

POKAGON BAND OF POTAWATOMI INDIANS ARBITRATION ORDINANCE

Section 1. Title

This Ordinance shall be known as the Pokagon Band of Potawatomi Indians Arbitration Ordinance.

Section 2. Scope of Ordinance

This Ordinance applies to any written contract, agreement or other instrument (a) entered into by the Pokagon Band of Potawatomi Indians (the ABand@), or any agency or instrumentality of the Band, or by any other person in a transaction that is subject to the jurisdiction of the Pokagon Band of Potawatomi Indians Tribal Court (the ATribal Court@) and (b) in which the parties thereto have agreed to settle by arbitration any controversy arising out of such contract, agreement or other instrument, or any other controversy existing between them, at the time of the agreement.

Section 3. Agreements to Arbitrate are Enforceable

An agreement in any written contract, agreement or other instrument, or in a separate writing executed by the parties to any written contract or agreement or other instrument, to settle by arbitration any controversy thereafter arising out of such contract, agreement or other instrument (or any other transaction contemplated thereunder), including the failure or refusal to perform the whole or any part thereof, or a written agreement between two or more persons to submit to arbitration any controversy existing between them at the time of the agreement, shall be valid, irrevocable and enforceable.

Section 4. Law to be Applied

- A. In any contract or agreement or instrument described in Section 2 of this Ordinance, the parties may agree upon the jurisdiction whose substantive law shall govern the interpretation and enforcement of the contract, agreement, instrument or controversy. Such choice of law shall be valid and enforceable, and not subject to revocation by one party without the consent of the other party or parties thereto.
- B. In any proceeding under this Ordinance, whenever the contract, agreement or other instrument 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 be effective to bar, unreasonably delay or impair any action, proceeding or remedy where such action, proceeding or remedy would not be barred, unreasonably delayed or impaired by the procedural rules of the Courts of the jurisdiction whose substantive law applies.

- C. In any proceeding under this Ordinance, whenever the contract, agreement or other instrument does not set forth a choice of law provision, the Tribal Court shall first apply the substantive law of the Band, including any applicable choice of law principles, and then the substantive law of the State of Michigan, including any applicable choice of law principles, provided that such law does not conflict with this Ordinance or other applicable law of the Band.

Section 5. Stay of Proceedings and Order to Proceed with Arbitration

- A. If any action for legal or equitable relief or other proceeding arising out of any contract, agreement or instrument described in Section 2 of this Ordinance is pending or brought in the Tribal Court by any party to such a contract, agreement or instrument, the Tribal Court Judge who is presiding over the action or proceeding shall not review the merits of the action or proceeding, but shall stay the action or proceeding until an arbitration has been had in compliance with the agreement.
- B. A party to any contract, agreement or instrument described in Section 2 of this Ordinance claiming the neglect or 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 their agreement. In such event, the Tribal Court shall order the parties to submit to arbitration in accordance with the provisions of the contract, agreement or instrument and the question of whether any obligation to arbitrate the dispute at issue exists shall be decided by the arbitrator(s).

Section 6. Advice of the 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 such parties shall agree in writing that the advice of Tribal Court shall be final as to the question presented and that it shall bind the arbitrator(s) in rendering any award.

Section 7. Time Within Which Award Shall be Rendered

- A. If the time within which an award is rendered has not been fixed in the arbitration agreement, the arbitrator(s) shall render the award within 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 by an extension or ratification thereof in writing.
- B. 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.

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

- A. 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.
- B. Any party applying for an order confirming an arbitration award shall, at the time the order is filed with the Clerk of the Tribal Court for entry of judgment thereon, file the following papers with the Clerk: (1) the agreement to arbitrate; (2) the selection or appointment, if any, of the arbitrator(s); (3) any written agreement requiring the reference of any question as provided in Section 5; (4) each written extension of the time, if any, within which to make the award; (5) the award; (6) each notice and other paper used upon an application to confirm; and (7) a copy of each order of the Tribal Court upon such an application.
- C. 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(s). 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 had been rendered in a civil action in the Tribal Court. When the award requires the performance of any act other than payment of money, the Tribal Court may direct the enforcement thereon in the manner provided by law.

Section 9. Arbitration Award Not Appealable

No appeal may be taken from an award issued by an arbitrator or arbitrators, or from an order issued by the Tribal Court pursuant to this Ordinance, enforcing an agreement to arbitrate.

Section 10. Jurisdiction of the Tribal Court in Actions to which the Band is a Party

- A. Except as provided in Paragraph (B) of this Section, the Tribal Court shall have exclusive jurisdiction over any action to enforce an agreement to arbitrate, to compel arbitration pursuant to such an agreement to arbitrate, or to enforce an award made by an arbitrator or arbitrators pursuant to such agreement to arbitrate if such agreement is contained in any contract, agreement or other instrument described in Section 2 of this Ordinance to which the Band, or any agency or instrumentality of the Band, is a party; *provided* that the defense of tribal sovereign immunity has been explicitly and unequivocally waived by the Tribal Council, or explicitly and unequivocally waived by an authorized Tribal entity or authority pursuant to an express authorization of the Tribal Council, in the contract, agreement or other instrument; *and provided further* that the said

contract, agreement, or other instrument does not expressly prohibit the Tribal Court from exercising jurisdiction thereunder.

- B. Any consent to the jurisdiction of a state or federal court contained in a contract, agreement or other instrument described in Section 2 of this Ordinance to which the Band, or an agency or instrumentality of the Band, is a party shall be valid and enforceable in accordance with its terms, *provided* that the defense of tribal sovereign immunity has been explicitly and unequivocally waived by the Tribal Council, or explicitly and unequivocally waived by an authorized Tribal entity or authority pursuant to an express authorization of the Tribal Council, in the contract, agreement or other instrument with respect to such state or federal court jurisdiction. Unless the said contract, agreement, or other instrument also expressly prohibits the Tribal Court from exercising jurisdiction, the jurisdiction of the Tribal Court under this Ordinance shall be concurrent with the jurisdiction of any state or federal court to which the Band, as authorized by the Tribal Council, shall have explicitly consented in such contract, agreement or other instrument; *provided, however*, that any waivers of exhaustion of remedies authorized by the Tribal Council shall be respected.
- C. The provisions of this Section 9 shall not be applicable to actions to enforce agreements entered into by the Band prior to the date of the adoption of this Arbitration Ordinance.

LEGISLATIVE HISTORY

The "Arbitration Ordinance" was enacted on January 30, 2001 by adoption of Tribal Council Resolution No. 01-01-30-01; and on June 1, 2006, by adoption of Resolution No. 06-06-01-02, the Tribal Council amended subsection 4.A of the Arbitration Ordinance regarding "choice of law" provisions in contracts.