

Modoc Tribe of Oklahoma Arbitration Ordinance

CHAPTER 1. GENERAL PROVISIONS

Section 101. Citation. This Ordinance shall be known as the Modoc Tribe of Oklahoma Arbitration Ordinance (or the “Arbitration Ordinance”).

Section 102. Purpose. The Modoc Tribe of Oklahoma (the “Tribe”) declares it to be the public policy and law of the Tribe that: (a) a speedy and fair method for resolution of all disputes shall be encouraged; and (b) agreements to arbitrate shall be enforceable to the fullest extent allowable by Tribal law as set forth herein and under applicable federal law.

Section 103. Scope of this Arbitration Ordinance.

- (a) This Arbitration Ordinance applies to any written contract, agreement, or any other instrument evidencing a transaction entered into by the Tribe; by any subdivision, instrumentality, wholly-owned entity, or affiliate of the Tribe; or by any other person or entity that enters into a transaction that is subject to the jurisdiction of the Tribe and in which the parties to that transaction agree to settle by arbitration any claim, controversy, or dispute arising out of or relating to such contract, agreement, or other instrument, or any claim, controversy, or dispute arising out of or relating to a transaction evidenced by such contract, agreement, or other instrument.
- (b) Any prior legislation, code, ordinance, common law, or other Tribal law that is inconsistent with this Arbitration Ordinance is hereby repealed to the extent of any such inconsistency.

CHAPTER 2. ENFORCEMENT OF AGREEMENTS TO ARBITRATE

Section 201. Agreements to Arbitrate are Enforceable. An agreement to arbitrate — whether set forth as a separate agreement or contained as a provision in any written contract, agreement or other instrument described in Section 103 — shall be valid, irrevocable, and enforceable to fullest extent allowable.

Section 202. Substantive Law to be Applied. In any contract, agreement, or other instrument described in Section 103, the parties may agree upon the jurisdiction whose substantive law shall govern any claim, controversy, or dispute arising out of or relating to the interpretation or enforcement of such contract, agreement, or other instrument. Such choice of law shall be valid and enforceable, the arbitrator(s) shall apply and act in

conformity with such choice of law, and such choice of law is not subject to revocation by one party without the written consent of the other party or parties thereto, provided that the subject matter of the contract, agreement, or instrument — or at least one of the parties thereto — shall have some meaningful contact with the jurisdiction whose substantive law is selected. In any matter or proceeding subject to this Arbitration Ordinance, if the contract, agreement, or other instrument does not set forth a choice of law provision, the substantive law of the Tribe shall apply, including any applicable choice of law principles and without regard to any other jurisdiction's choice of law rules.

Section 203. Stay of Proceedings and Order to Proceed with Arbitration.

- (a) If any action for legal or equitable relief is brought in a court of competent jurisdiction by any party to any contract, agreement, or instrument described in Section 103, such court shall not review the merits of the pending action or proceeding, but shall stay the action or proceeding until arbitration has occurred.
- (b) A party to any contract, agreement, or instrument described in Section 103 of this Arbitration Ordinance alleging the neglect or refusal of any other party thereto to proceed with arbitration to settle any claim, controversy, or dispute arising out of or relating to such contract, agreement, or instrument may apply to a court of competent jurisdiction for an order directing the parties to proceed with arbitration in compliance with their contract, agreement, or instrument. In such event, the court shall order the parties to arbitrate in accordance with the provisions of the contract, agreement, or instrument, and all questions regarding whether an obligation to arbitrate the claim, controversy, or dispute at issue exists shall be decided by the arbitrator(s) unless the parties' agreement expressly provides that all questions of arbitrability shall be decided by a court of competent jurisdiction.

Section 204. Agreement to Arbitrate Compelled by Non-signatory. A third-party non-signatory may enforce an agreement to arbitrate and thereby compel arbitration against a signatory to any contract, agreement, or instrument described in Section 103, but only in the following instances:

- (a) the plain language of the contract, agreement, or instrument described in Section 103 provides that a non-signatory may enforce the arbitration provision or is otherwise within the scope of the arbitration provision;
- (b) the non-signatory acted as an agent for any signatory of a contract, agreement, or instrument described in Section 103 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 any contract, agreement, or instrument described in Section 103 in asserting any of its claims against a non-signatory, regardless of whether the signatory

challenges the legality or enforceability of that contract, agreement, or instrument;

- (d) the signatory raises any allegation of interdependent or concerted conduct by the non-signatory and one or more of the signatories to any contract, agreement, or instrument described in Section 103 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 contract, agreement, or instrument described in Section 103.

Notwithstanding any other provision of this Arbitration Ordinance or any other law or agreement to the contrary, a non-signatory may not enforce an arbitration provision against the Tribe; any subdivision, instrumentality, wholly-owned entity, or affiliate of the Tribe; or any of their respective officers, employees, or agents acting within the scope of their authority unless the Tribe has executed an enforceable, written waiver of the defense of tribal sovereign immunity that explicitly authorizes such non-signatory to bring an arbitration claim against the Tribe or any subdivision, instrumentality, wholly-owned entity, or affiliate of the Tribe. Any such written waiver of the defense of tribal sovereign immunity is invalid unless approved by a duly authorized resolution of the Elected Council.

Section 205. Appointment of Arbitrators. If the contract, agreement, or other instrument described in Section 103 provides for a method of naming or appointing an arbitrator or arbitrators, such method shall be followed. But if no method is provided therein and the parties cannot agree upon such a method, or if a method is provided and any party thereto shall fail to avail himself of such method, or if for any reason there is a lapse in the naming of an arbitrator or filling a vacancy or if an arbitrator or arbitral forum is unavailable for any reason, then upon the application of any party, a court of competent jurisdiction shall designate and appoint an arbitrator or arbitrators, as the case may require, who shall act with the same force and effect as if he or they had been specifically named therein. An application described in this Section 205 may be sought by any party in all cases in which an arbitrator or arbitral forum is unavailable unless the contract, agreement, or other instrument described in Section 103 expressly provides that: (1) arbitration shall not proceed if the parties' choice of an arbitrator or arbitral forum is unavailable; or (2) the appointment of a substitute arbitrator or arbitral forum is prohibited; or (3) the agreement to arbitrate expressly states that the selection of the named arbitrator or arbitral forum is a material term to the parties' agreement to arbitrate.

Section 206. Advice of the Elected Council. At any time during any proceeding subject to this Arbitration Ordinance, upon written request of all the parties to the arbitration, the arbitrator(s) may make application to the Elected Council for advice on any question of Tribal law so long as such parties agree in writing prior to submission to the Elected Council that the advice of the Elected Council shall be final as to the question presented and shall bind the arbitrator(s) in rendering any decision or award.

CHAPTER 3. **ENFORCEMENT OF AN ARBITRATION DECISION OR AWARD**

Section 301. Timeframe for an Arbitration Decision or Award.

- (a) If the time within which a decision or award is rendered has not been fixed in the arbitration agreement, the arbitrator(s) shall render an award within thirty days from the date the arbitration has been completed. The parties may expressly agree in writing to extend the time in which the decision or award may be rendered.
- (b) An arbitration decision or 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 using certified or registered United States mail, return receipt requested, or by private courier with written confirmation of delivery.

Section 302. Application for Order Confirming Decision or Award; Record to be Filed with Tribal Court; Effect and Enforcement of Judgment.

- (a) At any time within one year after an arbitration decision or award has been rendered and the parties thereto are notified thereof, any party to the arbitration may apply to a court of competent jurisdiction for an order confirming the award.
- (b) Any party applying for an order confirming an arbitration decision or award shall — at the time the order is filed with the clerk (or other appropriate representative) of a court of competent jurisdiction for entry of judgment thereon — file the following papers (where applicable, with the clerk, or other appropriate representative):
 - (i) the contract, agreement, or other instrument containing the agreement to arbitrate;
 - (ii) the selection or appointment, if any, of the arbitrator(s);
 - (iii) any written agreement requiring the reference of any question as provided in Section 206;
 - (iv) each written extension of the time, if any, within which to make the award;
 - (v) the award; and
 - (vi) each notice and other paper used upon an application to confirm.
- (c) The judgment confirming any arbitration decision or award shall be docketed as if it were rendered in 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 under Tribal law as if it has been rendered in a civil action in a court of competent jurisdiction. When the decision or award requires the performance of any act

other than the payment of money, such court may direct the enforcement thereon in the manner provided by law.

Section 303. Review of Arbitration Decision or Award. An arbitration decision or award shall not be subject to judicial review or modification by a court of competent jurisdiction, but shall be confirmed strictly as provided by the arbitrator(s), except as provided in this Section 303.

(a) Any arbitration decision or award may be vacated by a court of competent jurisdiction upon the application of any party to the arbitration if it finds that any of the following occurred:

- (i) the decision or award was procured by corruption, fraud, or undue means;
- (ii) there was evident partiality or corruption committed by the arbitrator(s);
- (iii) an arbitrator was guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced;
- (iv) an arbitrator exceeded its powers, or so imperfectly executed them that a mutual, financial, and definite decision or award upon the subject matter submitted was not made;
- (v) an arbitrator finds that the Tribe or any of its subdivisions, instrumentalities, wholly-owned entities, or affiliates waived tribal sovereign immunity in a manner or scope contrary to an express and duly executed waiver; or
- (vi) an arbitrator infringed upon, abrogated, or otherwise failed to respect the tribal sovereign immunity of Tribe or any of its subdivisions, instrumentalities, wholly owned entities, or affiliates.

Where an arbitration decision or award is so vacated, such court may, in its discretion, direct a rehearing by the arbitrator(s) or substitute arbitrator(s).

(b) A court of competent jurisdiction may make an order modifying or correcting the arbitration decision or award upon the application of any party to the arbitration if it finds that any of the following occurred:

- (i) 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;
- (ii) the arbitrator(s) ruled upon a matter not submitted by the parties, unless it is a matter not materially affecting the merits of the decision or award; or
- (iii) the arbitration decision or award is imperfect in matter of form not affecting the merits of the controversy.

Where an arbitration decision or award is so modified or corrected, such court may issue an order modifying and correcting the decision or award so as to effectuate the intent thereof and promote justice between the parties.

- (c) Written notice of a motion to vacate, modify, or correct an arbitration decision or award must be filed with the clerk (or other appropriate representative) of a court of competent jurisdiction within ninety days after the decision or award is delivered. 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 motion to vacate, modify, or correct is ruled upon. Upon motion of any party, the such court shall issue an order confirming the stay.

CHAPTER 4. **MISCELLANEOUS PROVISIONS**

Section 401. Jurisdiction of the Tribe. To the extent allowable by Tribal law and applicable federal law, the jurisdiction of the Tribe under this Arbitration Ordinance shall be concurrent with the jurisdiction of any court of competent jurisdiction to which the Tribe or any subdivision, instrumentality, wholly-owned entity, agent, or affiliate of the Tribe shall have explicitly consented to in such contract, agreement or other instrument. Any consent to the jurisdiction of a court contained in a contract, agreement, or other instrument described in Section 103 of this Arbitration Ordinance to which the Tribe or any subdivision, instrumentality, wholly-owned entity, agent, or affiliate of the Tribe is a party shall be valid and enforceable only in accordance with its express terms.

Section 402. Interpretation of Agreements to Arbitrate. Consistent with federal law and the purpose of this Arbitration Ordinance, any ambiguities regarding the enforceability of or the scope of an agreement to arbitrate, including the claims, controversies, disputes, and parties subject to arbitration, shall be resolved in favor of arbitration and shall be resolved by the arbitrator, unless the agreement to arbitrate expressly states to the contrary.

Section 403. Sanctions. If any party or its attorney fails to comply with the provisions of this Arbitration Ordinance or fails to comply with any order or award rendered pursuant to this Arbitration Ordinance, 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 attorney fees incurred by all parties due to such failure to comply.

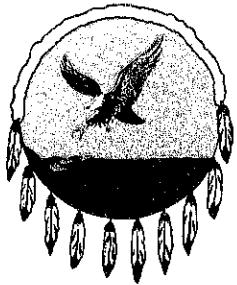
Section 404. Severability. If any section or part of this Arbitration Ordinance or the application thereof shall be held invalid for any reason whatsoever by a court of competent jurisdiction, the remainder of the relevant section or part of this Arbitration Ordinance shall not be affected thereby and shall remain in full force and effect.

Section 405. Codification and Supplementation. Except for the procedural provisions set forth herein, this Arbitration Ordinance codifies the Tribe's principles and common law regarding arbitration and contract law. Unless displaced by particular provisions of this Arbitration Ordinance, the principles of law and equity otherwise recognized by the Tribe shall supplement this Arbitration Ordinance.

Section 406. No Waiver of Sovereign Immunity. Nothing in this Arbitration Ordinance shall be interpreted to provide a waiver of the sovereign immunity of the Tribe; any subdivision, instrumentality, wholly owned entity, or affiliate of the Tribe; or any of their respective officers, employees, or agents acting within the scope of their authority.

Section 407. Additional Enforcement Provisions. All police or other law enforcement officials of the Tribe shall carry out any orders, decisions, or awards that are entered by a court of competent jurisdiction pursuant to this Arbitration Ordinance.

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MODOC TRIBE OF OKLAHOMA

515 G Southeast
Miami, Oklahoma 74354
918-542-1190 • FAX 918-542-5415



RESOLUTION NO. 13-13

Publication of the Modoc Tribe of Oklahoma Arbitration Ordinance

WHEREAS, the Modoc Tribe of Oklahoma is a federally recognized Indian tribe organized under the Oklahoma Indian Welfare Act of 1936 with a Constitution and Bylaws approved by the United States Secretary of the Interior on July 27, 1990, and

WHEREAS, the Elected Council of the Modoc Tribe of Oklahoma is empowered to act on behalf of the Modoc Tribe under Article 1, Section 3 of the Constitution and Bylaws, and

WHEREAS, the Elected Council has enacted ordinances, adopted resolutions, and negotiated intergovernmental agreements to govern the affairs of the Modoc Tribe and those who transact business with the Modoc Tribe;

WHEREAS, the Elected Council regularly reviews, modifies, amends, and repeals the aforementioned ordinances and resolutions as the Elected Council deems necessary to serve the best interests of the Modoc Tribe;

WHEREAS, the widespread publication and distribution of the Modoc Tribe's laws in print requires significant funds that the Modoc Tribe lacks due to insufficient federal funding and the Modoc Tribe's lack of economic opportunities;

WHEREAS, due to the advent of the Internet coupled with the increasing acceptance of legal authority obtained from the Internet, the Modoc Tribe can self-publish its laws without the costs associated with publication and distribution in print;

WHEREAS, publication of the Modoc Tribe's laws may help members of the public better understand the Modoc Tribe's rights and perspectives, refute misconceptions about the Modoc Tribe's laws, facilitate the development of Indian law, and allow state and federal judges to consider the Modoc Tribe's laws in issues of concurrent jurisdiction and choice-of-law;

WHEREAS, the Elected Council finds it is in the Modoc Tribe's best interest to begin self-publication of its laws, with priority given to the publication of laws governing transactions between the Modoc Tribe and those that do business with the Modoc Tribe;

WHEREAS, the Elected Council finds that the Modoc Tribe of Oklahoma Arbitration Ordinance is one such law that shall be given priority publication;

WHEREAS, the Elected Council finds that the Modoc Tribe's other laws shall be published by future resolution of the Modoc Elected Council when the resources of the Modoc Tribe so allow; and

WHEREAS, the Elected Council finds that in order to maintain the integrity of the Modoc Tribe's laws it is required that publication of any of the Modoc Tribe's laws on the Internet shall only be through websites owned, operated, and maintained by the Modoc Tribe.

NOW THEREFORE BE IT RESOLVED, that the Modoc Tribe of Oklahoma, acting through its Elected Council, hereby authorizes publication of the Modoc Tribe of Oklahoma Arbitration Ordinance for the reasons set forth above.

CERTIFICATION

I hereby certify that the foregoing resolution 13-13 was passed at a meeting of the Elected Council of the Modoc Tribe of Oklahoma on December 13, 2013 with a vote of 4 yes, 0 no and 0 abstaining.


Attest: **Troy Little Axe**
Tribal Attorney


Bill G. Follis, Chief