

**THE HABEMATOLEL POMO OF UPPER LAKE
TRIBAL CONSUMER FINANCIAL SERVICES REGULATORY
ORDINANCE**

(As amended and enacted on December 29, 2015)

Section 1. FINDINGS, INTENT AND POLICY

1.1 Findings. The Executive Council of the Habematolel Pomo of Upper Lake, the primary governing body of the Tribe, finds that:

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

(b) The United States Congress has recognized and enacted legislation such as the Native American Business Development, Trade Promotion and Tourism Act (25 U.S.C. §§ 4301 et seq.) and other legislation which recognizes the federal policy and Congressional intent "to promote economic self-sufficiency and political self-determination for Indian tribes" through offering services from Indian Country.

(c) Due to its remote location, the Tribe has determined that it can best meet its members' needs through offering goods and services by participating in the world of electronic commerce. Electronic commerce (or e-commerce) is defined by the Tribe as the purchase of goods and services located on Tribal Trust Land through internet.

(d) Specifically, the Tribe has determined that it can offer Consumer Financial Services from its Trust Land which will constitute a legitimate means of generating revenue to address the aforementioned pressing needs of Tribal members and furthering the Tribe's goal of self-sufficiency and self-determination as endorsed by the United States Congress.

(e) The Tribe wishes to ensure that any Consumer Financial Services offered from the Tribe's Trust Land is conducted in a fair and equitable fashion and therefore should be regulated by a Tribal governmental authority with the legal authority to license and regulate Consumer Financial Services within its jurisdiction.

(f) Through offering services to customers visiting the Tribe's jurisdiction through electronic commerce, the Tribe has identified that certain data (Personal Information and other Consumer Data as defined in Section 2) is provided by prospective customers to Tribal Entities headquartered within the Tribe's Indian Country directly by the customer or through Third Party Data Providers. The Tribe recognizes the need to insure adequate protections and regulation of Consumer Data within the Tribe's jurisdiction.

(g) Tribal regulation and control of Consumer Financial Services offered from within the jurisdiction of the Tribe is essential for the protection of the public welfare and the integrity of the Tribe's Consumer Financial Services businesses.

(h) Tribal regulation and control of Consumer Data within the jurisdiction of the Tribe is essential for the protection of the public welfare and the integrity of Tribal entities offering services from the Tribe's Indian Country.

(i) It is essential that the Tribal government regulate Consumer Financial Services in a manner commensurate with Tribal law and policy, and applicable federal law.

(j) It is essential that the Tribal government monitor and regulate Consumer Data and those parties who provide such data within Tribal jurisdiction to insure that data collection, data distribution, data integrity, data privacy, and data security meet all Tribal laws and applicable federal laws.

(k) It is essential that public confidence in Consumer Financial Services that take place within the Tribe's jurisdiction be cultivated and maintained.

(l) Adoption of a Tribal Consumer Financial Services Regulatory Ordinance by the Executive Council is a necessary condition for the legal operation of Consumer Financial Services within the Tribe's Trust Land and is in the best interest of the Tribe.

(m) Establishment of a Tribal Consumer Financial Services Regulatory Commission (the "Commission") to implement the purpose and intent of the Tribal Consumer Financial Services Regulatory Ordinance within the Tribe's Trust Land is in the best interest of the Tribe.

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

(a) Diversify and expedite the development of the economy of the Tribe's Trust Land for the purposes described in Section 1.1(a) above.

(b) Define general regulatory powers to be exercised by the Commission in relation to the regulation, control, and oversight of Consumer Financial Services offered from the Tribe's Trust Land and the regulation and protection of Consumer Data within the Tribe's jurisdiction as part of the Tribe's initiative to diversify and enhance the Tribe's economy and the Tribe's government as described in Section 1.1 above.

(c) Ensure that all tribal net revenues from Processing and from Consumer Financial Services are used for the benefit of the Tribe and the Tribe's community.

(d) Ensure that Consumer Data within the Tribe's jurisdiction is handled appropriately by Licensees owned by the Tribal government and Tribal economic arms and remain free from corrupt, incompetent, unconscionable and dishonest practices.

(e) Ensure that Consumer Financial Services are conducted appropriately by Licensees owned by the Tribal government and remain free from corrupt, incompetent, unconscionable and dishonest practices.

(f) Protect the interests of the public in the offering of Consumer Financial Services and in the Processing of Consumer Data.

(g) Ensure the maintenance of public confidence in Tribal treatment of Personal Information and in Consumer Financial Services practices.

(h) Ensure that the Tribe provides a Tribal-based forum for the fair and orderly resolution of Consumer Data disputes and Consumer Financial Services disputes consistent with the Tribe's preservation of sovereign immunity.

(i) Ensure that laws and regulations regarding Consumer Data are fairly enforced by the Tribe upon Licensees dealing with Consumer Data.

(j) Ensure that laws and regulations regarding Consumer Financial Services are fairly enforced by the Tribe upon Consumer Financial Services Licensees involved in Tribal Consumer Financial Services.

1.3 Policy.

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

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

(b) Tribal Consumer Financial Services Policy. The establishment, promotion and operation of Consumer Financial Services are necessary, provided that such Consumer Financial Services are regulated and controlled by the Tribe pursuant to this Ordinance and the tribal net revenues of such Consumer Financial Services are used exclusively for the benefit of the Tribe.

(c) Tribal Consumer Data Processing Policy. The Tribe shall license and monitor all Tribal entities engaging in Processing within the Tribe's jurisdiction, provide a forum for any complaints, and consider regulations from time to time.

(d) Responsibility for Regulation of Consumer Financial Services. The Tribe shall have the sole responsibility for the regulation of Consumer Financial Services authorized by this Ordinance.

(e) Responsibility for Regulation of Processing. The Tribe shall have the sole responsibility for the regulation of Processing within Tribal jurisdiction.

(f) Consumer Financial Services Authorized. Consumer Financial Services that are subject to licensing under this Ordinance are authorized and permitted only as described in this Ordinance and any implementing regulations promulgated by the Commission.

(g) Processing Authorized. Processing by Tribal entities is subject to registration and licensing under this Ordinance, and are authorized and permitted only as described in this Ordinance and any implementing regulations promulgated by the Commission.

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:

2.1 “Aggregated Data” means Consumer Data that describes groups of individuals by general characteristics, is not Personal Information and which, within individual Records, or taken as a whole, does not reveal the identity of any Consumer Data Subject.

2.2 "Applicant" means any Tribal Entity who has applied for a License under the provisions of this Ordinance.

2.3 "Application" means a request for the issuance of a License under the provisions of this Ordinance.

2.4 “Business Day” means all calendar days except Sundays and legal public holidays.

2.5 “Closed end credit” means the extension of credit by a Consumer Financial Services Licensee to a consumer pursuant to an arrangement or agreement which is not a revolving credit plan.

2.6 “Collect” means to conduct the initial gathering and recording of Consumer Data regarding Consumer Data Subjects, whether or not the Consumer Data constitutes Personal Information.

2.7 “Commission” means the Tribal Consumer Financial Services Regulatory Commission.

2.8 “Commissioner” means a natural Person appointed by the Executive Council of the Tribe pursuant to Section 4.5 of this Ordinance to perform the duties of the Commission.

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

2.10 "Consumer Financial Services" means the business of providing credit related services to a Consumer in exchange for consideration.

2.11 "Consumer Data" means all data regarding a potential Consumer Collected or obtained by a Licensee or received pursuant to a Transfer, whether Personal Information, Aggregated Data, or additional incidental data.

2.12 "Consumer Data Licensee" means a Tribal Entity that is Licensed to engage in Processing within Tribal jurisdiction.

2.13 "Consumer Data Subject" means an individual to whom Personal Information relates.

2.14 "Consumer Financial Services Licensee" means an Eligible Lender that is Licensed by the Commission to provide Consumer Financial Services.

2.15 "Conversion" means the permanent conversion of Personal Information to produce Records from which a Consumer Data Subject can no longer be individually identified.

2.16 "Eligible Lender" means any Tribal Entity that is eligible for a License to provide Consumer Financial Services.

2.17 "Eligible Data Purchaser" means (a) any Third Party offering Consumer Financial Services that certifies to a Licensee that it follows either NAFSA or OLA best practices, or (b) another Third Party offering services outside Consumer Financial Services that agree to meet, at a minimum, all applicable federal consumer protection and data privacy laws.

2.18 "Executive Council" means the Habematolel Pomo of Upper Lake Executive Council, the primary governing body of the Tribe as defined and described in Articles IV and X of the Tribe's Constitution.

2.19 "License" means the official, legal and revocable License issued by the Commission. A License granted by the Commission is a revocable privilege subject to revocation in accordance with this Ordinance.

2.20 "Licensee" means either a Consumer Financial Services Licensee, a Tribal Entity, or Consumer Data Licensee.

2.21 "Loan" means any extension of closed end credit in connection with a Consumer Financial Services transaction.

2.22 "Ordinance" means this Tribal Consumer Financial Services Regulatory Ordinance.

2.23 "Person" will mean any individual, partnership, corporation, firm, association, unincorporated organization, joint venture, trust, limited liability company, or other entity.

2.24 “Personal Information” means any information by which the identity of a Person could be revealed. Examples of Personal Information include, but are not limited to name, address, and telephone number, date of birth, social security number, email address, financial account information, or any combination thereof.

2.25 “Processing” means any operation or set of operations by a Licensee that is performed on Personal Information, whether or not by automatic means, including, without limitation, any Collection, Transfer, recording, organization, storage, adaptation, alteration, retrieval, consultation, use, disclosure, sale, transmission, dissemination, combination, blocking, erasure or destruction thereof.

2.26 “Record” means information that held by a Licensee and is inscribed on a tangible medium or is stored in an electronic or other medium and which is retrievable in perceivable form.

2.27 “Right of Rescission” means the right to return any amount borrowed, in full, on or before the close of business of the Business day following the day on which such sum has been disbursed or advanced without the incursion of any fee or other charges.

2.28 “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.

2.29 “Security Controls” means any controls that are used to regulate access to, or prevent the alteration, loss, or destruction of, any Consumer Data

2.30 “Short-term consumer loan” means a loan of \$2,000 or less made to an individual consumer that charges interest and/or fees for which the stated repayment period is less than 365 days and is not secured by title to a motor vehicle.

2.31 "Third Party" for the purposes of this Ordinance, means any Person that is not a Tribal Entity, and in the case of a natural individual, means one who is not an enrolled member of the Tribe.

2.32 "Third Party Data Provider" means a Third Party that owns or controls Consumer Data that has certified in writing to a Licensee that it has met all applicable federal and state laws required for Processing of the Consumer Data.

2.33 “Transfer” means a transfer or group of transfers of any Consumer Data, whether by electronic or other means.

2.34 “Transferor” means the party who initiates the Transfer.

2.35 "Tribal Consumer Financial Services Regulatory Commission" or "Commission" means the regulatory authority established and described in Section 4 of this Ordinance.

2.36 "Tribal Data Portal" means the point of entry to Tribal Entities operating within Tribal jurisdiction Tribal Entity.

2.37 "Tribal Entity" means any Person wholly owned and controlled by the Tribe.

2.38 "Tribe" means the Habematolel Pomo of Upper Lake.

2.39 "Trust Land" means that land within the Tribe's jurisdiction that is held in trust by the federal government for the benefit of the Tribe.

2.40 "Workout Agreement" means an agreement with respect to a short-term consumer loan between an individual consumer and a Consumer Financial Services Licensee 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.

Section 3. GENERAL PROVISIONS

3.1 Legislative Authority and Parameters. This Ordinance is enacted pursuant to the inherent sovereign powers of the Habematolel Pomo of Upper Lake and in accordance with the Tribe's Constitution and the interstate and Indian commerce clauses of the United States Constitution. All Consumer Data is considered to be in interstate commerce before it enters Tribal jurisdiction, and the Tribe, in keeping with United States Constitutional parameters does not assert jurisdiction over Consumer Data until it enters Tribal jurisdiction pursuant to Section 9 of this Ordinance and is considered Indian commerce at that time.

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 and protection of Consumers.

(b) The Findings, Intentions, and Policies stated in Section 1 constitute the standards to be observed by the Commission in the exercise of its discretionary powers under the Ordinance, in the adoption of implementing regulations, in the issuance of orders and declaratory statements, in the examination and supervision of Licensees, and in all matters of construction and application of the Ordinance required for any determination or action by the Commission.

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

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

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

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

3.3 Severability. If any section of this 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 Executive Council.

Section 4. TRIBAL CONSUMER FINANCIAL SERVICES REGULATORY COMMISSION

4.1 Establishment and Purpose. The Executive Council hereby creates and establishes the Tribal Consumer Financial Services Regulatory Commission, a division of the Tribe's government. The Commission has charge of the implementation of the Ordinances and regulations of the Tribe relating to the Tribe's Consumer Financial Services business activities and the treatment of Consumer Data and associated licensing requirements.

4.2 Location and Place of Business. The Commission will maintain its headquarters, principal place of business and office within the Tribal government offices or such other location as may be dictated by the Executive Council.

4.3 Attributes. The Commission is a governmental subdivision of the Tribe. The Commission shall operate to protect Consumers independently of the Executive Council regarding Consumer Financial Services and Processing conducted from within the Tribe's jurisdiction.

4.4 Sovereign Immunity of the Commission.

(a) Immunity from Suit. As part of the Tribe's government, the Commission possesses all the privileges and immunities of Tribal sovereignty as established by Tribal law and recognized by federal law.

(b) No Waiver. Nothing in this Ordinance nor any action of the Commission shall be deemed or construed to be a waiver of sovereign immunity of the Tribe from suit or counterclaim or a consent of the Tribe to the jurisdiction of any court.

4.5 Commissioners.

(a) Appointment. The Executive Council shall appoint at least one (1) and as many as three (3) Commissioners. The Executive Council may, by resolution, increase the number of Commissioners as it deems necessary to conduct the governmental operations of the Commission. Any Commissioner shall serve a term of three (3) years unless otherwise replaced or removed by the Executive Council. A Commissioner may serve consecutive terms at the discretion of the Executive Council. At least one-half of the Commissioners must be enrolled members of the Tribe.

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

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

- (1) Oversee and have responsibility for the day-to-day operations of the Commission, including supervision of Commission employees and any experts hired by the Commission;
- (2) Conduct or oversee the conduct of any meetings or hearings held by the Commission in accordance with this Ordinance or further directive of the Executive Council.
- (3) Exercise the powers enumerated in Section 4.9 herein as needed and at its discretion.

(d) Commissioner Qualifications. Any person appointed as a Commissioner shall be at least twenty-one (21) years of age; show proof of high school diploma or equivalent; possess expertise, experience, education or a combination thereof in lending, finance, management, business, governmental regulation, law, and/or Tribal policy; and, in the Executive Council's sole opinion, the organizational abilities to effectively manage the business of the Commission and make decisions on behalf of the Commission. No person shall serve as a Commissioner if that person has a criminal record; has been convicted of or entered a plea of no contest to any felony or to a misdemeanor involving breach of trust or dishonesty in any jurisdiction; or, in the Executive Council's sole discretion, has reputation, habits or associations that could undermine the integrity of the Commission or its role in protecting Consumers.

4.6 Meetings, Quorum and Decision Making. The Commission shall meet as needed or upon the request of the Executive Council. At least half of the Commissioners present shall represent a quorum and all decisions must be made by simple majority vote.

4.7 Prohibited Acts. The Commissioners, Commission employees and consultants to the Commission shall not do any of the following with respect to any Licensee under the jurisdiction of the Commission:

(a) Be indebted, either directly or indirectly, as borrower, accommodation endorser, surety or guarantor to any Licensee unless such indebtedness was contracted before becoming employed by or appointed to the Commission and is fully disclosed to the Commission.

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

(c) Own, directly or indirectly, the shares or obligations of any entity which provides goods or services to a Licensee.

(d) Receive from any Licensee or any officer, director, or employee of any Licensee any salary, compensation or other valuable thing by way of gift, donation, credit, or compensation for services or otherwise (excluding any item with a *de minimis* dollar value

that is less than \$100); except that a Commissioner or Commission employee is permitted to receive his or her pro-rata share of revenue that has been generated by a Licensee and is distributed among all eligible Tribal members by virtue of membership in the Tribe.

4.8 Removal of Commissioner / Vacancy.

(a) **Removal.** A Commissioner may be removed by the Executive Council 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 the Commission or violates the letter or intent of this Ordinance. The decision of the Executive Council concerning removal of a Commissioner shall be final.

(b) **Vacancy.** If a Commissioner dies, resigns, is removed or for any reason is unable to serve as a Commissioner, then the Executive Council 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 a Commissioner shall be for the balance of the unexpired term for the position.

4.9 Powers of the Commission. The Commission has the authority and responsibility for the discharge of all duties imposed on the Commission by law and this Ordinance. In furtherance, but not in limitation of, the Commission's purposes and responsibilities, and subject to any restrictions contained in this Ordinance or other applicable law, the Commission 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 furthering the purpose and provisions of this Ordinance. The Commission shall set a reasonable implementation period following any such changes.

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

(c) To make or cause to be made reasonable investigations of any Licensee or any employee of a Licensee as it deems necessary to ensure compliance with this Ordinance or any order of the Commission; to determine whether any Licensee 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 Commission; and 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) To employ support personnel, and professional advisors and employees to perform roles or responsibilities as it may deem necessary. Professional advisors and employees may include, but are not limited to, lawyers, accountants, law enforcement specialists and financial services professionals, and regulatory examiners.

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

(g) To examine under oath, either orally or in writing, in hearings or otherwise, any Licensee, 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 Commission may apply to a court of competent jurisdiction to compel appearance or production.

(h) To grant confidentiality protection for any information obtained from any Licensee under the power of the Commission.

(i) 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 engaging or participating in, or suspected to be engaging or participating in, activities regulated by this Ordinance.

(j) To discipline any Licensee or Person engaging or participating in activities that are 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 4.13 of this Ordinance.

(k) To arbitrate, compromise, negotiate or settle any dispute relating to the Commission's authorized activities, subject to any approval of the Executive Council that may be required by the Executive Council.

(l) To adopt a schedule of fees to be charged for the processing, issuance and renewal of Licenses, including fees or charges associated with conducting background checks; for reasonable examinations of Licensees; for services rendered relating to transcripts and the furnishing or certifying of copies of proceedings, files, and records; and to impose the foregoing fees as applicable.

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

(n) To provide for the fair disposition of Consumer complaints.

4.10 Investigations, Right of Entrance.

(a) Investigations. The Commission, 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 any Person engaging or suspected to be engaging in Consumer Financial Services or Processing of Consumer Data within the Tribe's jurisdiction.

- (1) In undertaking such investigations, the Commission may request the assistance of federal or local law enforcement officials, legal counsel and/or other third parties.
- (2) In conducting such investigation, the Commission shall make no order or final decisions without affording any affected Person notice and a hearing pursuant to Section 4.13 of this Ordinance.

(b) **Right of Entrance.** The Commission and duly authorized employees or agents of the Commission, 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 or Processing of Consumer Data within Tribal jurisdiction 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 or Processing of Consumer Data shall facilitate such inspection or examinations by giving every reasonable aid to the Commission and to any properly authorized officer or employee.

4.11 **Annual Budget.** The Commission shall prepare an annual operating budget for all Commission activities and present it to the Executive Council no less than thirty (30) days prior to the commencement of each operating year or part thereof.

4.12 **Reports to the Executive Council.** Upon request of the Executive Council, the Commission shall file a report with the Executive Council summarizing reports received from each Licensee and make such comments as it deems necessary to keep the Executive Council fully informed as to the status of the Commission's activities. The Commission may provide such reports to Executive Council at any time. All such reports shall be marked "Proprietary and Confidential Information", and the Commission and the Executive Council shall take necessary precautions to preserve the confidentiality of such reports.

4.13 **Notice of Violation, Opportunity to Cure; Due Process; Hearings; Examiner.** The Commission may issue a Notice of Violation to any Licensee or Applicant upon reasonable evidence that the Licensee or Applicant is not in compliance with this Ordinance or an order of the Commission. The Notice of Violation will explain the noncompliance and either (i) provide the Licensee or Applicant a reasonable timeframe to cure the violation, (ii) suspend the Licensee's license and allow an opportunity for the Licensee to request a hearing to dispute the violation and suspension, or (iii) deny an application. If the violation is not cured within the given time period, the Commission may issue an order suspending the Licensee's license or denying the Applicant's application. The Licensee or Applicant may request a hearing to dispute the violation, suspension, or order.

(a) **Voluntary Resolution.** Whenever the Commission is satisfied that a violation has been cured by agreement of all the interested parties, the Commission may dismiss any violation or rescind any order and approve the resolution of the issue, as appropriate, without a hearing.

(b) Request for Hearing. A Licensee or Applicant may request a hearing in writing within 21 days after an order is entered. The request must include the specific reasons the Licensee or Applicant contests the violation or order. The Licensee or Applicant must specifically respond to the Commission's description of circumstances surrounding the violation as explained in the Notice of Violation. A Licensee's request for hearing will delay enforcement of the Licensee's suspension or other enforcement action taken by the Commission until the Commission issues a decision and order after a hearing.

(c) Notice of Hearing. Either on its own or by request, the Commission may issue a Notice of Hearing that sets forth, with specificity, the issues to be resolved. The Notice of Hearing will specify the date, time, and location for the hearing. Unless exigent circumstances exist or unless waived by the Licensee or Applicant, notice must be served to the Licensee or Applicant at least 10 days before a hearing is scheduled.

(d) Hearing. The full Commission will preside over all hearings. At the hearing, the affected parties have the opportunity to make opening and closing statements, to present oral and written evidence, to challenge evidence presented by other parties, and to request relief. The Commission may promulgate additional rules to govern hearings. The Commission must conduct a hearing within six (6) months after a Notice of Violation is issued or the violation is abrogated.

(e) Examiner. The Commissioners shall act as examiner for the purpose of holding any hearing, or the Commissioners 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 Commission under this Ordinance with respect to any such hearing. An appointed examiner may not participate in the Commission's decision on the matter.

(f) Decision. The Commission shall issue a written decision to all affected parties within a reasonable time after the hearing.

(g) Appeals. A Licensee or Applicant may appeal a Commission's final decision by filing a written appeal with the Executive Council within twenty (20) days after the Commission issued the final written decision. Within ten (10) days of receipt of such appeal, the Executive Council may preside over the appeal or refer the appeal to a third party independent arbitrator for a final decision. The Commission may promulgate rules to govern an independent arbitrator's review of a final decision.

4.14 Promulgation of Regulations. The Commission may promulgate regulations as follows:

(a) The Tribe, Commission, or Licensee may propose a regulation by submitting a written draft to the Commission;

(b) The Commission will review the proposal to ensure it does not conflict with this Ordinance or any applicable law;

(c) The Commission will notify the Tribe and any Licensee that may be affected by the proposed regulation by means reasonably calculated to inform the Tribe and Licensees of the proposed regulation;

(d) For thirty days after notice of the proposed regulation, the Tribe and Licensees may submit written comments on the proposed regulation that that either support, oppose, or suggest amendments.

(e) After thirty days:

(1) if the proposed regulation is unopposed, it will be promulgated and implemented as required by Section 4.9(a);

(2) if the proposed regulation is opposed, the Commission may abandon the proposed regulation, amend the proposed regulation and re-notify the Tribe and Licensees, conduct a hearing on the proposed regulation for additional input, or present the proposed regulation to the Executive Council, along with all comments, for Executive Council approval or rejection.

(f) The Executive Council may promulgate a regulation at any time regardless of this promulgation procedure.

Section 5. CONSUMER FINANCIAL SERVICES LICENSES

5.1 Applicability. Any Eligible Lender seeking to engage in Consumer Financial Services subject to this Ordinance shall apply for and receive a Consumer Financial Services License prior to engaging in Consumer Financial Services. Any entity or 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 Consumer Financial Services License to engage in Consumer Financial Services, but is required to otherwise comply with any applicable provisions of the Ordinance. This Section does not apply to exempt Persons identified by Section 6.

5.2 Application Procedure.

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

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

(1) The Applicant's officers and/or directors, senior management employees, and executive staff;

(2) For each Person disclosed on the Application pursuant to Sections 5.1(b) above, an Applicant shall include (i) each Person's

criminal and civil record, if any, (ii) 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 (iii) a complete disclosure of any pending or anticipated civil or criminal action in any jurisdiction against the Applicant within the last ten (10) years (provided for that for any crime involving financial fraud the reporting ten-year time limit does not apply). The Applicant shall provide written permission giving the Commission or its designees the right to conduct a criminal and background check on the Applicant; and

- (3) A sworn statement that if the Applicant is issued a Consumer Financial Services License, then 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 submitted by the Applicant in the Application is true and correct to the best of the Applicant's knowledge.
- (4) Each Application shall be accompanied by an application fee, the amount of which shall be set by the Commission.

5.3 License Review, Issuance and Denial, Term.

(a) Issuance. Upon completion of any necessary background investigation, the Commission may issue a License on a conditional or unconditional basis. Subject to section (d), the Commission shall have the final word on whether to issue a License to an Applicant. Unless exigent circumstances exist, the Commission shall issue a License when the following criteria are met, or issue a denial as to why the Applicant does not meet the criteria:

- (1) The Applicant complied with the provisions of Section 5.2;
- (2) No officer and/or director; senior management employee, or executive of the Applicant has been, in any jurisdiction, charged with a felony or any other crime involving breach of trust or dishonesty; been convicted or entered a plea of no contest of any felony or any other crime involving breach of trust or dishonesty; had an order entered against it by an administrative agency based on conduct that involved fraud, deceit or misrepresentation by the Applicant; or had a financial judgment ordered against it in a civil action based on fraud, deceit or misrepresentation;
- (3) The Consumer Financial Services or Processing contemplated by the Applicant are authorized pursuant to this Ordinance;
- (4) The Consumer Financial Services or Processing contemplated by the Applicant are authorized by an Executive Council Resolution; and

(5) The Applicant for a Consumer Financial Services License is an Eligible Lender; and the Applicant for a Consumer Data License is a Tribal Entity.

(b) Temporary Consumer Financial Services License. The Commission may, in its discretion, grant a Temporary Consumer Financial Services License after submission of a completed application and a preliminary determination of suitability by the Commission. A Temporary Consumer Financial Services License is valid for 60 days. The Commission may grant a 60-day extension.

(c) No Property Rights Created. Nothing herein creates a property right in any License. Any License issued under this Ordinance is revocable without compensation of any kind as provided by this Ordinance. A License is not salable, lendable, transferable or assignable and control of a License shall not be acquired through any stock purchase or other devise without the prior written consent of the Commission.

(d) Denial. When the Commission does not license an Applicant, it shall notify the Applicant in writing, provide the basis for the denial, inform the Applicant of the right to a hearing to contest the denial, and otherwise comply with the procedural requirements of Section 4.13 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.

(f) License Substance and Classification. The Consumer Financial Services 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 Commission may issue Licenses that authorize a Licensee to provide all types of Consumer Financial Services under this Ordinance or a limited-purpose License that only authorizes certain types of Consumer Financial Services under this Ordinance. Each Consumer Financial Services License shall specify its scope.

(g) Records Retention. The Commission 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; Suspension or Revocation. The Commission shall not unreasonably withhold issuance or renewal of a License. The Commission may deny a License or suspend or revoke a License, after notice and an opportunity for a hearing pursuant to Section 4.13, if the Commission finds that an Applicant or Licensee:

(1) Fails to correct a violation or request a hearing within the time allowed by a Notice of Violation;

(2) Failed to pay initial Application or other applicable fees;

- (3) Made a material misstatement or omission on the Application or on any document required to be filed with the Commission;
- (4) Withheld or provided incomplete or insufficient pertinent information other than on an Application;
- (5) Employs officers or director or other key employees that are not a person of honesty, truthfulness or good character;
- (6) Violated or aided, abetted, or conspired in any way or knowingly or knowingly caused any Licensee or person to violate this Ordinance or the rules and regulations of the Commission;
- (7) Participated in any activity that is not authorized by the License, or this Ordinance;
- (8) Knowingly falsified books or records that relate to a transaction connected with the operation of Consumer Financial Services or Processing of Consumer Data;
- (9) 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 Commission, compliance with this Ordinance;
- (10) Failed to take reasonable measures to ensure that an agreement with a consumer is not materially breached;
- (11) Is insolvent;
- (12) Any officer of a Licensee is charged in any jurisdiction with a crime involving breach of trust or dishonesty, so long as any temporary suspension is removed if the charges are subsequently dismissed;
- (13) Any officer of a Licensee 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;
- (14) Employed any person in a Consumer Financial Services business (or, in the case of Processing of sensitive Personal Information) whom the Licensee knew or should have known was convicted of fraud, theft, or embezzlement;
- (15) Refused to comply with any lawful order, inquiry or directive of the Commission or the Executive Council;

- (16) Attempted to bribe or offer something of value to any person, Executive Council member, or a Commissioner in an attempt to avoid or circumvent Tribal law;
- (17) Stole or attempted to steal funds or other items of value from the Commission or the Tribe;
- (18) Poses a threat to the public interest or the effective regulation of Tribal Consumer Financial Services or Processing of Consumer Data; or
- (19) Creates or enhances the danger of unsuitable, unfair or illegal practices and methods and activities in the conduct of Tribal Consumer Financial Services or Processing of Consumer Data.

5.5 Renewal & Fees.

(a) Renewals. A Licensee may submit a renewal application to have the License renewed by the Commission before the License expires. The Commission may require Applicants to provide updated material and pay an annual renewal fee.

(b) Non-renewal. The Commission may deny renewal of a License if the Commission finds the existence of any circumstance listed in section 5.4(a), 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 Commission to refuse to issue the License. A Licensee may request a hearing pursuant to section 4.13 to contest the Commission's non-renewal of a Licensee.

(c) Fees. The Commission may charge an annual renewal fee to all Licensees generating revenue. The aggregate amount of the annual renewal fee assessed to all Licensees shall not exceed the reasonable operating budget of the Commission for that year. Additionally, with thirty (30) days' notice to affected Licensees, the Commission may make a special assessment fee charged to all or one of the Licensees designed to provide for unbudgeted costs to the Commission such as third party assistance with auditing. All fees assessed by the Commission shall be assessed against Licensees in a non-discriminatory manner and may be based on revenue generated and/or volumes.

5.6 Voluntary Surrender or Lapse of License. Any Licensee may voluntarily surrender its License at any time by giving written notice of the surrender to the Commission. A Licensee may allow its License to lapse by not submitting a renewal application.

5.7 Deposits of Fees and Assessments. All 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 Commission. The Commission shall deposit such proceeds into an account or fund designated by the Executive Council.

Section 6. EXEMPTIONS

6.1 Applicable Exemptions. The following persons or entities are subject to Section 7.2 but otherwise exempt from any other provision or application of this Regulatory Ordinance:

- (a) Any third-party provider of products or services in support of a Licensee business not provided directly to a Licensee;
- (b) Any national or state chartered bank that is insured by the Federal Deposit Insurance Corporation or any subsidiary thereof;
- (c) Any other federal insured financial institution and any of their subsidiaries;
- (d) Any credit bureau or similar third-party service provider subject to oversight and regulatory control by the federal government;
- (e) Any Person participating in future revenues of Loans issued by a Consumer Financial Services Licensee;
- (f) Any Person providing a funding source or access to a revolving credit line to allow a Consumer Financial Services Licensee to have access to funds to make Loans to Consumers;
- (g) Any Person providing customer service or software support to a Licensee;
- (h) Any employee of the above.

Section 7. LICENSEES

7.1 Compliance in General. Licensees of any type 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 as applicable.

7.2 Federal Consumer Protection Laws. A Licensee of any type shall conduct business in a manner consistent with principles of federal consumer protection law, 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; the Telephone Consumer Protection Act of 1991 at 47 U.S.C 227, and related

regulations at 47 C.F.R. §64.1200; the Telemarketing Sales Rule at 16 C.F.R. §310; Section 5 of the Federal Trade Commission Act at 15 U.S.C. §45(a); and Servicemembers' Civil Relief Act, 50 U.S.C. App. §§ 501-596, provided that for any provision in which a state is mentioned, the Tribe shall be considered the only state applicable for the purposes of that provision.

7.3 Prohibited Acts by Licensees.

(a) An Eligible Lender shall not engage in Consumer Financial Services subject to this Ordinance without first obtaining a Consumer Financial Services License pursuant to this Ordinance.

(b) A Tribal Entity shall not engage in Processing subject to this Ordinance without first obtaining a Consumer Data License pursuant to this Ordinance.

(c) A Consumer Financial Services 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 under regulations issued pursuant to 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.
- (6) Engage in the sale or transfer of Consumer Data to any Third Party except as permitted by Section 9.7 of the Ordinance.

7.4 Compliance Management System. Each Licensee will maintain a compliance management system, or other appropriate control, to ensure compliance with this Ordinance, promulgated regulations, and applicable federal law.

7.5 Books, Accounts and Records, Examinations, Costs. A Licensee shall maintain at each location at which it conducts business all books, accounts and records that the Commission reasonably requires. Each Licensee shall (i) ensure that the books, accounts and records are sufficiently detailed to comply with the Ordinance and all applicable Tribal and federal laws; (ii) maintain the books, accounts and records separately from any other business in which the Licensee is engaged; and (iii) shall retain the books, accounts and records for at least three years.

7.6 Reports.

(a) Annual Reports. By April 1 of each calendar year after a full year operations, the Licensee shall file a confidential annual report with the Commission in a time and manner specified by the Commission. Each report shall contain information specified by the Commission sufficient for the Commission 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/or Processing, as the case may be; 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 Licensee shall provide the Commission access to a copy of their financial statements which may be audited or unaudited upon the request of the Commission. All such information shall be considered confidential and proprietary.

7.8 Public Notice. Each Licensee of any type shall have a copy of this Ordinance and any implementing regulations readily available for inspection by any person.

Section 8. CONSUMER FINANCIAL SERVICES TRANSACTIONS – CLOSED END CREDIT

8.1 General Authority. Subject to this Ordinance, a Consumer Financial Services Licensee may engage in the business of providing Consumer Financial Services as provided in this Ordinance. This Section 8 applies to Closed End Credit.

8.2 General Terms, Conditions, and Practices.

(a) Consumer Notice. The consumer must be provided a template of a Consumer Financial Services Licensee's consumer loan agreement and related disclosures regarding exclusive tribal jurisdiction and a consumer's limited and exclusive rights to submit complaints to a Tribally approved dispute resolution process in accordance with this Ordinance and regulations of the Commission. The Commission may issue a regulations establishing disclosure language for all Consumer Financial Services Licensees loan agreements.

(b) Extension of credit. Any Consumer Financial Services Licensee 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 closed 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 Consumer Financial Services Licensee. Loans to any one borrower may not exceed \$10,000.

(c) Interest. A Consumer Financial Services Licensee 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 year, as the Consumer Financial Services Licensee may determine.

(d) 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 Consumer Financial Services Licensee 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.

(e) 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 Consumer Financial Services Licensee 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 Consumer Financial Services Licensee in connection with the Loan.
- (2) If the agreement governing a Loan so provides, a Consumer Financial Services Licensee 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 Consumer Financial Services Licensee 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 Consumer Financial Services Licensee 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 Consumer Financial Services Licensee 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.

(f) Deferred installments. A Consumer Financial Services Licensee may at any time or from time to time permit a consumer to defer payments of a loan and may, in connection with such deferral, charge and collect deferral charges.

(g) Refinancing.

- (1) A consumer may, with the consent of the Consumer Financial Services Licensee, refinance the entire outstanding and unpaid amount of a Loan, and the Consumer Financial Services Licensee 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.

(h) Short-term consumer loans.

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

- A. No Consumer Financial Services Licensee shall make more than 4 rollovers of an existing short-term consumer loan. A Consumer Financial Services Licensee 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 Consumer Financial Services Licensee 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 Consumer Financial Services Licensee 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 shall be subject to the following: No Consumer Financial Services Licensee shall make a short-term consumer loan unless the consumer loan agreement and/or related disclosures 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; and,
- C. Credit counseling services are available to consumers who are experiencing financial problems.

(3) Nothing in this section prohibits a Consumer Financial Services Licensee from refinancing the principal amount of a short-term consumer loan, subject to the limitations and requirements imposed herein.

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

(i) Attorney's fees; costs. In the event a consumer defaults under the terms of a Loan, the Consumer Financial Services Licensee may, if the consumer's account is referred to an attorney (not a regularly salaried employee of the Consumer Financial Services Licensee) or to a Third Party for collection and if the agreement governing, or the bond, note or other evidence of, the Loan so provides, charge and collect from the consumer a reasonable attorney's fee. In addition, following a consumer's default, the Consumer Financial Services Licensee may, if the agreement governing, or the bond, note or other evidence of, the Loan so provides, recover from the consumer all court, alternative dispute resolution or other collection costs (including, without limitation, fees and charges of collection agencies) actually incurred by the Consumer Financial Services Licensee.

(j) Application of other laws. Any federal law not applicable to Indian tribes or state law limiting the rate or amount of interest, discount, points, finance charges, service charges or other charges which may be charged, taken, collected, received or reserved shall not apply to extensions of credit issued in accordance with this subchapter.

(k) No oral agreements. A Consumer Financial Services transaction may provide that it represents the entire agreement of the parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties.

(l) Enforcement of Licensee's rights and remedies. In any proceeding in which a Consumer Financial Services Licensee is a party in interest with respect to any transactions with a consumer, the Consumer Financial Services Licensee's rights and remedies shall be granted based upon prima facie proof and entitlement based upon the terms of the written transaction documents and the payment and business records maintained by the Consumer Financial Services Licensee in the ordinary course of business.

(m) Prepayment.

(1) A borrower may prepay a Loan in full at any time.

(2) If interest charged on a Loan has been precomputed and taken in advance, then, in the event of prepayment of the entire indebtedness, the Consumer Financial Services Licensee shall refund to such borrower the unearned portion of the precomputed interest charge. This refund shall be in an amount not less than the amount which would be refunded if the unearned precomputed interest charge were calculated in accordance with the actuarial method, except that the borrower shall not be entitled to a refund which is less than \$5. The unearned portion of the precomputed interest charge is, at the option of the Consumer Financial Services Licensee, either:

A. That portion of the precomputed interest charge which is allocable to all originally scheduled or, if deferred, all deferred payment periods, or portions thereof, ending subsequent to the date of prepayment. The unearned precomputed interest charge is the total of that which would have been earned for each such period, or portion thereof, had the Loan not been precomputed, by applying to unpaid balances of principal, according to the actuarial method, an annual percentage rate based on the precomputed interest charges, assuming that all payments were made as scheduled, or as deferred, if deferred. The Consumer Financial Services Licensee, at its option, may round this annual percentage rate to the nearest one quarter of 1 percent; or

B. The total precomputed interest charge less the earned precomputed interest charge. The earned precomputed interest charge shall be determined by applying an annual percentage rate based on the

total precomputed interest charge, under the actuarial method, to the unpaid balances for the actual time those balances were unpaid up to the date of prepayment.

Section 9. REGULATION OF CONSUMER DATA

9.1 General Authority & Registration. A Tribal Entity, which is not otherwise a Licensee, that wishes to engage in Processing within the Tribe's jurisdiction must obtain a Consumer Data License by registering with the Commission no less than ten (10) days before the Processing is to occur and must renew such registration on or before January 31 of successive each year. A Consumer Data License is automatically granted upon registration, but may be withdrawn at any time by the Commission.

(a) To register with the Commission, the Tribal Entity shall: (i) state the name of the entity to engage in Processing; and (ii) state the address of the Tribal Entity's principal office. The Tribal Entity must provide notice of changes to this information no later than thirty (30) days before the effective date of any change.

(b) To be eligible for registration, the Tribal Entity must provide the Commission with a copy of: (i) its privacy policy (or policies); (ii) its privacy notice as required by the Gramm-Leach-Bliley Act, if applicable; (iii) its information security policy, and (iv) its data retention plan.

9.2 Consumer Data entering the Tribe's Jurisdiction via a Tribal Data Portal or Communication to a Tribal Entity. All Personal Information that is Collected through a Tribal Portal or from a Consumer by a Tribal Entity, shall be deemed to have entered into jurisdiction of the Tribe and within the regulation of this Commission. Any Tribal Entity responsible for the Transfer of Consumer Data into the Tribe's jurisdiction must insure that any Processing meets the following minimum standards:

(a) the Tribal Entity's Tribal Data Portal or other communication from a Tribal Entity must clearly indicate that (i) the data is being provided within the Tribe's jurisdiction, (ii) whether the entity collecting the Consumer Data does or does not directly offer services of its own (e.g. whether it is a "lender" for purposes of Consumer Financial Services), (iii) that the entity and services are regulated by the Tribal Consumer Financial Services Regulatory Ordinance, and (iv) the contact information for resolving complaints that might be raised by the Consumer. Any Consumer Financial Services Licensee that is directly Processing Consumer Data must follow Section 9.2(a) of this Ordinance. Tribal Entities not directly providing services to Consumers must use a disclosure that notifies consumers that Processing of Consumer Data will occur in Indian country, which is compliant with the Consumer Data notification and disclosure regulations adopted by the Commission:

(b) the Tribal Entity's Tribal Data Portal must clearly display its privacy, data security and terms and conditions to potential Consumers.

(c) the Tribal Entity provides clear notice when the Consumer is leaving its Tribal Data Portal; and the Consumer consents to leaving the Tribal Data Portal.

(d) all Consumer Data must be protected using Security Controls appropriate for the nature of the data and in accordance with Section 9.4 of this Ordinance and all applicable federal laws related to such protection of Consumer Data.

9.3 Consumer Data entering Tribal Jurisdiction via Third Parties.

(a) Tribal Jurisdiction. Consumer Data is within the Tribe's jurisdiction upon a Transfer to a Licensee or other Tribal Entity regulated under this Ordinance.

(b) Warranties of Transferors. For all Consumer Data that enters Indian commerce and the jurisdiction of the Tribe, a Transferor Collecting, Transferring or Processing Consumer Data must represent and warrant to the receiving Tribal Entity before such Consumer Data enters Tribal jurisdiction that (i) Transferor has complied with all applicable federal and state laws with respect to the Collection, Transfer and Processing of the data, and (ii) Transferor has obtained all necessary permissions needed to Transfer the Consumer Data, whether from the Consumer Data Subjects or from any Third Party from which the Transferor has acquired the Consumer Data.

9.4 Consumer Data Protection Standards. All Licensees who engage in Processing within Tribal jurisdiction must at a minimum:

(a) limit internal access to Personal Information only to those that are determined to have legitimate business reason to access such Personal Information;

(b) maintain reasonable Security Controls for Personal Information in its custody;

(c) actively manage and provide appropriate oversight of Third Parties that Process or have access to Personal Information to ensure continuing compliance with applicable consumer protection laws;

(d) conduct a security audit annually and provide the results of that audit to the Commission;

(e) provide the Commission with a breach remediation plan acceptable to the Commission within sixty (60) days of obtaining a License;

(f) report all discovered security breaches and unauthorized Transfers to the Commission as soon as possible but not later than forty-eight hours after a breach or unauthorized Transfer was discovered.

9.5 Maximum Retention Time

(a) Recognizing that data retention necessarily presents an inherent security risk to Personal Information, Licensees shall adhere to all applicable federal laws pertaining to Personal Information, but in no case retain data for longer than five years unless otherwise required by federal law or Commission order.

(b) Licensees shall implement data and record retention schedules based on industry-wide security protocols and subject to approval by the Commission.

(c) In the event (i) any Licensee is served with any non-Tribal subpoena or request for documents, (ii) any employee of a Licensee becomes aware of any non-Tribal governmental investigation or audit, (iii) any litigation is commenced against a Licensee, or (iv) a Licensee plans to institute litigation against any third party, the Licensee shall immediately inform the Commission of such event and will release or destroy or delete Records relating to the matter only with Commission approval.

(d) If the retention periods outlined in a Licensee's schedule are modified, the Licensee will submit to the Commission an updated schedule which will specify the modified retention and/or destruction periods and the date such modifications became effective.

(e) The Commission may promulgate rules to further regulate data and record retention.

9.6 Restrictions on Consumer Financial Services Licensees. Consumer Financial Services Licensees may only sell Consumer Data to another Tribal Entity that possesses a License issued by the Commission. Consumer Financial Services Licensees may Transfer Consumer Data to a Third Party for Processing (excluding sale of Personal Information) provided such Transfer or Processing by the Third Party is compatible with the original purposes for which the Consumer Data was Collected or subsequently authorized by the Consumer Data Subject.

Section 10. ENFORCEMENT

10.1 Jurisdiction. Except as provided otherwise in this Ordinance, the Commission shall have jurisdiction over all violations of this Ordinance.

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

10.3 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 Commission may be charged with a violation and given due process pursuant to Section 4.13 herein. If the Licensee or any employee of a Licensee is found to have committed a violation, he/it may be required to pay a civil fine to the Commission 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 Licensee's License.

(b) An officer or agent of a Licensee who knowingly or recklessly participates in a material violation of this Ordinance may be subject to termination by the Commission.

10.4 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.

10.5 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 Commission regulations and not to punish such people for violation of such laws and regulations.

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

10.7 Seizure and Forfeiture of Property. Property utilized in violation of this Ordinance shall be subject to seizure and forfeiture by order of the Commission. The Commission may promulgate rules to govern the seizure of property. The Commission may not exercise any authority under this subsection until promulgated rules are approved by the Executive Council.

Section 11. CONSUMER DISPUTE RESOLUTION PROCESS

11.1 Mandatory Dispute Resolution Procedure. The Tribe wishes to ensure public confidence in its Consumer Financial Services and its Licensees and strives to ensure that its Consumers are protected with a fair and impartial dispute resolution process to address any Consumer issues in a timely manner. Nothing in this Section waives the Tribe, a Licensee, or the Commission's sovereign immunity or any rights or privileges.

11.2 Complaint Procedure.

(a) A Consumer who is aggrieved by an action or inaction of a Licensee may request the Licensee address the complaint. Where the complaint involves a Consumer Financial Services Licensee, the Consumer's request must be made in accordance with the terms of the Consumer's loan agreement. Where the complaint involves services provided by a Consumer Data Licensee, the Consumer's request must be made in accordance with the terms of the agreement governing the applicable service. A Consumer may not consolidate a claim with another Consumer's claim unless expressly authorized by the Commission.

(b) Within 30 days after receiving a Consumer's complaint, the Licensee must expediently gather sufficient facts to make a determination about the complaint and respond to the consumer in writing with its determination. If the Licensee fails to respond to a Consumer's complaint within 30 days, a consumer may choose to initiate the Tribal Consumer Financial Services Regulatory Commission Review Procedure in Section 11.3 and the Licensee may be subject to fines up to the total cancellation of the Consumer's debt and reimbursement of all monies paid.

(c) The Licensee must retain all records of all Consumer complaints in compliance with section 9.6.

11.3 Tribal Consumer Financial Services Regulatory Commission Review Procedure

(a) Consumers that have followed the Complaint Procedure described in Section 1.2 and who are dissatisfied with a Licensee's determination may request and administrative review of the Licensee's determination by the Commission. To request the Commission's review, a Consumer is required to submit a written request to the Commission within ninety (90) days after the Licensee's issues its determination. The Consumer's written request must include the following information:

- (1) The Consumer's full name, the name that appears on the consumer's loan agreement, as well as the Consumer's address, email address, and phone number;
- (2) A copy of the Consumer's agreement with the Licensee, or otherwise identify the agreement;
- (3) A copy of the Licensee's determination;
- (4) A statement requesting a hearing before the Commission. If a hearing is requested, the Consumer must indicate whether he will appear personally or if he would prefer to appear by telephone. The Consumer must also indicate whether he will be represented by an attorney or if he will represent himself;
- (5) Any other information the Consumer feels may be relevant to the complaint or that may assist the Commission to evaluate the complaint.

(b) The Commission may investigate the dispute in any manner it chooses. The Commission may require the Licensee to provide a written response to the complaint. The Commission may require the Consumer and the Licensee to provide additional documentation or information. The Commission may conduct interviews as needed, require sworn statements, or take other action necessary or advisable to make its determination. A failure to respond to a request by the Commission may result in a default pursuant to Section 1.2(h).

(c) After an investigation, the Commission may deny a Consumer's request for a hearing by sending a written explanation for the basis for denying the hearing request and a decision on the merits of the Consumer's request for a review of the Licensee's determination.

11.4 Hearing Procedure.

(a) Within 60 days after the Commission grants a Consumer's request for a hearing, the Commission will schedule and hold a hearing within 120 days after receiving the Consumer's written request. The Commission will send notice of the hearing date and location to the Consumer and Licensee. Upon request, the Commission may conduct a hearing via telephone or other means.

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

(c) The Commission may schedule a prehearing conference with the Consumer and Licensee(s) to discuss such matters as motions, discovery, witnesses, exhibits, etc. After a prehearing conference, the Commission will issue a case management order. If the parties agree that a prehearing conference is unnecessary, the parties may file a signed stipulated proposed case management order before the scheduled date of a prehearing conference.

(d) Hearing Procedure.

(1) Every hearing will be before the full Commission. The Commission may designate a Presiding Officer, who will conduct the hearing, administer oaths, admit or refuse evidence, and control any other aspect of the hearing the Presiding Officer deems necessary. The Presiding Officer does not need to be a Commissioner; however only Commissioners may participate in the decision on the complaint.

(2) A Licensee must be represented by someone knowledgeable and capable of testifying about the Consumer's complaint and must provide the Licensee's records pertaining to the Consumer.

(3) The parties may make opening and closing statements, call witnesses and provide physical evidence. The Commission will administer an oath to any witness and the witness must confirm that their testimony will be truthful. All physical evidence will be admitted and considered as long as it is the type of evidence a reasonable person would find relevant to the Consumer's complaints. Objections to evidence will be noted on the record. No Commission agent may be called to testify.

(4) The Commission may request the parties submit post-hearing briefs or evidence.

(5) Hearings will be recorded by the Commission. The recording and all physical evidence will constitute the record. The Commission is responsible to preserve all hearing records for two (2) years after the Commission's decision is issued.

(e) Within a reasonable time after a hearing, the Commission will issue a written decision and order that will include its factual findings and conclusions of law. Factual findings may be based on the Commission's investigation as well as the testimony and evidence presented by the parties. The Commission may grant or deny any relief as the Commission determines appropriate provided that total award may not exceed the amount of the Consumer's debt plus reimbursement of payments. The decision and order must inform the Consumer of the opportunity to appeal the Consumer's decision and order pursuant to Section 11.5.

(f) The Commission will mail a copy of the decision and order to all parties.

(g) A Consumer or Licensee may request a rehearing within 30 days after the Commission issues a decision and order. A request for a rehearing must provide justification for a rehearing. The Commission may grant or deny a request for a rehearing at its discretion.

(h) On its own or upon request, the Commission may default any party and issue a default decision. A default decision may not be appealed pursuant to Section 11.3. A default may be issued under any of the following circumstances:

(1) A party fails to comply with the Commission's investigatory requests;

(2) A Licensee fails to answer a Consumer's complaint; or

(3) A party fails to appear at a prehearing conference or hearing.

(i) The Commission may not award attorney fees or costs to either party.

11.5 Arbitration Procedure.

(a) A Consumer may request a review of a Commission decision and order by requesting arbitration by the American Arbitration Association ("AAA"). The AAA's Consumer Arbitration Rules ("CAR") will govern the arbitration subject to the following modifications:

(1) Where this Ordinance and the AAA's CAR differ, this Ordinance controls. To the extent this Ordinance is silent, then the Consumer's agreement may be relied upon to resolve ambiguities;

(2) No state or federal court will have jurisdiction to intervene in an arbitration arising under this Ordinance or any agreement between a Consumer and a Licensee;

(3) A Consumer may request that a dispute be resolved by submission of documents only or by a hearing. The Licensee will pay all AAA fees regardless of the AAA's decision;

(4) Arbitration is only available; mediation is not available;

- (5) A Consumer has 120 days after the Commission issued its decision and order to request arbitration;
- (6) Upon receipt of a Consumer's request for Arbitration, the Licensee will contact the AAA to make payment arrangements and the Licensee will solely be responsible for all of the AAA's fees;
- (7) Upon receipt of a Consumer's request for Arbitration, the Licensee will forward the record from the Complaint Procedure in Section 11.2 and the Review Procedure in Section 11.3;
- (8) The AAA may default either party for failing to respond to an answer;
- (9) There is no small claims court option for either party. By entering the loan agreement, the Consumer has agreed to abide by the Dispute Resolution Procedure within this Ordinance and that arbitration with the AAA is the final opportunity for adjudication of a Consumer's complaints;
- (10) The AAA's jurisdiction is limited to resolution of a Consumer's dispute after the Consumer's full compliance with Sections 11.2 and 11.3 of this Ordinance;
- (11) The Consumer may to choose the arbitrator from the AAA's National Roster without input or influence from the Licensee;
- (12) There will only be one arbitrator for any dispute arising under this Ordinance;
- (13) An arbitrator may default any party for failing to file a required document, failing to appear; or failing to fully participate in the exchange of documents, but the arbitrator's enforcement is limited to any applicable provisions within this Ordinance;
- (14) All proceedings, decisions, and awards made by the arbitrator are strictly confidential and may not be disclosed under any circumstances unless ordered by a court of competent jurisdiction;
- (15) If the complaint involves a Consumer Financial Service provided by a Consumer Financial Services Licensee, then the scope of the arbitrator's award is limited to the maximum value of the Loan at issue and no punitive damages will be awarded, and no equitable relief may be awarded;
- (16) If the complaint involves service provided by a Consumer Data Licensee, then the scope of the arbitrator's award is limited to the maximum value of service provided pursuant to the terms of the

agreement governing the applicable service, and no punitive damages will be awarded, and no equitable relief may be awarded;

(17) The AAA's decision will be the final decision and will resolve the Consumer's complaint.

(18) By allowing arbitration, the Tribe will allow enforcement of an AAA decision only upon the following circumstances:

- A. The person seeking to enforce an AAA decision was a Customer (or a Customer's agent) of a Licensee;
- B. The person seeking to enforce an AAA decision has fully complied with the Mandatory Dispute Resolution process in Sections 11.1 to 11.4.
- C. The person seeking to enforce an AAA decision has not already recovered all actual damages from the Licensee.
- D. The person seeking to enforce an AAA decision was determined by the AAA to be entitled to actual damages.
- E. The person seeking to enforce the AAA decision is only seeking recovery of actual damages and is not seeking punitive damages or equitable relief.
- F. The person seeking to enforce an AAA decision may only do so in a court of competent jurisdiction.
- G. The person seeking to enforce an AAA decision has timely filed an enforcement action.

(b) If AAA refuses to arbitrate a dispute, an alternate arbitration method may be used subject to the limitations within this Section.

(c) A request for arbitration under this Section is limited to a review of the Licensee and Commission decisions. A request for arbitration is not a cause of action as contemplated in any jurisdiction. As such, participating in arbitration does not constitute a suit against the Tribe, the Commission, or the Licensee, does not challenge the Tribe's sovereignty, and cannot be used as a means to circumvent the Tribe's sovereignty.



TRIBAL CONSUMER FINANCIAL SERVICES REGULATORY ORDINANCE

EXHIBIT A

Initial Application Fee to become a Consumer Financial Services Licensee..... \$250.00.

Initial Registration Fee to become a Consumer Data Licensee..... \$250.00.