

**TUNICA-BILOXI TRIBE OF LOUISIANA
ARBITRATION CODE**

GENERAL PROVISIONS

SECTION 1 — SHORT TITLE

This Code may be cited as the “Tunica-Biloxi Arbitration Code.”

SECTION 2 — AUTHORITY AND PURPOSE

- 2.1 The Tunica-Biloxi Tribe of Louisiana, hereinafter referred to as “Tribe,” is empowered by its Constitution to enact codes and hereby enacts this Code to encourage a speedy and fair method for resolution of all disputes.
- 2.2 The purpose of this Code is to ensure agreements to arbitrate and arbitration decisions and awards are enforceable to the fullest extent allowable under Tribal law as set forth herein and under applicable federal law.

SECTION 3 — DECLARATION OF TRIBAL POLICY

It is the policy of the Tribe that:

- a) All parties to transactions and proceedings benefit from clear expectations regarding how disputes will be resolved;
- b) Arbitration is a more streamlined and cost-effective way to resolve commercial disputes than litigation;
- c) A fair, quick, and efficient process to resolve commercial disputes is in the best interests of all parties; and
- d) Tribal Law should support arbitration to the extent possible.

SECTION 4 — APPLICATION

This Code applies to any written contract, agreement or other instrument entered into before or after the Effective Date of this Act between the Tribe or any Tribal Entity and any person subject to the jurisdiction of the Tribe for the provision of a consumer financial loan product and, in which the parties thereto agree to settle by arbitration any claim, dispute or controversy arising out of such contract, agreement or other instrument, or existing between them at the time of the agreement to arbitrate.

SECTION 5. DEFINITIONS

For purposes of this Code, the following definitions shall apply:

- a) “Agreement” means any written contract, agreement or other instrument described in Section 4 above.
- b) “Code” means this Tunica-Biloxi Arbitration Code.
- c) “Person” means any individual, entity, firm, partnership, corporation, company, or association entering an agreement.
- d) “Tribal Council” means the elected governing body of the Tribe.
- e) “Tribal Court” means any present or future court established by the Tribe.
- f) “Tribal Entity” means an arm of the Tribe formed under Tribal Law as an instrumentality, agency, unincorporated department or division, or business entity that is wholly owned by the Tribe or tribal subsidiaries, including, without limitation, a corporation or limited liability company.
- g) “Tribal Law” means all laws of the Tribe, including without limitation, this Code.
- h) “Tribe” means the Tunica-Biloxi Tribe of Louisiana.

SECTION 6 — SOVEREIGN IMMUNITY

Nothing in this Code, or in any arbitration or other provision of any Agreement, shall constitute a waiver, in whole or in part, of the sovereign immunity of the Tribe, any Tribal Entity, or any of their subsidiaries, departments, affiliates, agents, officers or employees, beyond the terms of any express limited waiver agreed to therein.

SECTION 7 – PRIOR CONTRACT OBLIGATIONS

Nothing in this Code shall be interpreted, applied, or enforced in such a way as to cause the Tribe or any Tribal Entity to be in violation of any prior contractual obligation or otherwise result in the Tribe or any Tribal Entity breaching any covenant made by the Tribe or any Tribal Entity in existence as of the Effective Date of this Code.

SECTION 8 — SAVINGS PROVISIONS

- 7.1 If any section or part thereof of this Code or the application thereof to any Party shall be held invalid for any reason whatsoever by a court of competent jurisdiction or by federal legislative action, the remainder of the relevant section or part thereof this Code shall not be affected thereby and shall remain in full force and effect.
- 7.2 In interpreting the provisions of this Code, unless otherwise plainly declared or clearly apparent from the context:
 - a) Words in the present tense shall include the future tense;

- b) Words in masculine, feminine and neuter genders shall include all genders; and
- c) Words in the singular shall include the plural, and words in the plural shall include the singular.

SECTION 9 — REPEAL OF INCONSISTENT PROVISIONS

Any prior legislation or other Tribal Laws that are inconsistent with the purpose and procedures established by this Code are hereby repealed to the extent of any such inconsistency.

SECTION 10 — EFFECTIVE DATE

This Code shall become effective immediately upon adoption by the Tribal Council.

ENFORCEMENT OF AGREEMENTS TO ARBITRATE

SECTION 11 — VALIDITY AND ENFORCEABILITY OF AGREEMENTS TO ARBITRATE

- 11.1 An agreement to arbitrate—whether set forth in a separate Agreement or contained as a provision within a written contract, agreement or other instrument—any claim, dispute or controversy arising out of such Agreement, or any other transaction contemplated thereunder, including the failure or refusal to perform the whole or any part thereof, shall be valid, enforceable, and irrevocable, except where grounds exist at law or in equity for the revocation of a contract.
- 11.2 Consistent with federal law and the purpose of this Code, any ambiguities regarding the validity, scope, or enforceability of an agreement to arbitrate, including the claims, controversies, disputes, and parties subject to arbitration, shall be resolved by the arbitrator, unless the Agreement expressly states otherwise.

SECTION 12 – LAW TO BE APPLIED

- 12.1 Substantive Law. In any Agreement, the parties may agree upon the jurisdiction whose substantive law governs the interpretation and enforcement of the agreement or claim, dispute or controversy arising thereunder. Such choice of law provision shall be valid and enforceable, and not subject to revocation by one Party without the consent of the other Party or parties thereto, provided that the subject matter of the agreement or claim, dispute or controversy arising thereunder, or at least one of the parties thereto, shall have sufficient contact with the jurisdiction so selected.
- 12.2 Procedural Law. In any proceeding under this Code, whenever the Agreement sets forth a choice of law provision, the Tribal Court shall apply the procedural rules of the Tribal Court and the substantive law of the jurisdiction selected in such choice of law provision, unless the parties have specifically provided in the Agreement that the action, proceeding or remedy shall be governed by the procedural rules of the jurisdiction whose substantive law applies.

12.3 In any proceeding under this Code, whenever the Agreement does not set forth a choice of law provision, the Tribal Court shall apply the substantive law of the Tribe, including any applicable choice of law principles, and then applicable federal law and then the substantive law of the State of Louisiana, including any applicable choice of law principles, provided that such State law does not conflict with this Code or other applicable Tribal Law.

SECTION 13 – STAY OF PROCEEDINGS

If any action for legal or equitable relief or other proceeding is brought by any Party to any Agreement, the Tribal Court shall not review the merits of the pending action or proceeding, but shall stay the action or proceeding until an arbitration has been had in compliance with the Agreement.

SECTION 14 – ORDER TO PROCEED WITH ARBITRATION

A Party alleging failure, neglect, or refusal of another to arbitrate pursuant to the provisions of any applicable Agreement may petition the Tribal Court for an order directing that such arbitration proceed in the manner provided for in such Agreement. Notice shall be served upon the Party in default in accordance with the Tribe’s Rules of Civil Procedure. Unless a Party in default sufficiently alleges grounds at law or in equity for the revocation of the agreement to arbitrate in particular, not the underlying Agreement as a whole, the Court shall order the Parties to proceed to arbitration in accordance with the provisions of the Agreement.

SECTION 15 – AGREEMENT TO ARBITRATE COMPELLED BY NON-SIGNATORY

- 15.1 A third party non-signatory may enforce an Agreement and thereby compel arbitration against a signatory to any Agreement, but only in the following circumstances:
- a) the plain language of the Agreement provides that a non-signatory may enforce the arbitration provision, or enforcement by a non-signatory is otherwise within the scope of the arbitration provision;
 - b) the non-signatory acted as an agent for any signatory of the Agreement during the transaction or occurrence giving rise to the signatory’s claim or dispute;
 - c) the signatory relies upon, presumes the existence of, or references the Agreement in asserting any of its claims against a non-signatory, regardless of whether the signatory challenges the legality or enforceability of that Agreement;
 - d) the signatory raises any allegation of interdependent or concerted conduct by the non-signatory and one or more of the signatories to the Agreement in asserting any of its claims against the non-signatory; or
 - e) the non-signatory is a third-party beneficiary (identified or unidentified) to the Agreement.

15.2 Notwithstanding any other provision of this Code or any other law or agreement to the contrary, a non-signatory may not enforce an arbitration provision against the Tribe, a Tribal Entity, or any of their respective officers, employees, or agents acting within the scope of their authority unless the non-signatory has obtained an enforceable, written waiver of tribal sovereign immunity for such an enforcement under Tribal Law.

SECTION 16 – APPOINTMENT OF ARBITRATOR

16.1 If the Agreement provides a method for naming or appointing an arbitrator(s), such method shall be followed.

16.2 Upon petition from any Party to any Agreement, the Tribal Court shall appoint an arbitrator in any of the following circumstances:

- a) The Agreement does not prescribe a method for the appointment of an arbitrator, and the parties cannot agree to a method;
- b) The Agreement prescribes a method for the appointment of an arbitrator, but the arbitrator has not been duly appointed within the appropriate time frame;
- c) The Agreement prescribes a method for the appointment of an arbitrator, but any Party thereto fails to avail itself of such method; or
- d) The arbitrator fails or is otherwise unable to act.

An arbitrator appointed by the Tribal Court shall have the same power under this Code and the agreement as though his or her appointment had been made in accordance with the Agreement.

16.3 Any Party to an Agreement may petition for appointment of an arbitrator by the Tribal Court pursuant to Section 15.2, unless the Agreement expressly states that the selection of the named arbitrator or arbitral forum is a material term of the parties' Agreement, such that there can be no substitution of arbitrator or arbitral forum in the event that the arbitrator or arbitral forum is unavailable. Upon receipt of such a petition, the Tribal Court shall randomly select an arbitrator from its qualified panel of individuals that serve as judges in other cases before the Tribal Court.

SECTION 17 – AUTHORITY OF ARBITRATORS

17.1 An arbitrator acting pursuant to this Code may administer oaths, allow discovery, order the presence of witnesses or the production of documents and things, and allow fees for such appearance or production, in a manner consistent with the Tribe's Rules of Civil Procedure.

17.2 If any person or persons refuse or neglect to obey an arbitrator's summons or order, the arbitrator may enforce its summonses or orders in the same manner provided by Tribal Law for such noncompliance in Tribal Court.

SECTION 18 – ADVICE OF THE TRIBAL COURT

At any time during any proceeding subject to this Code, upon request of all the parties to the arbitration, the arbitrator(s) may make application to the Tribal Court for advice on any question of Tribal Law arising in the course of the arbitration; provided that such parties shall agree in writing that:

- a) The advice of the Court shall be final as to the question presented; and
- b) The advice of the Court shall bind the arbitrator in rendering any award.

SECTION 19 – TIMEFRAME FOR A DECISION OR AWARD

- 19.1 If the time within which an award is to be rendered has not been fixed in the Agreement, the arbitrator shall render the award within thirty (30) days from the date the arbitration has been completed. The parties may expressly agree to extend the time in which the award may be made.
- 19.2 An arbitration award shall be in writing and signed by the arbitrator. The arbitrator shall provide written notice of the award to each Party by certified or registered mail, return receipt requested, and, if applicable, to the Tribal Court.

ENFORCEMENT OF ARBITRATION DECISION OR AWARD

SECTION 20 – ORDER CONFIRMING AWARD

- 20.1 At any time within one (1) year after an arbitration award has been rendered and the parties thereto notified thereof, any Party to the arbitration may make application to the Tribal Court for an order confirming the award.
- 20.2 Any Party applying for an order confirming an arbitration award shall file the following papers with the Clerk at the time the application is filed with the Clerk of the Tribal Court:
 - a) the Agreement;
 - b) the selection or appointment, if any, of the arbitrator;
 - c) any written agreement requiring the reference of any question as provided in Section 17;
 - d) each written extension of the time, if any, within which to make the award; and
 - e) the award.
- 20.3 The order confirming an award shall be docketed and enforced as if it were rendered in a civil action in the Tribal Court. The order so entered shall have the same force and effect in all respects as, and be subject to all the provisions of law relating to, a judgment in a civil action. When the award requires the performance of any act other than the payment of money, the Tribal Court may direct the enforcement thereon in the manner provided by Tribal Law.

20.4 If any Party or its attorney fails to comply with the provisions of this Code or fails to comply with any order or award rendered pursuant to this Code, the Tribal Court, upon motion, may in its discretion impose upon such Party or attorney, or both, appropriate sanctions, including, but not limited to, the award of attorneys' fees incurred by all parties due to such failure to comply.

SECTION 21 – REVIEW OF ARBITRATION DECISION OR AWARD

21.1 An arbitration award shall not be subject to review or modification by the Tribal Court, but shall be confirmed strictly as provided by the arbitrator, except as provided herein.

21.2 Upon motion by a Party to the arbitration proceeding, the Tribal Court shall vacate an award if:

- a) The award was procured by corruption, fraud, or other undue means;
- b) The arbitrator showed evident partiality or engaged in corruption;
- c) The arbitrator committed misconduct in:
 - 1) refusing to postpone the hearing, upon showing of sufficient cause for postponement;
 - 2) refusing to consider evidence pertinent and material to the controversy; or
 - 3) otherwise misbehaving so as to prejudice the rights of a Party to the arbitration proceeding.
- d) The arbitrator exceeded the arbitrator's powers or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made; or
- e) The arbitrator's finding of a waiver of sovereign immunity by the Tribe or a Tribal Entity was clearly erroneous.

If an award is vacated and the time within which the agreement required the award to be made has not expired, the Court may, in its discretion, direct a rehearing by a different arbitrator.

21.3 Upon the petition of any Party to the arbitration, the Tribal Court may modify or correct the award to effect the intent thereof and promote justice between the parties in any of the following circumstances:

- a) Where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award;
- b) Where the arbitrators have awarded upon a matter not submitted to them, unless it is a matter not affecting the merits of the decision upon the matter submitted; or

c) Where the award is imperfect in matter of form not affecting the merits of the controversy.

21.4 Any Party seeking to vacate, modify, or correct an award must serve written notice of such a motion upon the adverse Party or his attorney within ninety (90) days after the award is rendered. Such service shall be made upon the adverse Party in the same manner a complaint must be served under the Tribe's Rules of Civil Procedure. Upon the filing of such notice, any motion or proceeding of the adverse Party to enforce the arbitration decision or award shall be automatically stayed until the Tribal Court has ruled on the motion to vacate, modify, or correct the decision or award.

21.5 All proceedings in Tribal Court under this section of the Code shall be conducted by the Tribal Court without a jury.

SECTION 22 – ARBITRATION AWARD NOT APPEALABLE

No further appeal may be taken from an order issued by the Tribal Court pursuant to this Code enforcing or vacating an Agreement or an award issued by an arbitrator.

SECTION 23 – JURISDICTION OF THE TRIBAL COURT

23.1 To the extent allowable by Tribal Law and applicable federal law, the jurisdiction of the Tribal Court under this Code shall be concurrent with the jurisdiction of any court of competent jurisdiction to which the Tribe, Tribal Entity, or other parties shall have explicitly consented in an Agreement, provided that the Tribe or Tribal Entity has explicitly waived the defense of Tribal sovereign immunity in Tribal Court under the Agreement. Any consent to the jurisdiction of the Tribal Court or a court contained in such Agreement shall be valid and enforceable only in accordance with its express terms.

23.2 Any claim that would be barred in Tribal Court by limitation of time may not be asserted by a Party in arbitration or in any action to enforce an Agreement, to compel arbitration pursuant to such an Agreement, or to enforce an award made by an arbitrator pursuant to such Agreement.