender to the Regulatory 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 Regulatory Authority. The Regulatory Authority shall not give consent if the Regulatory Authority finds that the acquiring Person does not meet the qualifications described in this Ordinance. 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



Ordinance shall in all cases be paid directly to the Regulatory Authority. The Regulatory Authority shall deposit such proceeds into an account or fund designated by the Tribal Business Committee.

## SECTION 6. EXEMPTIONS

6.1 The following Persons are subject to sections 7.1 and 7.2 but otherwise exempt from any other provision or application of this Regulatory Ordinance:

- (a) Any Person providing products or services in support of a Consumer Financial Services Licensees not provided directly to Licensees;
- (b) Any national or state chartered bank that is insured by the Federal Deposit Insurance Corporation or any subsidiary thereof;
- (c) Any Person licensed or otherwise authorized to engage in payment processing, money transmission, tax preparation, or the practice of law;
- (d) Any credit bureau or similar third-party service provider or vendor engaged by a Licensee for purposes of risk assessment or similar pre-origination services.
- (e) Any other federal insured financial institution and any of their subsidiaries; and
- (f) Any employee of the above.

## SECTION 7.LICENSEES

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

7.2 Federal Consumer Protection Laws. A Licensee shall conduct business in compliance with federal consumer protection laws, including, without limitation, the following, as applicable: Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. §§ 5491-5493; 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.

7.3 Prohibited Acts by Licensees.

(a) A Person shall not engage in the business of Consumer Financial Services subject to this Ordinance without first obtaining a license pursuant to this Ordinance. A separate license is not required for each location that the licensee operates and deals in person with the consumers, but each location must be approved in advance by the Regulatory Authority. The Financial Services licensees shall post its license issued pursuant to this Ordinance at the each location or, if the location is a website, said license shall be posted electronically on each website. For purposes of this Section 6.2, the term "location" includes a website maintained for the purpose of participating in Consumer Financial Services pursuant to this Ordinance.

(b) A Licensee shall not:

(1) Engage in any Consumer Financial Services other than those allowed under this Ordinance.

(2) Assess any interest, fee, or charge fee that is greater than any applicable limitation, if any, prescribed in this Ordinance.

(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.

(5) Tie or otherwise condition the providing of Consumer Financial Services to the sale of any good or service by the Licensee.

7.4 Minimum Internal Control Systems. Consumer Financial Services licensees shall maintain minimum internal controls systems regulation as may be promulgated by the Regulatory Authority.

(a) Internal control systems regulation shall be submitted to Consumer Financial Services Licensees for review and comment prior to implementation.

7.5 Books, Accounts and Records, Examinations, Costs.

(a) Consumer Financial Services licensees and Vendors shall maintain at each location at which it conducts business all books, accounts and records that the Regulatory Authority reasonably requires. Each such licensee shall:

(1) Ensure that the books, accounts and records are sufficiently detailed to comply with the Ordinance 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 specific to its work as or in support of a Consumer Financial Services licensee.

(b) The Regulatory Authority may examine or cause to be examined each Licensee annually. In conducting such examination, the Regulatory Authority or its Agent may examine the

books, accounts and records to determine if the Licensee has complied with this Ordinance and any implementing regulations adopted pursuant to this Ordinance. The Licensee shall pay the cost of the examination as may be required by the Regulatory Authority in accordance with its regulations.

#### 7.6 Reports.

(a) Annual Reports. Every Licensee shall file an annual report with the Regulatory Authority in a time and manner specified by the Regulatory Authority. Each report shall contain information specified by the Regulatory Authority sufficient for the Regulatory Authority to determine compliance with this Ordinance including, at a minimum, the following:

- (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 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; and
- (4) The name and address of the agent who will accept service of process on behalf of the Licensee.

7.7 Audit requirements. Each Consumer Financial Services licensee shall provide to the Regulatory Authority annually a copy their financial statements which may be audited or unaudited.

7.8 Public Notice. Each Consumer Financial Services licensee shall have a copy of this Ordinance and any implementing regulations readily available for inspection by any Person at each authorized Consumer Financial Services site.

### **SECTION 8. LENDING**

8.1 General Authority. Subject to this Ordinance, a Consumer Financial Services licensee may engage in the business of providing Lending as provided in this Ordinance.

#### 8.2 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 through arbitration, or if arbitration is not used, a Tribal dispute resolution process in accordance with regulations promulgated by the Regulatory Authority.

(b) Definitions. As used in this Section 8:

(1) "Business day" means, with respect to the Right of Rescission under Section 8.2(b)(7) of this title, all calendar days except Sundays and legal public holidays.

(2) "Closed end credit" means the extension of credit by a Lender to a consumer pursuant to an arrangement or agreement which is not a revolving credit plan.

(3) "Conspicuously displayed" means highlighted through the use of capitalization, bold print, underlining or some combination thereof.

(4) "Installment loan" means a loan between \$200 and \$25,000 made to an individual consumer that charges interest and/or fees for which the stated repayment period is greater than 90 days but no longer than 5 years and is not secured by title to a motor vehicle.

(5) "Loan" means any extension of closed end credit in connection with a Lending transaction.

(6) "Revolving Credit" means any extension of open-end credit in connection with a Lending transaction.

(7) "Right of Rescission" means, with respect to any short-term consumer loan or installment loan, the right to return any amount borrowed, in full, on or before the close of business on the Business day following the day on which such sum has been disbursed or advanced without the incursion of any fee or other charges.

(8) "Rollover" means, with respect to any short-term consumer loan, the extension of an outstanding and unpaid indebtedness beyond the stated repayment period solely on the basis of the payment of a fee without approval of a new loan application.

(9) "Short-term consumer loan" means a loan of \$1,000 or less made to an individual consumer that charges interest and/or fees for which the stated repayment period is less than 60 days and is not secured by title to a motor vehicle.

(10) "Workout agreement" means an agreement between an individual consumer and a Lender for the repayment of an outstanding and unpaid indebtedness which requires a net reduction of not less than 10% of such indebtedness per payment period.

(c) Extension of credit. Any Lender may, subject to any limitations on lending authority or otherwise imposed by law and subject to the other provisions of this Section, offer and extend either closed end credit or open-end credit to a consumer and, in connection therewith, may charge and collect the interest and other charges permitted by this subchapter and may take such security as collateral in connection therewith as may be acceptable to the Lender.

(d) Interest. A Lender may charge and collect interest in respect of a loan at such daily, weekly, monthly, annual or other periodic percentage rate or rates as the agreement governing the loan provides or as established in the manner provided in such agreement and may calculate such interest by way of simple interest or such other method as the agreement governing

the loan provides. If the interest is precomputed it may be calculated on the assumption that all scheduled payments will be made when due. For purposes hereof, a year may but need not be a calendar year and may be such period of from 360 to 366 days, including or disregarding leap years, as the Lender may determine.

(e) Variable rates. If the agreement governing the loan so provides, the periodic percentage rate or rates of interest charged and collected in respect of the loan may, if the interest is not precomputed and taken in advance, vary in accordance with a schedule or formula. Such periodic percentage rate or rates may vary from time to time as the rate determined in accordance with such schedule or formula varies and such periodic percentage rate or rates, as so varied, may be made applicable to all or any part of outstanding unpaid amounts of such loan on and after the effective date of such variation. This section shall not be construed to limit the authority of a Lender to charge and collect interest in respect of a loan in the manner and at the rate or rates authorized in any other section of this subchapter. Without limitation, a permissible schedule or formula hereunder may include provisions in the agreement governing the loan for a change in the periodic percentage rate or rates of interest applicable to all or any part of outstanding unpaid amounts whether by variation of the then applicable periodic percentage rate or rates of interest, variation of an index or margin or otherwise, contingent upon the happening of any event or circumstance specified in the loan agreement, which event or circumstance may include the failure of the consumer to perform in accordance with the terms of the loan agreement.

(f) Additional charges. In addition to or in lieu of interest at a periodic percentage rate or rates permitted by 8.2(e) and (f) of this title, the Lender may charge and collect, in respect of a loan:

(1) If the agreement governing the Loan so provides, charge and collect any other fees or charges, costs, points, premiums and all other expenses which may be assessed by the Lender in connection with the Loan.

(2) If the agreement governing a Loan so provides, a Lender may impose, as interest, a late or delinquency charge upon any outstanding unpaid installment payments or portions thereof under the loan agreement which are in default; provided, however, that no more than one (1) such delinquency charge may be imposed in respect of any single such installment payment or portion thereof regardless of the period during which it remains in default. Nothing contained in this subdivision shall limit, restrict or otherwise affect the right of a Lender under and pursuant to 8.2(e) of this title to change the periodic percentage rate or rates of interest applicable to the loan agreement between the Lender and a consumer upon the occurrence of a delinquency or default or other failure of the consumer to perform in accordance with the terms of the loan agreement;

(3) Such other charges as are set forth in the agreement governing the loan including, but not limited to, costs, fees, services, points, premiums and all other reasonable expenses which may be incurred by such applicant in connection with a Loan. No Lender shall demand, collect or receive from any applicant for a loan, directly or indirectly, any other charges, or any greater amounts for any authorized charges than those permitted by this subchapter.

(g) Deferred installments. A Lender may at any time or from time to time permit a consumer to defer installment payments of a loan and may, in connection with such deferral, charge and collect deferral charges.

(h) Refinancing.

(1) A Consumer may, with the consent of the lender, refinance the entire outstanding and unpaid amount of a loan, and the lender may charge and collect a refinancing charge in connection with any such refinancing.

(2) For the purposes of this section, the entire outstanding and unpaid amount of a loan shall be deemed to be the total of the unpaid balance and the accrued and unpaid interest and charges on the date of refinancing.

(i) Short-term consumer loans and Installment loans.

(1) In addition to such other limitations and requirements as are imposed pursuant to other provisions of this subchapter, short-term consumer loans and Installment loans shall be subject to the following:

A. No Lender shall make more than six (6) rollovers of an existing short-term consumer loan. A Lender may, following not more than the maximum allowable number of rollovers, enter into a workout agreement with the consumer or take such other actions as are lawful to collect any outstanding and unpaid indebtedness.

B. No Lender shall make a short-term consumer loan unless such loan is subject to a right of rescission on the part of the individual consumer.

C. No Lender shall pursue or threaten to pursue criminal action against an individual consumer in connection with the nonpayment of any amount due, including the unpaid return of any check or automated clearing house transaction.

(2) In addition to such other disclosure requirements as are imposed pursuant to other provisions of this subchapter, short-term consumer loans and installment loans shall be subject to the following: No Lender shall make a short-term consumer loan or an installment loan unless the application for such loan contains a written disclosure, conspicuously displayed, that:

A. The loan is designed as a short-term cash flow solution and not designed as a solution for longer term financial problems;

B. Additional fees and interest may accrue if the loan is rolled over or refinanced; and

C. Credit counseling services are available to consumers who are experiencing financial problems.

(3) Nothing in this section prohibits a Lender from refinancing the principal amount of a short-term consumer loan or an installment loan, subject to the limitations and requirements imposed herein.

(4) Every Lender must post on any website a prominent statement that: "This loan is not intended to meet long-term financial needs."

(j) Revolving Credit products. In addition to such other disclosure requirements and limitations imposed by federal law and outlined herein, Revolving Credit Lending shall be subject to each of the following:

(1) Right of rescission. No Lender shall issue a Revolving Credit loan product unless such loan is subject to a right of rescission of no less than three (3) days after extension of credit on the part of the individual consumer.

(2) No threatening criminal action. No Lender shall pursue or threaten to pursue criminal action against an individual consumer in connection with the nonpayment of any amount due, including the unpaid return of any check or automated clearing house transaction

(3) Interest, fees and rates. All interests, fees, and rates associated with the Revolving Credit loan product must be disclosed in the Lender's consumer agreement and appear in a table clearly setting forth all terms, including when such terms can or will be triggered. This table must be in-writing and delivered to the client unless the client consents to e-delivery. These disclosures must be made before the first transaction under the plan.

(4) Conditional fees. The loan agreement must conspicuously disclose any and all account opening fees, cash advance fees, late payment fees (and the grace period for repayments), over the limit fees, balance transfer fees, returned payment fees, insurance fees (if applicable), termination fees, and default, cancellation, or debt suspension fees.

(5) Hardship Arrangements. Lenders that enter into hardship arrangements with consumers may impose higher rates, fees, or charges so long as there is a clear and conspicuous written disclosure of the terms.

(6) Periodic rate terms. If applicable, a lender must conspicuously disclose that the interest rate is variable, along with an explanation of how and why the rate would vary, including:

- i. The range of balances to which the rate is applicable;
- ii. The type(s) of transaction(s) to which the rate applies
- iii. How the rate is determined, and how it may increase or decrease, any limitation on how the rate might change, and the effect of a rate increase

- iv. Variable interest rates must vary in direct response to publicly-available information that is not controlled by the lender.

(7) Periodic statements and disclosures. A Lender shall provide a written statement to every client with a debit or credit balance of at least \$1 at the beginning of each billing cycle that conspicuously provides the following information:

- A. The opening account balance (i.e. the account balance at the beginning of the cycle);
- B. An identification of each credit transaction, including any credits to the account (i.e. funds advanced to consumer, funds repaid by consumer, interest or fees accrued or credited);
- C. All interest charges and fees, presented in tabular format alongside each credit transaction, along with a simple explanation of how the charge was determined.
- D. If applicable, for promotional, introductory or temporary rates, a statement that the rate is temporary, when the final date for the rate will be, and what the rate will be after that point.
- E. A notice regarding the client's right to dispute charges and an address for submitting notice of such disputes as well as notice of billing errors;
- F. The closing date of the present billing cycle and payment due date, as well as a statement of what fees may apply if minimum payment is not made by that date.
- G. Changes to terms of agreement that negatively impact the consumer. A Lender shall provide no less than forty-five (45) days prior written notice to its consumer before a change to its loan agreement related to increases in penalty or default rates .
- H. Conversion to closed-end credit. A Lender may decline to extend further credit to a consumer and thereby convert the revolving account into a closed-end credit. New account opening disclosures must be made for the closed-end account as if it were a new account when the account is converted. Unless the client agrees in writing, the APR must be at least as favorable to the client as it was before the account was converted.

(8) Credit Card Accounts. Revolving Credit Lending products that are accessed by a credit card shall comply with the following:



A. Interest Rate, Fees, or Charges Increases. A Lender may not increase the interest rate, fee schedule, or applicable charges unless one of the following applies:

i. Promotional Periods Exception. Upon the expiration of an agreed-upon period provided that: (1) such period is at least six months long, (2) prior to commencement of the period, the Lender disclosed in clear and conspicuous writing the terms and length of the period, the date on which it would expire, and the terms that would apply afterwards, and (3) the terms of the promotional period will continue to apply to the funds extended during the promotional period and all credit extended for 14 days after the expiration of the promotional period.

ii. Variable Rates Exception. According to an index that is: (1) not under the control of the lender, and (2) publicly-available, provided that: (i) the variable nature of the interest rate is disclosed in clear and conspicuous writing and (ii) the interest rate actually increases according to the index.

iii. Advance Notice Exception. When: (1) the change is not made within the first year of the account, (2) the change is not made while the account is closed or in a period of forced inactivity, (3) 45 days prior to commencement of the increase, the Lender disclosed in clear and conspicuous writing the terms that would apply, and (4) the previous terms will continue to apply to the funds extended until 14 days after noticed date of the rate change. In the event a rate increase is imposed as a penalty for one or more account agreement breaches, the Lender may increase the rate provided that, 45 days prior to commencement of the increase, the consumer receives a statement that: (1) the increased rate has been triggered, (2) the date on which the penalty rate will apply, (3) the circumstances under which the new rate will cease to apply, including if such rate shall continue indefinitely, (4) which balances the new rate will apply to, (5) if applicable, the balances the old rate will apply to, and (6) a list of no more than four reasons for the increase.

iv. Delinquency Exception. If the consumer misses two consecutive required minimum monthly payments, provided that: (1) the customer receives a written statement stating in a clear and conspicuous manner the reason for the increase and that the increase in fees, charges, or interest rate will cease to apply once the consumer has made six consecutive required minimum monthly payments on or before the due date, and (2) if the next six consecutive required minimum monthly payments after notice are received on or before the due date, the Lender shall revert to the original lower rate for all credit extended for the 14 days before and after the delinquency notice.

v. Temporary Hardship Agreement Exception. If the consumer agrees to a temporary hardship arrangement, provided that: (1) the Lender discloses the terms of the arrangement in writing in a clear and conspicuous manner, (2) the consumer agrees to the terms, and (3) upon completion or failure of the agreement, the Lender must not apply the new interest rate, fee schedule, or applicable charges to credit extended before commencement of the arrangement.

vi. Servicemembers Civil Relief Act Exception. A Lender providing a reduced interest rate, fee, or charge pursuant to the Servicemembers Civil Relief Act may increase those rates, fees, or charges once that Act no longer applies, provided that the Lender does not apply an increased interest or fee structure to any credit extended prior to the decrease.

B. For any significant change in any of the terms of the account, the Lender must notify the consumer of their right to reject, which the consumer may exercise by notifying the Lender of their intent to reject before the effective date of the change. This statement must include (1) instructions for rejection, including a toll-free number, and (2) if applicable, a statement that the consumer's ability to use the account will be terminated or suspended if the consumer rejects. This section does not apply to accounts that are delinquent for two or more required minimum monthly payments.

C. If the consumer rejects the change, the Lender must not (1) apply the change to the account, (2) impose a fee or charge due to the rejection, or (3) require repayment of the balance on the account using a method that is less beneficial to the consumer than prescribed by subsection iv below. This does not apply to changes due to delinquency.

D. Repayment of Non-Delinquent Balances. For accounts which are not delinquent for two consecutive monthly payments, a Lender that increases the interest rate on an account cannot require payments that:

i. Are less favorable to the consumer than the previous payment structure.

ii. Require an amortization period of less than five years.

iii. Require a minimum monthly payment with a payment towards principal that is more than twice the required percent payment toward principal before the increase.

This section continues to apply even after the account is closed or its balance is transferred to a different type of account.

E. Reduction in Credit Limit. A Lender may reduce the available credit, provided that: (1) the change is not made within the first year of the account, and (2) Lender has disclosed in clear and conspicuous writing the terms that would apply.

F. Offsetting. A Lender may not use funds from a second account or otherwise freeze that account based on the delinquency of the card account unless the Lender is enforcing a periodic deduction arrangement or a security agreement in those funds specifically agreed to in clear and conspicuous writing by the consumer.

G. Fraudulent use of Credit Card. A Lender may not, under any circumstances, hold a consumer liable for more than \$50 for the unauthorized use of a credit card, or the actual amount of the unauthorized use, whichever is less. In addition, a Lender may also not hold a consumer liable for:

i. the unauthorized use of a credit card that is not a generally-accepted credit card.

ii. the unauthorized use of a credit card unless the Lender has provided the consumer notice that: (1) maximum liability is \$50 or the amount of the transaction, whichever is less, (2) the consumer may give oral or written notification of the loss or theft of the card, and (3) the means of notifying the Lender of the loss or theft of the card.

iii. the unauthorized use of a credit card after the Lender has received notice that the card is lost or stolen.

iv. the unauthorized use of a credit card unless the Lender has provided a means to identify the cardholder on the account, such as a signature.

H. A Lender must disclose on either the front or the back of the card instructions for the consumer to cancel the card, including a toll-free number for the consumer to call.

I. A Lender must disclose all renewal fees prior to charging such fees. If the renewal fee is periodic, the Lender must disclose in clear, conspicuous writing that the fee will be charged at least 30 days before the charge. If the fee is for renewing a closed account, the consumer must receive written notice before the renewal fee can be charged. These disclosures must contain the amount of the fee, as well as instructions regarding the consumer's right to reject.

J. A Lender may not prevent a third party from offering a discounted rate for consumers who pay in cash.

K. A Lender must credit third-party refunds to the consumer's account within three (3) business days of receiving the refund.

(k) No oral agreements. A Lending transaction may provide that it represents the entire agreement of the parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. Such provisions are enforceable and disallow evidence of oral agreements.

(l) Enforcement of Lender's rights and remedies. In any proceeding in which a Lender is a party in interest with respect to any transactions with a Consumer, the Lender'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 business records maintained by the Lender in the ordinary course of business.

## SECTION 9. DEBT COLLECTION

9.1 Authorized Conduct. Subject to this Ordinance, a Collection Agency may engage in the business of Debt Collection. However, no person may operate a Collection Agency within the jurisdiction of the Tribe, unless said Person has received a license from the Regulatory Authority.

9.2 Protection of Debtors. It is the purpose of Section 9 to promote Debtor protections by eliminating abusive Debt Collection practices and ensuring compliance with Tribal and applicable federal law.

9.3 Collection Agency License. No person shall operate within this jurisdiction a Collection Agency, without having first applied for and obtained a Collection Agency license.

9.4 Licensure Exemption. Any Lender who collects on its own accounts may not be required to obtain a Collection Agency license. Although Lenders may not be required to obtain a Collection Agency license, Lenders shall comply with Section 9.6.

9.5 Collection Agency Duties. All Collection Agency licensees shall:

- (a) at all times comply with this Ordinance, rules and regulations promulgated pursuant to this Ordinance, and all other applicable Tribal and federal laws;
- (b) provide the Regulatory Authority written notice of a material change, including but not limited to, company name, address, management, bankruptcy, reorganization, complaints or felony convictions against Licensees or Key Participants, not later than ten (10) days after the change occurs;
- (c) establish procedures to follow when screening an employee for employment, which at a minimum shall include:

- i. a national criminal history record search; and
  - ii. a county criminal history search for all counties where the employee has resided the previous five (5) years.
- (d) post license and Ordinance in a conspicuous place in all physical locations where the business is transacted and the website;
- (e) preserve books, accounts and records required by the Regulatory Authority for a period of three (3) years;
- (f) at the expense of Collection Agency, provide the Regulatory Authority access to investigate books, accounts and records;
- (g) submit monthly reports with details of updated Vendors, or Key Employee's as required by the Regulatory Authority;
- (h) submit annual reports to the Regulatory Authority which at a minimum shall include:
  - i. name, address and contact information for Collection Agency licensee, Vendors and Key Participants;
  - ii. description of Debt Collection activities conducted;
  - iii. sworn statement Collection Agency has complied with Tribal and applicable federal laws; and
  - iv. the name and signature of agent who will accept service of process on behalf of the Collection Agency.
- (i) conduct independent audits to ensure compliance with Tribal and applicable federal laws.

9.6 Prohibited Acts. All Collection Agency licensees may not:

- (a) in collection letters or publications, or in any communication, oral or written, threaten wage garnishment or legal suit by a lawyer, unless it has retained the lawyer;
- (b) use or threaten to use methods of collection which violate Tribal or applicable federal laws;
- (c) furnish legal advice or otherwise engage in the practice of law or represent that it is competent to do so;

- (d) communicate with Debtors in a misleading or deceptive manner by using the stationary of a lawyer, forms or instruments which only lawyers are authorized to prepare, or instruments which simulate the form and appearance of judicial process;
- (e) operate under a name or in a manner which implies the Collection Agency is a branch of or associated with any department of federal, state, county or local government or an agency thereof;
- (f) violate any provisions of the Fair Debt Collection Practices Act of 1977, Public Law 95-109, while attempting to collect on any account, bill or other indebtedness;
- (g) communicate with a Debtor by use of a recorded message utilizing an automatic dialing announcing device unless the recorded message is immediately preceded by a live operator who discloses prior to the message the name of the Collection Agency and the fact the message intends to solicit payment and the operator obtains the consent of the Debtor to hearing the message;
- (h) when attempting to collect a debt, fail to provide the Debtor with the full name of the Collection Agency as it appears on its license;
- (i) fail to return any amount of overpayment from a Debtor to the Debtor;
- (j) accept currency or coin as payment for a debt without issuing an original receipt to the Debtor and maintaining a duplicate receipt in the Debtor's payment records; or
- (k) falsify any Collection Agency documents with the intent to deceive the Regulatory Authority.

## SECTION 10. PRIVACY PROTECTION

10.1 Protection of Debtors and Consumers. In addition to other protections afforded to Debtors and Consumers under Tribal law and applicable federal laws, Debtors and Consumers of the Tribe also enjoy privacy protections to provide protections of personal identifiable information.

10.2 Debtor and Consumer Rights. Debtors and Consumers may request:

- (a) documentation for what personal information is collected, used and shared;
- (b) their personal information to be deleted, so long as the information deleted would solely be used for marketing purposes.

10.3 Collection Agency and Lender Obligations. Collection Agencies and Lenders shall:

- (a) establish procedures with a timeframe to respond to requests for documentation as provided in Section 10.2(a) and provide opt-out instructions on the website and marketing materials; and
- (b) establish procedures to verify the Debtor or Consumer is in the Licensees system and provide adequate notice to the Debtor or Consumer for how the request was handled.

## **SECTION 11. ENFORCEMENT**

11.1 Jurisdiction. Except as provided otherwise in this Ordinance, the Regulatory Authority shall have jurisdiction over all violations of this Ordinance.

11.2 Guidelines. In imposing any administrative remedy or civil penalty provided for in this Ordinance, the Regulatory 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.

11.3 Civil Violations. Any Licensee who violates or fails to comply with any provision of this Ordinance or who fails or neglects to comply with any final order of the Regulatory Authority may be charged with a violation and given due process pursuant to Section 4.17 herein. If the Licensee or Person is found to have committed a violation, he/it may be required to pay a civil fine to the Regulatory 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 Ordinance, 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 Licensee found responsible for a material violation pursuant to this Section may also be subject to revocation of the 'license.

(b) A Key Participant who knowingly or recklessly participates in a material violation of this Ordinance may be subject to termination by the Regulatory Authority.

11.4 Cumulative Fines. All civil fines accruing under this Ordinance 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.

11.5 Purpose of Civil Penalties. The civil fines imposed under this Ordinance 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 Ordinance. The civil fines under this Ordinance are also intended to coerce all people into complying with this Ordinance and Regulatory Authority regulations and not to punish such people for violation of such laws and regulations.

11.6 Civil Action for Penalties. In enforcing the civil infraction provisions of this Ordinance, the Regulatory 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 Ordinance.

11.7 Seizure and Forfeiture of Property. Property utilized in violation of this Ordinance shall be subject to seizure and forfeiture by order of the Regulatory Authority pursuant to such implementing regulations as the Regulatory Authority shall promulgate.

## SECTION 12. RESOLVING CONSUMER DISPUTES

12.1 Arbitration. Lenders shall provide agreements to arbitrate as a form of dispute resolution to Consumers. Such agreements are required to be enforceable to the fullest extent allowable under Tribal law and applicable federal law.

12.2 Arbitration Requirements. A Lender shall provide that disputes involving or arising out of or relating to Consumer Financial Services be resolved by way of binding arbitration, which at a minimum may not require the consumer to:

- (a) prospectively waive any federal rights;
- (b) travel more than 100 miles from their residence for any arbitration proceeding; and
- (c) pay the Lender's attorney's fees incurred in connection with the arbitration proceeding.

12.3 Individual Arbitration. If a Consumer conspicuously waives their right to proceed on a class wide basis or in any other representative capacity within the arbitration agreement, arbitration shall be limited to individual arbitration.

12.4 Sovereign Immunity. A Lender shall grant a limited waiver of sovereign immunity to Consumers only to the extent necessary to enforce an arbitration award under Federal Arbitration Act. The waiver shall only apply regarding claims seeking enforcement of an arbitration award against the assets of the Lender, and not the Tribe. In no event shall the waiver apply to class-wide or representative claims.

12.5 Consumer Option to Opt Out of Arbitration. A Lender shall provide Consumers with an option to opt out of arbitration that is clear and conspicuous. The option to opt out shall be limited as follows:

- (a) Consumer may not have more than forty-five (45) days from executing the Loan Agreement, to provide Lender with arbitration opt-out notice;
- (b) Claims are limited to being brought pursuant to the Tribal dispute resolution procedures adopted by Regulatory Authority regulation as set forth herein;



(c) the limited waiver of sovereign immunity granted under Section 12.4 does not apply; and

(d) any class action waiver shall continue to remain in effect.

12.6 Informal Dispute Resolution. Nothing in this subchapter precludes a Lender from resolving a dispute with a Consumer through informal means.

**THE BIG VALLEY BAND OF POMO INDIANS OF THE BIG VALLEY RANCHERIA  
TRIBAL CONSUMER FINANCIAL SERVICES REGULATORY ORDINANCE**

**EXHIBIT A**

Application Fee to become a Financial Services Licensee.....	\$250.00.
Application Fee to become an Key Participant of a Licensee.....	\$100.00.
Application Fee to become a Vendor Licensee.....	\$250.00.

# **TITLE III**

## **CONSUMER RIGHTS**

### **TRIBAL CONSUMER FINANCIAL SERVICES REGULATORY AUTHORITY ALTERNATIVE DISPUTE RESOLUTION FOR CONSUMERS**

#### **I. AUTHORITY; SCOPE; GENERAL PROVISIONS**

##### **1.01 Authority.**

The Tribe has the legal authority to license and regulate Consumer Financial Services businesses pursuant to Section 1.1(c) of the Big Valley Band of Pomo Indians of the Tribal Consumer Financial Services Regulatory Ordinance (“Ordinance”). The Tribal Consumer Financial Services Regulatory Authority (“Regulatory Authority”) is empowered to promulgate regulations to implement the power and authority of the Ordinance pursuant to §§ 4.12(c) and 4.15 of the Ordinance.

##### **1.02 Scope.**

As provided in §§ 1.3(c) and 4.15(a)(4) of the Ordinance, this Regulatory Authority’s Alternative Dispute Resolution for Consumers Regulation (“Regulation”) shall govern the practice and procedure of all Alternative Dispute Resolution for Consumers who opt out of arbitration pursuant to Ordinance § 12.5.

##### **1.03 Effective Date.**

This Regulation shall take effect immediately upon publication by the Regulatory Authority and governs all proceedings in actions brought on or after the date the Regulatory Authority publishes this Regulation, and all further proceedings in actions then pending.

##### **1.04 Construction of Regulation.**

This Regulation shall be construed to secure a fair, efficient, and impartial determination of consumer complaints asserted against Lender Licensees consistent with due process. The procedures set forth in this Regulation apply to all consumers who opt out of the dispute resolution provision of their individual consumer loan agreements with a Lender Licensee consistent with Ordinance § 12.5.

##### **1.05 Definitions.**

All capitalized terms used herein are as defined in the Ordinance. Additionally, the following definitions apply:

- A. “Alternative Dispute Resolution for Consumers” means the dispute resolution procedure outlined in this Regulation that is applicable to consumers who opt out of arbitration pursuant to § 12.5 of the Ordinance.
- B. “Date of Receipt” means the date on which the Regulatory Authority receives a filing.
- C. “Petition” means an Alternative Dispute Resolution Petition filed to initiate a proceeding pursuant to this Regulation.
- D. “Petitioner” means a consumer in privity of contract with a Financial Services Licensee who files a Petition.
- E. “Proceeding” means the arguing and consideration of the consumer’s Petition pursuant to this Regulation.
- F. “Respondent” means a Lender Licensee against whom a Petition is filed.

**1.06 Regulatory Authority; Powers; Communications.**

- A. The Regulatory Authority shall conduct Alternative Dispute Resolution proceedings according to this Regulation with the assistance of its legal counsel, as the Regulatory Authority deems necessary in its sole discretion. The powers of the Regulatory Authority shall include, but are not limited to:
  - 1. Receiving Petitions, determining jurisdiction, assigning case numbers, and administering Petitions through the process;
  - 2. Conducting a full, fair, and impartial hearing;
  - 3. Taking action to avoid unnecessary delay in the disposition of the proceedings;
  - 4. Maintaining proper decorum;
  - 5. Adjourning hearings when necessary to avoid undue disruption of the proceedings;
  - 6. Administering oaths and affirmations;
  - 7. Ruling upon offers of proof;
  - 8. Ruling upon motions and examine witnesses;
  - 9. Limiting repetitious testimony and time for presentations;
  - 10. Setting the time and place for continued hearings and fix the time for the filing of briefs and other documents;

11. Directing the parties to appear, or confer, or both, to consider clarification of issues, stipulations of facts, stipulations of law, settlement, and other related matters;
  12. Requiring the parties to submit prehearing orders and legal memorandum deemed necessary;
  13. Examining witnesses as deemed necessary;
  14. Granting applications for subpoenas and subpoena witnesses and documents to the extent authorized by Tribal law;
  15. Issuing proposed and final orders and take any other appropriate action authorized by Tribal law; and
  16. On motion, or on the Regulatory Authority's own initiative, continuing or adjourning hearings, except where limited by Tribal law.
- B. No Agent of the Regulatory Authority may serve as a witness or be called to testify. No Agent of the Regulatory Authority may be a party to any proceedings before the Regulatory Authority.
- C. Any Agent of the Regulatory Authority who would otherwise be recused or disqualified by the terms of this Regulation may disclose on the record the basis of disqualification and may ask the parties and their attorneys to consider, out of his or her presence, whether to waive disqualification. If, following disclosure, the parties agree that the Agent should not be disqualified, the Agent may remain on the Regulatory Authority presiding over the proceeding. The agreement shall be incorporated into the hearing record.
- D. In the event an Agent becomes unavailable (through resignation, removal, conflict, incapacitation or death), the Tribal Business Committee shall promptly appoint a replacement Agent pursuant to the Ordinance to preside over any proceeding.
- E. Ex Parte Communications Prohibited. Once a consumer files a Petition, no person shall communicate with the Regulatory Authority relating to the merits of the dispute without the knowledge and consent of all other parties to the matter, except the Regulatory Authority may, when circumstances require, communicate with parties or attorneys for scheduling, or other administrative purposes that do not deal with substantive matters or issues on the merits.

## **II. CASE ADMINISTRATION**

### **2.01 Computation of Time.**

- A. In computing any period of time prescribed or allowed by this Regulation, the time in which an act is to be done shall be computed by excluding the first day, and including the last. In the event the last day is a Saturday, Sunday, or holiday, , the period will be extended to the end of the next week day.
- B. Unless otherwise specified by the Regulatory Authority, the date of receipt of a filing by the Regulatory Authority shall be the date used to determine whether a pleading or other paper has been timely filed.

## **2.02 Attorneys; Misconduct; Withdrawal and Substitution.**

- A. A party may appear in person, by an attorney, or by a lay advocate, at the party's own expense.
- B. To appear on behalf of a party, an attorney or lay advocate shall file a notice of appearance with the Regulatory Authority. After a notice of appearance has been filed or after an appearance is made on the record, service of all papers in a proceeding shall be made upon the person whose name appears on the notice of appearance, at the email address indicated on the notice of appearance.
- C. An appearance shall be effective as service on the party represented.
- D. An attorney or lay advocate who has entered an appearance may withdraw from the case, or be substituted for another attorney or lay advocate, only by order of the Regulatory Authority. Timely notice of withdrawal or substitution shall be provided to all parties, their attorneys or lay advocates, and the Regulatory Authority. The Regulatory Authority shall allow withdrawal unless significant injury to the consumer is likely to result if withdrawal is granted.

## **2.03 Filing; Service of Documents and Other Pleadings.**

- A. Upon filing a Petition, any and all filings and communications shall be filed and served via electronic mail to the Regulatory and all parties.
- B. Documents received by the Authority by 11:59 pm pacific time are considered filed and served on the date received.
- C. Service on the opposing party to a Proceeding shall be deemed effectuated as of the date and time (pacific time) that the electronic mail containing the filing is sent to all parties to the contact information on file with the Regulatory Authority. For purposes of filing a Petition, the Petitioner must serve the Regulatory Authority and the Lender Licensee at the email address provided to the consumer upon timely opt out of arbitration pursuant to Ordinance § 12.5.
- D. All filings must include a caption or cover sheet with the following information:

1. Case name;
  2. Case number;
  3. Document title; and
  4. Name, telephone number, and email address of sender.
- E. Unless a motion for leave for additional pages is granted, no filings may be more than fifteen (15) pages.
- F. The Regulatory Authority may decline to consider any document or pleading not served pursuant to this Regulation.

**2.04 Email Address and Telephone Number of Parties.**

- A. All parties to a Proceeding shall keep the Regulatory Authority informed of their current email addresses and telephone numbers.
- B. Failure to keep the Regulatory Authority informed of a current email address or telephone number may result in a Proceeding occurring in the absence of a party who fails to appear.

**III. ALTERNATIVE DISPUTE RESOLUTION PROCEDURES**

**3.01 Commencement of Alternative Dispute Resolution Proceeding**

- A. Alternative dispute resolution is initiated upon:
1. The Petitioner submitting his or her Petition to the Regulatory Authority; and
  2. The Regulatory Authority confirming the Petitioner has followed the requirements of Ordinance § 12.5, thus conferring jurisdiction over the Petition to the Regulatory Authority.
- B. Each Petition shall contain all of the following information:
1. The Petitioner's name, legal residence, mailing address, if different than the address for the legal residence, email address, and telephone number;
  2. The name of the opposing party or parties;
  3. A description of the matter in controversy;
  4. A statement of the amount or amounts in dispute;
  5. A clear and concise statement of the facts upon which the Petitioner relies, except for facts that the opposing party has the burden of proving;
  6. The relief sought; and

7. The signature of the Petitioner or Petitioner's attorney or lay advocate.

### **3.02 Response to Petition.**

The Lender Licensee shall have fourteen (14) days from the date of service of the Petition to file a Response. Failure to file a Response may result in a default judgment, as provided in Section 6.12 of this Regulation.

### **3.03 Motion Practice.**

- A. All requests for action addressed to the Regulatory Authority, other than during a hearing, shall be made by written motion. Motions shall state specific grounds and describe the action or order sought. A copy of all written motions or requests for action shall be served pursuant to this Regulation.
- B. All motions shall be filed at least fourteen (14) days prior to the date set for hearing unless other scheduling provisions prevent compliance with this timeline or the need for the motion could not reasonably have been foreseen fourteen (14) days prior to hearing.
- C. A response (or opposition) to a motion may be filed within seven (7) days after service of the motion unless otherwise ordered by the Regulatory Authority or unless other scheduling provisions prevent compliance with this timeline.
- D. All motions and responses shall include citations of supporting authority and, if germane, supporting affidavits or citations to evidentiary materials of record.
- E. A request for oral argument on a motion shall be made in writing. The Regulatory Authority has discretion to require oral argument on a motion or allow or deny oral argument based on a request from a party.
- F. Notice of oral argument on a motion shall be given prior to the date set for hearing as set forth in Section 6.01.
- G. The Regulatory Authority shall rule upon motions within a reasonable time.
- H. Multiple motions may be consolidated for oral argument.
- I. A party may withdraw a motion for oral argument at any time.
- J. Any relief granted by the Regulatory Authority in response to a motion should be incorporated in a written order.
- K. Motions Allowed. A party may file any motion it deems proper, founded in law or fact, and in good faith. In addition to the guidance in this Section 3.03, the following shall apply:

1. Motions for an Extension of Time; Expedite. Requests for extensions of or to expedite any time limit established in the Regulation shall be made by written motion and filed with the Regulatory Authority before the expiration of the period originally prescribed or previously extended, except as otherwise provided by Tribal law, or by stipulation of the parties. A motion under this Rule shall be granted only for good cause or on the written stipulation of the parties.
2. Motions to Dismiss, Motion for Judgment as a Matter of Law; Motion for Summary Disposition, Motion for Summary Judgment. A party may file a motion to dismiss, motion for judgement as a matter of law, or a motion for summary disposition or summary judgment of all or part of a proceeding. A motion to dismiss may be filed before a Response to a Petition and will toll the time to respond to the Petition until after the motion to dismiss is decided. A motion for summary judgment may be filed after a Response is filed. The Regulatory Authority may grant dismissal or summary disposition on all or part of a proceeding if he or she determines that that any of the following exists: there is no genuine issue of material fact; there is a failure to state a claim for which relief may be granted; or there is a lack of jurisdiction or standing. If the dismissal or summary disposition is denied, or if the decision on the motion does not dispose of the entire action, then the action shall proceed to hearing.
3. Motions for Protective Orders; Compel. A party may move for a protective order from unreasonable, oppressive, embarrassing, or disproportionate discovery, or discovery that seeks confidential or privileged information. A party may move to compel discovery responses after the time to serve responses has lapsed. For either motion, the movant must confirm that he has in good faith conferred with other parties in an effort to solve the dispute.
4. Motions to Stay. A party may move to stay a dispute by showing that without a stay the movant would be substantially prejudiced and that a stay would not substantially prejudice the non-movant.
5. Motion to Strike. A party may move to strike filings when a filing does not serve a proper purpose, is not filed in good faith, is not based on a reasonable interpretation of law, or is unsupported by evidence.
6. Motion for Discovery. Motions for discovery may be filed pursuant to Section 4.01 of this Regulation and must adequately address the expectations of Section 4.01(B) and (C).



7. Motions for Reconsideration. Motions for reconsideration may be filed pursuant to Section 6.13 of this Regulation following a hearing. Under the same standards, motions for reconsideration may be filed requesting reconsideration of any decision or order.

#### **IV. DISCOVERY**

##### **4.01 Availability; Scope; Timing.**

- A. A party may move for discovery after a Response is served and only as allowed under this Regulation. If discovery is allowed, interrogatories and requests for production of documents are permitted.
- B. Parties may obtain discovery regarding any non-privileged matter that is relevant to any party's claims or defenses and proportional to the needs of the proceeding.
- C. The Regulatory Authority possesses discretion to permit discovery so long as it is narrowly tailored to the precise issues raised in the Petition and/or Response. Generally, a party may obtain discovery of documents and tangible things otherwise discoverable only on a showing that (a) the party seeking discovery has substantial need of the materials in preparation for the hearing; (b) is unable to obtain the substantial equivalent of the materials by other means; and (c) the discovery sought is relevant and necessary to the Authority's review of the Petition and/or Response. In ordering discovery of such materials, the Regulatory Authority shall limit discovery to documents and tangible things circumspectly and only to verify allegations of specific facts related to the Petition and/or Response.
- D. The time for completion of discovery shall be set by an order of the Regulatory Authority. The order shall:
  1. Indicate the final service deadline for any discovery requests;
  2. Require that any party serving discovery requests file a certificate of service with the Authority; and
  3. Advise the parties that any party may move for a protective order from any discovery requests.

##### **4.02 Stipulations.**

- A. The parties may agree upon facts, or any portion of facts, in controversy by written stipulation or by a statement entered into the record.
- B. Stipulations shall be used as evidence at the hearing or subsequent proceedings.
- C. Stipulations are binding on the parties that have acknowledged acceptance of the stipulations.

#### **4.03 Interrogatories**

- A. A party may serve written interrogatories to be answered by the party to whom the interrogatories are directed.
- B. Interrogatories shall be answered separately and fully in writing under oath. If an interrogatory is objected to, the reasons for objection shall be stated in place of an answer. The answers shall be signed by the person making them and shall contain information that is available to the party served or that could be obtained by the party from its employees, agents, representatives, or persons who may testify on the party's behalf.
- C. The party to whom the interrogatories are directed shall serve a copy of the answers on the party or the party's attorney or lay advocate submitting the interrogatories and on all other parties or their attorneys or lay advocates within fourteen (14) days after service of the interrogatories.
- D. The Regulatory Authority may issue an order compelling a response if one is not received in the time specified under Section 4.03(C) of this Regulation.
- E. To the extent that answers are admissible as evidence before the tribunal, answers to interrogatories may be used against the party making them, and an adverse party may introduce an answer that has not been previously offered in evidence by a party.
- F. The Regulatory Authority may limit interrogatories, as justice requires, to protect the answering party from annoyance, expense, embarrassment, oppression, or violation of a privilege.
- G. A party who has given a response that was complete when made is under a duty to supplement the response to include information thereafter acquired.

#### **4.04 Requests for Production of Documents and Tangible Things for Inspection, Copying, or Photographing; Inspection of Property.**

- A. A party may serve upon another party a request to produce documents, papers, books, records, accounts, letters, photographs, objects, or tangible things, which are not privileged, which come within the scope of discovery permitted by Section 4.01(B) of this Regulation, and which are in the party's possession.
- B. A party upon whom a request is served shall serve a response to the request within fourteen (14) days of service of the request. If a party upon whom a request is served does not comply with the request, then the Regulatory Authority may, upon motion or its own initiative, order the party to produce any designated documents, papers, books, records, accounts, letters, photographs, objects, or tangible things, which are

- not privileged and come within the scope of discovery permitted by Section 4.01(B) of this Regulation, and which are in the party's possession.
- C. If the party or person upon whom a request is served claims that the item is not in his, her, or its possession or that he, she, or it does not have information calculated to lead to discovery of the item's whereabouts, then he, she, or it may be ordered to submit to examination before the Regulatory Authority or to other means of discovery regarding the claim.
  - D. Failure to comply with an order requiring a response to discovery requests may result in a default judgment.

## **V. PRETRIAL PROCEDURES**

### **5.01 Prehearing Conferences.**

- A. The Regulatory Authority may hold a prehearing conference to resolve matters prior to the hearing.
- B. A prehearing conference may be convened to address matters including, but not limited to, any of the following:
  - a. Factual and legal issues;
  - b. Stipulations;
  - c. Requests for official notice;
  - d. Identification and exchange of documentary evidence;
  - e. Admission of evidence;
  - f. Identification and qualification of witnesses;
  - g. Motions;
  - h. Order of presentation;
  - i. Scheduling;
  - j. Position statements;
  - k. Settlement; or
  - l. Any other matter that will promote the orderly and prompt conduct of the hearing.
- C. Prehearing conferences may be conducted in person, by telephone, by videoconference, or other electronic means at the discretion of the Regulatory Authority.

- D. When a prehearing conference has been held, the Regulatory Authority shall issue a prehearing order which states the actions taken or to be taken with regard to any matter addressed at the prehearing conference.
- E. If a prehearing conference is not held, the Regulatory Authority may issue a prehearing order to regulate the conduct of proceedings.
- F. If a party fails to appear for a prehearing conference after proper notice, the Regulatory Authority may proceed with the conference in the absence of that party.
- G. A party who fails to attend a prehearing conference is subject to any procedural agreement reached, and any order issued, with respect to matters addressed at the conference.

## **VI. HEARINGS**

### **6.01 Notice of Hearing.**

- A. At least fourteen (14) days before a hearing on a Petition, the Regulatory Authority shall issue a notice of hearing. For all other types of hearings, the Regulatory Authority shall issue a notice of hearing at least seven (7) days before the hearing.
- B. All notices shall contain:
  - 1. The address and phone number of the hearing location;
  - 2. A statement of the date, hour, place, and nature of the hearing;
  - 3. A statement of the legal authority and jurisdiction under which the hearing is being held;
  - 4. The action intended by the Regulatory Authority, if any;
  - 5. A statement of the issues or subject of the hearing. On request, the Regulatory Authority may require a party to furnish a more definite and detailed statement of the issues; and
  - 6. A citation to the applicable law and rules, if any.

### **6.02 Location.**

The Regulatory Authority shall designate a location for all hearings. Upon request by the parties or otherwise in the Regulatory Authority's reasonable discretion, hearings may take place through telephone or video conference technologies for the benefit of the parties and the convenience of the consumer.

### **6.03 Timing.**

A hearing on the merits of a Petition shall take place, except as otherwise determined by the Authority, no less than thirty (30) days and no more than ninety (90) days after the Authority receives the Petition.

#### **6.04 Record.**

- A. The Regulatory Authority shall maintain an official record of each case or proceeding.
- B. The record shall include all of the following:
  - 1. Notice of hearings and orders of continuance, adjournment, or dismissal;
  - 2. Prehearing orders;
  - 3. Motions, pleadings, briefs, petitions, requests, agency rulings, and intermediate written rulings;
  - 4. Evidence presented;
  - 5. A statement of matters officially noticed;
  - 6. Offers of proof, objections, and rulings;
  - 7. An official recording of the proceeding prepared by the Regulatory Authority;
  - 8. Final orders or orders on reconsideration; and
  - 9. Written notation of any ex parte communications referred to on the record.

#### **6.05 Telephone and Electronic Hearings.**

The Regulatory Authority may conduct all or part of a hearing by telephone, video conference, or other electronic means.

#### **6.06 Hearing by Brief.**

- A. The Regulatory Authority may direct that the hearing be conducted by submission of briefs.
- B. After consulting with the parties, the Regulatory Authority shall prescribe the time limits for submission of briefs and provide direction on whether filings are to be either simultaneous or successive.

#### **6.07 Hearing Procedure.**

- A. A party may make or waive opening and closing statements.
- B. The Petitioner shall present any case first.
- C. The Respondent shall then present any response.

- D. The Petitioner may then have an opportunity to rebut the Respondent.
- E. The parties may submit tangible or testimonial evidence as allowed by Sections 6.08 and 6.09 of this Regulation.
- F. The Regulatory Authority may question any party or witness at any time.

**6.08 Evidence; Admissibility; Objections; Submission in Written Form; Documentary Evidence; Official Notice; Record.**

- A. The Regulatory Authority may admit and give probative effect to evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs.
- B. Irrelevant, immaterial, or unduly repetitious evidence may be excluded.
- C. Claims of privilege shall be evaluated using federal authority from within the United States Circuit Court, Ninth Circuit.
- D. Objections to offers of evidence may be made and shall be noted in the record.
- E. For the purpose of expediting a hearing, and when the interests of the parties will not be substantially prejudiced, the Regulatory Authority may require submission of all or part of the evidence in written form.
- F. The Regulatory Authority may take official notice of judicially cognizable facts, and general, technical, or scientific facts within the Authority's specialized knowledge.
- G. Evidence in a proceeding shall be offered and made a part of the record if admitted by the Regulatory Authority.

**6.09 Witnesses**

- A. The testimony of all witnesses shall be upon oath or affirmation.
- B. Witnesses may be sequestered by the Regulatory Authority on their own initiative, or upon request of a party.
- C. Opposing parties shall be entitled to cross examine witnesses.
- D. The Regulatory Authority may limit the number of witnesses to prevent cumulative or irrelevant evidence, and to prevent unnecessary delay.

**6.10 Post-Hearing Brief.**

A party may request an opportunity to submit a post-hearing brief. The Regulatory Authority may grant or deny the request based on the nature of the proceedings. The Regulatory Authority may also require a post-hearing brief on his or her own initiative.

**6.11 Final Decisions and Orders.**

- A. The Regulatory Authority shall issue a written final decision within thirty (30) days of the hearing, or the post-hearing briefing, of ordered by the Regulatory Authority.
- B. A written final decision shall include separate sections entitled “findings of fact” and “conclusions of law.” Findings of fact shall include a concise statement of the underlying supporting facts. Each conclusion of law shall be supported by authority or reasoned opinion.
- C. A decision or order shall be based on the record as a whole or a portion of the record. A decision or order shall be supported by competent, material, and substantial evidence.
- D. A copy of the decision or order shall be mailed on the date it is entered and issued to each party and any attorneys or lay advocates of record.
- E. The decision is final and not subject to appeal.

#### **6.12 Default Judgment**

- A. If a party fails to attend or participate in a scheduled proceeding after a properly served notice, the Regulatory Authority may conduct the proceedings without participation of the absent party. The Regulatory Authority may issue a default order or other dispositive order which shall state the grounds for the order.
- B. Within seven (7) days after service of a default order, the party against whom it was entered may file a written motion requesting the order be vacated. If the party demonstrates good cause for failing to attend a hearing or failing to comply with an order, the Regulatory Authority may reschedule, rehear, or otherwise reconsider the matter as required to serve the interests of justice and the orderly and prompt conduct of proceedings.

#### **6.13 Request for Reconsideration.**

- A. A party may file a request for reconsideration and the Regulatory Authority may grant the request for reconsideration upon a showing of material error.
- B. A request for reconsideration shall state with specificity the material error claimed.
- C. A request for reconsideration which presents the same issues previously ruled on, either expressly or by reasonable implication, shall not be granted.
- D. A request for reconsideration shall be filed within fourteen (14) days after the issuance of a decision or order.

#### **6.14 Awarding costs and fees to consumer in the event of a bad faith defense; finding; hearing; evidence; reduction or denial of award; final action; amount of costs and fees; applicability of section.**

- A. After a contested hearing, and upon a motion by the consumer if he or she is the prevailing party, the Regulatory Authority may award the consumer the costs and fees incurred by the party in connection with that contested case, if the Regulatory Authority finds that the Lender Licensee's position or argument in the proceeding was made in bad faith.
- B. As used in this section, "costs and fees" means the normal costs incurred by a party in a dispute resolution proceeding under this Regulation, and includes all of the following:
  - 1. The reasonable and necessary expenses of expert witnesses;
  - 2. Reasonable and necessary attorney or lay advocate fees including those for purposes of appeal; and
  - 3. Any other costs and fees allowed by applicable Tribal law or regulation.
- C. The party seeking an award of costs and fees shall present evidence establishing all of the following:
  - 1. That they are the prevailing party and the consumer by final order of the Regulatory Authority;
  - 2. That the position of the Lender Licensee was made in bad faith; and
  - 3. The amount of costs and fees sought by including an itemized statement showing the rate at which the costs and fees were computed.
- D. To find that the Consumer Financial Service Licensee's position was made in bad faith, the Regulatory Authority shall determine by a preponderance of evidence that at least one (1) of the following conditions has been met:
  - 1. The party's primary purpose in defense to the action, was to harass, embarrass, or injure the prevailing party.
  - 2. The party had no reasonable basis to believe that the facts underlying its legal position were true.
  - 3. The party's legal position was devoid of arguable legal merit.
- E. The Regulatory Authority may reduce the amount of the costs and fees to be awarded, or deny an award, to the extent that the prevailing party engaged in conduct which unduly and unreasonably protracted the contested case.



- F. The final action taken by the Regulatory Authority under this section in regard to costs and fees shall comply with the requirements in Section 5.11.
- G. The amount of costs and fees awarded under this section shall include those reasonable and necessary costs actually incurred by the prevailing party, fees for reasonable and necessary attorney, and any costs allowed by law or by a regulation promulgated under the Ordinance.
- H. The amount of fees awarded under this section shall be based upon the prevailing market rate for the kind and quality of the services furnished. An attorney or agent fee shall not be awarded at a rate of more than \$75.00 per hour unless the Regulatory Authority determines that special circumstances existed justifying a higher rate or an applicable regulation promulgated by the Authority provides for the payment of a higher rate.