



## Mashpee Wampanoag Tribe

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### TRIBAL ORDINANCE

2016-ORD-013

### MASHPEE WAMPANOAG TRIBAL ARBITRATION ORDINANCE

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The Mashpee Wampanoag Tribal Council does ordain as follows:

#### **Section 1. FINDINGS.**

The Mashpee Wampanoag Tribal Council finds as follows:

(a) The Mashpee Wampanoag Tribe is a federally-recognized Indian Tribe with a duly-enacted Constitution pursuant to which the governing body of the Tribe is its Tribal Council.

(b) In accordance with 2009-ORD-03 entitled "Regulating Adoption, Amendment or Repeal of Ordinances and Resolutions," the Tribal Council duly enacted 2008-ORD-002 entitled



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“Mashpee Wampanoag Tribal Judiciary”.

(c) Article V, Section 3 of the Constitution provides that the “Tribal Judiciary”, as established in Article X, shall be vested with all of the Tribe’s judicial powers.

(d) Article X, Section 9 of the Constitution provides that the Tribal Council shall implement the constitutional Article governing the Mashpee Wampanoag Tribal Court by ordinance.

(e) Article VI, § 2.A. of the Constitution, further provides that the Tribal Council is empowered to promote and protect the health, peace, morals, education, political integrity, economic security and general welfare of the Tribe and its members.

(f) The Tribe currently lacks rules and procedures for proceedings and awards related to arbitration.

(g) The Tribal Council deems it essential to adopt this Ordinance to define rules and procedures with respect to arbitration of claims, disputes or controversies arising out of contracts, agreements or other instruments involving a Tribal Party.

### **Section 2. AUTHORITY AND PURPOSE.**

(a) The authority for this Ordinance is Article V, §§ 2 and 3 of the Constitution; Article VI, §2.A of the Constitution; and Article X, § 9 of the Constitution.

(b) The purpose of this Ordinance is to provide rules and procedures for proceedings and awards related to arbitration.

### **Section 3. DEFINITIONS.**

“Agreement to Arbitrate” means provisions in any written contract, agreement or other instrument which constitute an agreement by a Tribal Party to settle by arbitration any claim, dispute or controversy.

“Constitution” means the Constitution of the Mashpee Wampanoag Tribe, approved by certain members of the Tribe on June 26, 2004, as duly amended from time to time.

“Ordinance” means 2016-ORD-011, captioned “Mashpee Wampanoag Tribal Arbitration Ordinance,” as duly amended or supplemented from time to time.

“Tribal Council” means the Tribal Council of the Tribe as referred to in the Constitution.

“Tribal Forum” means any present or future tribal court or other body established by the Tribe having or asserting jurisdiction to resolve disputes.





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“Tribal Party” means any of the Tribe and any division, subdivision, branch, department, board, committee, commission, agency, authority, enterprise, instrumentality, or entity wholly-owned or wholly-controlled, directly or indirectly, by the Tribe, including, but not limited to, the Mashpee Wampanoag Tribal Gaming Authority and the Mashpee Wampanoag Tribal Gaming Commission, along with the successors and assigns of each.

“Tribe” means the Mashpee Wampanoag Tribe, a federally recognized sovereign Indian tribe.

### **Section 4. SCOPE OF ORDINANCE.**

This Ordinance applies to any written contract, agreement or other instrument duly approved by the Tribal Council containing an Agreement to Arbitrate and which expressly states that this Ordinance applies to the Agreement to Arbitrate.

### **Section 5. AGREEMENTS TO ARBITRATE ARE ENFORCEABLE.**

An Agreement to Arbitrate contained in any contract, agreement or other instrument described in Section 4 of this Ordinance shall be valid, irrevocable and enforceable.

### **Section 6. LAW TO BE APPLIED.**

(a) In any contract, agreement or instrument described in Section 4 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 claim, dispute or controversy. Such choice of law shall be valid, irrevocable, 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 in a Tribal Forum, whenever the contract, agreement or other instrument sets forth a choice of law provision, the Tribal Forum shall apply the procedural rules of the Tribal Forum and the substantive law of the jurisdiction selected in such choice of law provision; provided that no procedural rule of the Tribal Forum 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.

(c) In any proceeding under this Ordinance in a Tribal Forum, whenever the contract, agreement or other instrument does not set forth a choice of law provision, the Tribal Forum shall apply the substantive law of the Tribe, including any applicable choice of law principles, and to the extent not inconsistent therewith, federal law, and to the extent not inconsistent therewith, the laws of the State of Massachusetts.

### **Section 7. STAY OF PROCEEDINGS AND ORDER TO PROCEED WITH**





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### **ARBITRATION.**

(a) If any action for legal or equitable relief or other proceeding is brought by any party to any contract, agreement or instrument described in Section 4 of this Ordinance with respect to a any claim, dispute or controversy subject to an Agreement to Arbitrate, the Tribal Forum shall not review the merits of the pending action or proceeding, but shall stay the action or proceeding and enforce the Agreement to Arbitrate.

(b) A party to any contract, agreement or instrument described in Section 4 of this Ordinance claiming the neglect or refusal of another party thereto to proceed with an arbitration thereunder may make application to the Tribal Forum or to any other state or federal court enumerated in an Agreement to Arbitrate for an order directing the parties to proceed with the arbitration in compliance with the Agreement to Arbitrate. If application is made to a Tribal Forum, the Tribal Forum shall order the parties to arbitration in accordance with the provisions of the contract, agreement or instrument and the question of whether an obligation to arbitrate the dispute at issue exists shall be decided by the arbitrator(s).

### **Section 8. ADVICE OF THE TRIBAL FORUM OR OTHER COURTS.**

At any time during an arbitration, upon request of all the parties to the arbitration, the arbitrator(s) may make application (i) to the Tribal Forum for advice on any question of tribal law, or (ii) to any other state or federal court enumerated in an Agreement to Arbitrate for advice on any question of federal or state law arising in the course of the arbitration so long as such parties agree in writing that the advice of the Tribal Forum or such other courts shall be final as to the question presented and that it shall bind the arbitrator(s) in rendering any award.

### **Section 9. TIME WITHIN WHICH AWARD SHALL BE RENDERED.**

If the time within which an award is rendered has not been fixed in the Agreement to Arbitrate, the arbitrator(s) shall render the award within thirty days from the date the arbitration has been completed.

### **Section 10. APPLICATION FOR ORDER CONFIRMING AWARD; RECORD TO BE FILED WITH CLERK OF THE TRIBAL FORUM; 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 an arbitration subject to an Agreement to Arbitrate may make application to the Tribal Forum or to any other state or federal court enumerated in the Agreement to Arbitrate for an order confirming the award.

(b) Any party applying to the Tribal Forum for an order confirming such an arbitration award shall, at the time the order is filed with the clerk (or other appropriate representative) of the





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Tribal Forum for entry of judgment thereon, file the following papers with the clerk (or other appropriate representative): (1) the contract, agreement or other instrument containing 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) the award; (5) each notice and other paper used upon an application to confirm; and (6) a copy of each proposed order of the Tribal Forum in connection with such an application.

(c) An arbitration award submitted to the Tribal Forum for confirmation shall not be subject to review or modification by the Tribal Forum, but shall be confirmed strictly as provided by the arbitrator(s), provided however, that if the Tribal Forum is permitted under the contract, agreement or instrument described in Section 4 of this Ordinance to enforce an arbitration award, then the Tribal Forum may nevertheless decline to enforce an award if it finds that any of the following occurred: (1) the award was procured by corruption, fraud, or undue means; (2) there was evident partiality or corruption in the arbitrator; (3) the arbitrator was guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, 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; or (4) the arbitrator exceeded his or her powers, or so imperfectly executed them that a mutual final, and definite award upon the subject matter submitted was not made. Where an award is so vacated and the time within which the applicable contract, agreement or instrument described in Section 4 of this Ordinance required the award to be made has not expired, the Tribal Forum may, in its discretion, direct a rehearing by the arbitrators.

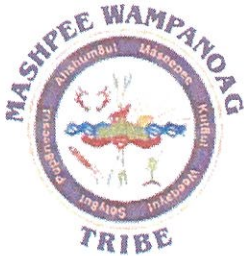
(d) In any of the following cases when the Tribal Forum is authorized to make an order regarding arbitration, the Tribal Forum may make an order modifying or correcting the award upon the application of any party to the arbitration: (1) where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award; (2) 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 (3) where the award is imperfect in matter of form not affecting the merits of the controversy. The order may modify and correct the award, so as to effectuate the intent thereof and promote justice between the parties.

(e) 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 Forum. When the award requires the performance of any act (other than or in addition to the payment of money), the Tribal Forum will direct the enforcement thereon in the manner provided by law.

### **Section 11. ARBITRATION AWARD NOT APPEALABLE.**

No further appeal may be taken from an order issued pursuant to Section 10 of this Ordinance





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enforcing an agreement to arbitrate or an award issued by an arbitrator.

### **Section 12. JURISDICTION OF THE TRIBAL FORUM IN ACTIONS TO WHICH A TRIBAL PARTY IS A PARTY.**

(a) The Tribal Forum shall have non-exclusive jurisdiction over an action to compel or enforce an Agreement to Arbitrate in accordance with its terms and to enforce an award made by an arbitrator pursuant to such Agreement to Arbitrate; provided that in any such action, the Tribal Party (or Tribal Parties) shall have explicitly waived the defense of tribal sovereign immunity in the contract, agreement or other instrument; and provided further that such Agreement to Arbitrate does not expressly prohibit the Tribal Forum from exercising jurisdiction thereunder.

(b) The jurisdiction of the Tribal Forum under this Ordinance shall be concurrent with the jurisdiction of any other state or federal courts enumerated in an Agreement to Arbitrate. Any consent to the jurisdiction of a state or federal court contained in a contract, agreement or other instrument described in Section 4 of this Ordinance to which a Tribal Party is a party shall be valid, irrevocable, and enforceable in accordance with its terms, including any expression of a preference or priority of one jurisdiction or court over another.

### **Section 13. SEVERABILITY.**

If any section or part thereof of this Ordinance 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 of this Ordinance shall not be affected thereby and shall remain in full force and effect.

### **Section 14. NO WAIVER OF SOVEREIGN IMMUNITY.**

Nothing in this Ordinance shall be interpreted to provide a waiver of the sovereign immunity of a Tribal Party or any of their respective officers, employees or agents acting within the scope of their authority.

### **Section 15. ADDITIONAL ENFORCEMENT PROVISIONS.**

(a) The Tribal Party shall comply with and observe each award to the extent not judicially vacated or modified in accordance herewith by any court whose jurisdiction is authorized in the contract, agreement or instrument described in Section 4 of this Ordinance. To that end, the Tribal Party and the Tribal Forum shall give full faith and credit to any award, order or decree rendered in any arbitration or by any federal or state court in accordance with this Ordinance, and, to the extent reasonably necessary, shall issue such orders and exercise such legal powers as may reasonably be necessary in order to effectuate the same.



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(b) All police or other law enforcement officials of the Tribe shall carry out any orders that may be entered by the Tribal Forum or by any other state or federal court pursuant to an Agreement to Arbitrate and this Ordinance.

(c) Judgment enforcement remedies generally available throughout the State of Massachusetts may be applied on lands held by or in trust for a Tribal Party.

### **Section 16. REPEALER.**

Subject to the contractual right of any party to an existing contract binding on a Tribal Party, and any limitations arising from the Constitution, all ordinances, laws (other than the Constitution), judgments, decisions, orders, resolutions, rules, regulations or other actions, or any part or provision thereof, of a Tribal Party, or any of the officers, employees, or agents of the foregoing, whether written, unwritten or established by tradition, that are in effect as of the date hereof and that are in conflict or inconsistent with the terms of this Ordinance are hereby repealed and annulled to the extent of such conflict or inconsistency, and this ordinance shall supersede the same.

### **Section 17. EFFECTIVE DATE.**

This Ordinance shall take effect immediately upon adoption by the Tribal Council. Thereafter it shall be enforced in accordance with the Constitution and laws of the Tribe.





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### CERTIFICATION

We, the undersigned Chairperson and Secretary of the Tribal Council of the Mashpee Wampanoag Tribe, hereby certify that the Tribal Council is composed of 13 members of whom 10 constituting a quorum, were present at a meeting thereof, duly and regularly called, noticed, convened and held on the 20<sup>th</sup> day of July, 2016, and that the foregoing Ordinance 2016-ORD-013 was duly adopted by the affirmative vote of 8 members, with 1 opposing, and with 0 abstaining.

DATED THIS 20<sup>th</sup> day of July, 2016.

Cedric Cromwell, Chairperson  
Mashpee Wampanoag Tribe

ATTEST:

Marie A. Stone, Secretary  
Mashpee Wampanoag Tribe

### CERTIFICATION OF POSTING

This is to certify that the Ordinance titled 2016-ORD-013, "MASHPEE WAMPANOAG TRIBAL ARBITRATION ORDINANCE," has been posted in accordance with 2009-ORD-003, Regulating Adoption, Amendment or Repeal of Ordinances and Resolutions, and 2009-ORD-007, Meetings of the Tribal Council.

DATED this 20<sup>th</sup> day of July, 2016.

Cedric Cromwell, Chairperson  
Mashpee Wampanoag Tribe

Marie A. Stone, Secretary  
Mashpee Wampanoag Tribe  
Notary Public, Commission Expires 04-06-2023