

# SANTEE SIOUX NATION ARBITRATION CODE

## CHAPTER 1. GENERAL PROVISIONS

**Section 101. Citation.** This Code shall be known as the Santee Sioux Nation Arbitration Code (or the “Arbitration Code”).

**Section 102. Purpose.** The Santee Sioux Nation (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 Code.**

- (a) This Arbitration Code 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legislation, code, ordinance, common law, or other Tribal law that is inconsistent with this Arbitration Code is hereby repealed to the extent of any such inconsistency.
- (c) As used in this Arbitration Code, the term “Tribal Court” shall mean any present or future court established by the Tribe, or if no Tribal Court exists, then this term shall refer to any dispute resolution body now or hereafter established by the Tribal Council for resolving disputes.

## 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 Code, if the contract, agreement, or other instrument 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 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 by any party to any contract, agreement, or instrument described in Section 103, the Tribal 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 Code 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 the Tribal Court for an order directing the parties to proceed with arbitration in compliance with their contract, agreement, or instrument. In such event, the Tribal 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 the Tribal Court.

**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 Code 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 Tribal 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, the Tribal Court 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 Tribal Court.** At any time during any proceeding subject to this Arbitration Code, upon written 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 so long as such parties agree in writing prior to submission to the Tribal Court that the advice of the Tribal Court 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 the Tribal Court 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 the Tribal Court 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 by the Tribal Court as if it were rendered in a Tribal 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 Tribal civil action, and it may be enforced under Tribal law as if it has been rendered in a civil action in the Tribal Court. When the decision or 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 law.

**Section 302. Review of Arbitration Decision or Award.** An arbitration decision or award shall not be subject to judicial review or modification by the Tribal Court or any other court, but shall be confirmed strictly as provided by the arbitrator(s), except as provided in this Section 302.

- (a) The Tribal Court may vacate any arbitration decision or award 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, the Tribal Court may, in its discretion, direct a rehearing by the arbitrator(s) or substitute arbitrator(s).

- (b) The Tribal Court 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.

In any such case, the Tribal 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 the Tribal Court 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 by the Tribal Court. Upon motion of any party, the Tribal Court shall issue an order confirming the stay.

## **CHAPTER 4.** **MISCELLANEOUS PROVISIONS**

**Section 401. Jurisdiction of the Tribal Court.** To the extent allowable by Tribal law and applicable federal law, the jurisdiction of the Tribal Court under this Arbitration Code 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 Code 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 Code, 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 Code or fails to comply with any order or award rendered pursuant to this Arbitration 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 attorney fees incurred by all parties due to such failure to comply.

**Section 404. Severability.** If any section or part of this Arbitration Code 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 Code 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 Code codifies the Tribe's principles and common law regarding arbitration and contract law. Unless displaced by particular provisions of this Arbitration Code, the principles of law and equity otherwise recognized by the Tribe shall supplement this Arbitration Code.

**Section 405. No Waiver of Sovereign Immunity.** Nothing in this Arbitration Code 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 406. 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 any Tribal Court pursuant to this Arbitration Code.

2014-11

**RESOLUTION OF THE SANTEE SIOUX NATION  
AUTHORIZING PUBLICATION OF TRIBAL ARBITRATION CODE**

**WHEREAS**, the Santee Sioux Nation is a federally-recognized Indian Tribe pursuant to Section 16 of the Act of June 18, 1934, (48 Stat. 984), codified at 25 U.S.C. 476, *et seq.*, as amended by the Act of June 16, 1935, (49 Stat. 378);

**WHEREAS**, the Santee Sioux Nation (hereinafter the "Tribe") is governed by a Tribal Council made up of elected representatives who act in accordance with the powers granted to it by its Constitution and By-Laws, amended on August 30, 2002 by Secretarial Election;

**WHEREAS**, the Tribal Council is authorized to act on the Tribe's behalf to enhance Tribal culture, to protect the welfare of the Tribe, and to maintain law and order consistent with the Tribe's history, traditions, and recognized principles of law;

**WHEREAS**, to serve these purposes, the Tribal Council has enacted codes, adopted resolutions, and negotiated intergovernmental agreements to govern the affairs of the Tribe and those who transact business with the Tribe;

**WHEREAS**, the Tribal Council regularly reviews, modifies, amends, and repeals the aforementioned codes and resolutions as the Tribal Council deems necessary to serve the best interests of the Tribe;

**WHEREAS**, the widespread publication and distribution of the Tribe's laws in print requires significant funds that the Tribe lacks due to insufficient federal funding and the 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 Tribe can self-publish its laws without the costs associated with publication and distribution in print;

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

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

**WHEREAS**, the Tribal Council finds that the Santee Sioux Nation Arbitration Code is one such law that shall be given priority publication;



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

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

NOW THEREFORE BE IT RESOLVED that the Santee Sioux Nation, acting through its Tribal Council, hereby authorizes publication of the Santee Sioux Nation Arbitration Code for the reasons set forth above.

### CERTIFICATION

This will certify that the foregoing resolution was considered at a meeting of the Santee Sioux Tribal Council of the Santee Sioux Nation duly called and held on the 9th day of December, 2013, and was adopted by a vote of 5 FOR and 0 AGAINST and 1 NOT VOTING OR ABSENT. A quorum of 6 was present.

Dated this 9th day of December, 2013.

  
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Roger Trudell, Chairman  
SANTEE SIOUX TRIBAL COUNCIL

ATTEST:

  
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SANTEE SIOUX TRIBAL COUNCIL

TREASURER