

ARBITRATION CODE
Ordinance # 01-300-02

Section 1. Purpose.

1.01. *Purpose; Policy.* The Tribal Council of the Little River Band of Ottawa Indians creates this Ordinance for the purposes of creating a process whereby parties to written contracts and other written agreements may agree to resolve disputes arising under their contracts and agreements, without requiring court proceedings and have those decisions of arbitrators recognized and enforceable in Tribal Court.

1.02. *Findings.* The Tribal Council of the Little River Band of Ottawa Indians finds that:

a. the Constitution of the Little River Band of Ottawa Indians delegates to the Tribal Council the responsibility to "...exercise the inherent powers of the Little River Band by establishing laws through the enactment of ordinances and adoption of resolutions not inconsistent with this Constitution:

1. to govern the conduct of members of the Little River Band and other persons within its jurisdiction;

2. to promote, protect and provide for public health, peace, morals, education and general welfare of the Little River Band and its members[.]” *Article IV, Section 7(a).*

b. the Tribal Council has the responsibility to set forth processes to protect the contractual agreements made between parties subject to the Tribe’s jurisdiction when the parties agree to the processes of arbitration.

c. it is an important aspect of recognition of arbitration awards that those awards be made and enforced in substantial compliance with the rules set forth herein.

Section 2. Adoption, Amendment, Repeal

2.01. *Adoption.* This Ordinance is adopted by the Tribal Council by Resolution # 01-0404-07, and as amended by Resolution # 01-0425-09 and Resolution # 01-0618-01.

2.02. *Amendment.* This Ordinance may be amended from time to time as set forth in the Constitution or in procedures adopted by the Tribal Council.

2.03. *Severability.* If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of this Ordinance or the application of the provision to other persons or circumstances is not affected.

Section 3. Definitions.

3.01. *Application; Interpretation of Defined Terms.* For purposes of this Ordinance, certain terms are defined in this Section. The word “shall” is always mandatory and not merely advisory.

3.02. “Contract” means any written agreement, instrument, or document evidencing the intent of the parties. Contract may also include any written agreement, instrument, or document that is separate from the contract, but states within the separate written agreement, instrument, or document an intent that it is intended to be a part of the original contract.

3.03. “Claim” means any disagreement, dispute, controversy or other conflict arising out of or relating to a contract entered into between two parties, and may, if agreed to between the parties in writing, refer to specific disagreements, dispute, controversy or other conflict arising between the parties, but not out of or relating to the contract.

3.04. “Little River Band of Ottawa Indians” hereinafter referred to as the Tribe.

3.05. “Arbitrable claim” means a claim that is subject to a written agreement to arbitrate ~~which~~ that is enforceable under section 4.02.

Section 4. Scope of Ordinance

4.01. *General.* This Ordinance applies to any contract entered into by the Tribe, or parties subject to the jurisdiction of the Little River Band, in which the parties thereto agree in writing to settle claims by arbitration. And, with the agreement of the parties, the parties may include any other claim existing between them at the time of the agreement in the arbitration process.

4.02. *Agreements to Arbitrate are Enforceable.* An agreement in any contract, or in a separate writing executed by the parties to any contract, to settle by arbitration any claim thereafter arising out of such contract, or any other transaction contemplated thereunder, including the failure or refusal to perform the whole or any part thereof, or an agreement between two or more persons to submit to arbitration any specific claim existing between them at the time of the agreement, shall be valid, irrevocable and enforceable, except upon such grounds as exist at law or in equity for the revocation of any contract.

4.03. *Application to Tribe.* Notwithstanding anything in section 4.01 to the contrary –

a. *Consent to Jurisdiction.* Any contract entered into by the Tribe in which the Tribe agrees to submit any particular type or claim or any claims arising under that contract to arbitration must be approved by adoption of a resolution of the Tribal Council specifically waiving the sovereign immunity of the Tribe to –

1. arbitrate such claim,
2. have the agreement to arbitrate judicially enforced, and
3. have any award entered in such arbitration judicially enforced.

b. *Attorney Fees; Expenses.*

1. Any costs related to arbitration processes shall be allocated equally between all parties to the arbitration, and in no cases may the arbitrator or the Tribal Court allocate any attorney or legal fees of any party to the Tribe, except those incurred by the Tribe, provided that, fees and expenses related to filing arbitration awards, enforcing arbitration awards, or proceedings to order the Tribe to participate in arbitration may be allocated by the Tribal Court.

2. The Tribal Council may, by resolution agree to the allocation of costs and fees related to arbitration by adoption of a resolution that identifies such agreement; provided that, the amount of costs and fees sought shall be identified by an itemized statement from any attorney, agent, or expert witness who represented the party showing the rate at which the costs and fees were computed.

c. *Filing.* Prior to commencing any arbitration to which the Tribe is a party, the parties commencing arbitration must file a written statement notifying the Tribal Court of the commencement of arbitration, provided that, where the Tribe has waived the jurisdiction of the Tribal Court pursuant to section 10.02, such filing shall not be required. The Tribal Court shall notify the parties within 14 days of receipt of notice of commencing arbitration under this section whether the Tribal Court has jurisdiction in regards to the matter.

4.04. *Representation by Attorney.* A party has the right to be represented by an attorney at any proceeding or hearing under this Ordinance. A waiver thereof, regardless of whether it is writing or otherwise, prior to the proceeding or hearing is ineffective.

Section 5. Law to be Applied

5.01. *Choice of Law.* In any contract the parties may agree upon the jurisdiction whose substantive law shall govern the interpretation and enforcement of the contract or claim so long as the subject matter of the contract or claim, or at least one of the parties thereto, shall have some contact with, or relation to, the jurisdiction so selected. Such choice of law provisions shall be valid and enforceable, and not subject to

revocation by one party without the consent of the other party or parties thereto.

5.02. *Procedural Rules.* In any proceeding under this Ordinance, whenever a contract between the parties 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; provided that no procedural rule of the Tribal Court shall bar, delay or impair any action, proceeding or remedy where such action, proceeding or remedy would not be barred, delayed or impaired by the procedural rules of the courts of the jurisdiction whose substantive law applies.

5.03. *No Choice-of-Law Provision Identified.* In any proceeding under this Ordinance, whenever a contract between the parties does not set forth a choice-of-law provision, the Tribal Court shall first apply the substantive law of the Tribe, and then, if no such law exists, the substantive law of the United States and the State of Michigan, including any applicable choice-of-law principles, provided that such law does not conflict with this Ordinance or other applicable Tribal law.

Section 6. Stay of Proceedings; Order to Proceed with Arbitration

6.01. *Stay of Proceedings.* If any action for legal or equitable relief or other proceeding is brought on an arbitrable claim, the Tribal Court Judge who is presiding over the pending action or proceeding 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 contract, provided that if the contract between the parties provides a first preference for a jurisdiction other than the Tribal Court to enforce an arbitration award, the Tribal Court shall dismiss the action and order the parties to proceed in accordance with the provisions of the contract.

6.02. *Order to Proceed.* A party to any contract claiming the neglect or the refusal of another party thereto to proceed with an arbitration thereunder may make application to the Tribal Court for an order directing the parties to proceed with the arbitration in compliance with the contract. In such event, the Tribal Court shall order the parties to arbitration in accordance with the provisions of the contract and the question of whether an obligation to arbitrate the dispute at issue exists shall be decided by the arbitrator(s).

6.03. *Advice of the Tribal Court.* At any time during an arbitration, 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 or state law arising in the course of the arbitration, provided that, all parties agree in writing that the advice of the Tribal Court shall be final as to the question presented and that it shall bind the arbitrator(s) in rendering any award.

6.04. *Merit of Issue.* The Tribal Court shall not refuse to enter an order for arbitration on the ground that the claim in issue lacks merit, or because any fault or grounds for the claim sought cannot be shown.

6.05. *Appointment of Arbitrators by the Tribal Court.* If the contract in which the parties agreed to arbitrate provides a method for appointment of arbitrators, this method shall be followed. In the absence thereof, or if the agreed method fails or for any reason cannot be followed, or when an arbitrator appointed fails or is unable to act and his or her successor has not been duly appointed, the Tribal Court on application of a party shall appoint one or more arbitrators. An arbitrator appointed by the Tribal Court shall meet the qualifications set forth in any agreement, or, where no qualifications are set forth, shall be an attorney admitted to practice, who is in good standing with the highest court for any jurisdiction, and who has substantial litigation experience or experience with the general subject matter of the contract. An arbitrator so appointed shall have all the powers of one specifically named in the agreement.

Section 7. Time Within Which Award Shall Be Rendered

7.01. *Time Not Fixed by Contract.* If the time within which an award is rendered has not been fixed in the contract in which the parties agreed to arbitrate, the arbitrator(s) shall render the award within thirty 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 by an extension or ratification thereof in writing.

7.02. *Form of Arbitration Award.* An arbitration award shall be in writing and signed by the arbitrator(s). The arbitrator(s) shall provide written notice of the award to each party by certified or registered mail, return receipt requested. Each arbitration award shall contain findings of fact and conclusions of law, including a statement of the basis for any award of monetary damages, attorney fees, or costs as may be authorized in the contract or allowed by section 4.03.

7.03. *Requirement of Content of Arbitration Award.* The Tribal Court may order an arbitration award submitted for entry of judgment returned to the arbitrator(s) to conform to the requirements of section 7.02.

Section 8. Application for Order Confirming Award; Record to Be Filed with Clerk of Court; Effect and Enforcement of Judgement.

8.01. *Application for Order Confirming Award.* At any time within one 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.

8.02. *Effect and Enforcement of Judgement.* Upon application of a party to the arbitration, the Tribal Court shall confirm an award, unless another party has within the time limits imposed in section 8.03 or 8.04, applied to have the arbitration award vacated, modified or corrected. The judgment confirming an award shall be docketed as if it were rendered in a civil action. The judgment 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, and it may be enforced as if it has been rendered in a civil action in the Tribal Court. When the award requires the performance of any other act than payment of money, the Tribal Court may direct the enforcement thereon in the manner provided by law.

8.03. *Vacating an Award.*

- a. Upon application of a party the Tribal Court shall vacate an award if the Tribal Court finds that:
 1. The award was procured by corruption, fraud or other undue or illegal means.
 2. There was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of any party.
 3. The arbitrators in the course of their jurisdiction exceeded their powers or so imperfectly executed them that a mutual, final and definite award was not made, and the award cannot be corrected without affecting the merits of the decision upon the controversy submitted.
 4. The arbitrators in the course of their jurisdiction refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing as to prejudice substantially the rights of a party.
 5. There was no agreement or provision for arbitration subject to this law, unless the matter was determined in a proceeding under section 6.02 and the party participated in the arbitration hearing without raising the objection.
- b. The fact that the relief awarded by the arbitrator(s) was such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.
- c. An application under this section shall be made within ninety days after delivery of a copy of the award to the applicant, except that, if predicated upon corruption, fraud or other undue or illegal means, it shall be made within ninety days after such grounds are known or should have been known.
- d. In vacating the award on grounds other than those stated in subsection (a)(5), the Tribal Court may order a rehearing by new arbitrators, chosen as provided in the agreement or provision for arbitration or by the Tribal Court in accordance with section 6.05, or, if the award is vacated on grounds set forth in subsection (a)(3) and (4), the Tribal Court may order a rehearing before the

arbitrators who made the award or their successors appointed in accordance with section 6.05. The time within which the agreement or provision for arbitration requires the award to be made is applicable to the rehearing and commences from the date of the order therefor.

e. If the application to vacate is denied and no motion to modify or correct the award is pending, the Tribal Court shall confirm the award.

8.04. *Modification or Correction of Award.*

a. Upon application made within ninety days after delivery of a copy of the award to the applicant, the Tribal Court shall modify or correct the award if the Tribal Court finds that:

1. There is an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award.

2. The arbitrators have made an award upon a matter not submitted to arbitration and the award may be corrected without affecting the merits of the decision upon the issues submitted.

3. The award is imperfect as a matter of form, not affecting the merits of the controversy.

b. If the application is granted, the Tribal Court shall modify and correct the award so as to effect its intent and shall confirm the award as so modified and corrected. Otherwise, the Tribal Court shall confirm the award as made.

c. An application to modify or correct an award may be joined in the alternative with an application to vacate the award.

8.05. *Record to Be Filed with Clerk of Court.* Any party applying for an order confirming, vacating, modifying or correcting an arbitration award shall, at the time the arbitration award or application for order is filed with the Clerk of the Tribal Court for entry of judgment thereon, also file the following papers with the Clerk of the Tribal Court:

a. the agreement to arbitrate;

b. the selection or appointment, if any, of the arbitrator(s);

c. any written agreement requiring the reference of any question as provided in section 6.03;

d. each written extension of the time, if any, within which to make the award;

e. the award;

f. evidence that any party to the arbitration proceedings shall have received notice of the filing of such application; and

g. a copy of each order of the Tribal Court upon such an application.

Section 9. Arbitration Award Not Appealable.

9.01. *Appeal.* No further appeal may be taken from an order issued by the Tribal Court pursuant to this Ordinance enforcing an agreement to arbitration or an award issued by an arbitrator.

Section 10. Jurisdiction of the Tribal Court

10.01. *Jurisdiction.* The jurisdiction of the Tribal Court under this Ordinance shall be concurrent with the jurisdiction of any other court to which the Council shall have explicitly consented in such contract. Any consent to the jurisdiction of a state or federal court contained in a contract described in section 4.02 to which the Tribe is a party and any term of such contract providing for priority among venues shall be valid and enforceable in accordance with its terms.

10.02. *Tribe As a Party.* By resolution, the Tribal Council may agree to waive Tribal Court jurisdiction or to give priority to some other venue in circumstances where it is in the interest of the public health, peace, morals, education, and general welfare of the Little Rive Band and its members to do so. Such resolution shall specifically state that the Tribal Council is waiving Tribal Court jurisdiction or is giving priority to

some other venue, and, if applicable, is waiving the notice requirement of section 4.03(c) and the requirement of exhaustion of Tribal remedies; provided that, in any case where the Tribal Council is giving priority to some other venue, the Tribal Court shall in all circumstances be identified as the venue that comes after the first priority of venues as either second or third priority. Provided further, that any resolution waiving Tribal Court jurisdiction, or giving priority to some other venue, shall require that modification or vacating an award shall be in accordance with either this Arbitration Code or the Federal Arbitration Act.

10.03. *Commercial Court Division.* Under Article VI, Section 1, of the Constitution, the Tribal Council does hereby create a Commercial Court of the Little River Band of Ottawa Indians Tribal Court system for the purposes of hearing matters arising under this Arbitration Code, the Tribal Uniform Commercial Code and other ordinances as may from time to time authorize jurisdiction of the Tribal Commercial Court. The Tribal Commercial Court shall apply the provisions of Tribal ordinances and any other procedural codes or rules, ordinances, resolutions or other enactments adopted by the Tribe. When appropriate, the Tribal Commercial Court shall rely on previous opinions issued by the Tribal Court, the Tribal Commercial Court, or the Tribal Court of Appeals in interpreting the Tribal ordinances or any other Tribal resolution, ordinance or enactment.

a. *Proceedings.* In proceedings before the Tribal Commercial Court, the Tribal Commercial Court shall –

1. First, adhere to the requirements of this section 10.03,
2. Second, apply the provisions of this ordinance and the Tribal Uniform Commercial Code.
3. Third, unless otherwise agreed by the parties under Section 5, apply the substantive statutory, regulatory and common law of the United States and the State of Michigan, but only to the extent that such substantive statutory, regulatory and common law does not conflict with the Tribal ordinances or any duly enacted ordinances, resolutions or other enactments of the Tribe or federal law.

b. *Jurisdiction.* Original jurisdiction in all civil proceedings where the matter in controversy exceeds the sum of \$10,000, exclusive of interest and costs, is hereby referred to the Tribal Commercial Court. The Chief Judge of the Tribal Court may also refer jurisdiction over other civil actions to the Tribal Commercial Court on a discretionary basis, or where directed by ordinance of the Tribe.

c. *Qualifications for Judges of the Tribal Commercial Court.* A judge of the Tribal Commercial Court may be any person, Indian or non-Indian, whether a resident or nonresident of the Reservation, provided that such person:

1. meets the requirements of the Constitution applicable to judges of the Tribal Court generally; and
2. is duly licensed to practice law in the courts of any state at all times while presiding as a Judge of the Tribal Commercial Court.

Provided that, the Tribal Court, may assign any Tribal Court Judge currently meeting the qualifications set forth above, or may retain the services on a temporary basis, or any judge from any other Tribe meeting the above qualifications, until such time as permanent judges may be appointed by the Tribal Ogema and approved by the Tribal Council.