

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“MOU”) is made this 24<sup>th</sup> day of <sup>December</sup> ~~November~~ 2014, by and between the New Mexico Attorney General (the “Attorney General”) and the Habematolel Pomo of Upper Lake (the “Tribe”), a federally recognized Indian Tribe. This MOU is entered into on a government-to-government basis by and between the Tribe (as hereinafter defined) and the New Mexico Attorney General’s Office, an agency of the State of New Mexico.

### RECITALS

**WHEREAS**, the Tribe is a federally-recognized sovereign Indian tribe, possessing inherent powers of tribal self-governance and self-determination; and

**WHEREAS**, pursuant to its inherent sovereign authority and right to self-determination, the Tribe has established wholly owned tribal businesses (“Tribal Lending Enterprises”) in order to provide online consumer financial services, pursuant to duly enacted tribal laws authorizing the conduct of these business operations; and

**WHEREAS**, the Tribe is a member of the Native American Financial Services Association (“NAFSA”), an association of tribal governments that work together to protect and preserve the right of tribes to operate responsible online consumer financial services; and

**WHEREAS**, NAFSA requires tribal nations to exercise their sovereign authority by enacting consumer financial services laws and establishing regulatory agencies for the oversight and enforcement of such tribal and applicable federal laws in an effort to regulate the consumer financial services industry on tribal land (“Tribal Lending Regulatory Authority”); and

**WHEREAS**, the Attorney General is the chief law enforcement officer of the State of New Mexico and is charged with representing the state in all matters in which the state is a party or has an interest, and is a guardian of the public interest and serves as a consumer advocate; and

**WHEREAS**, the Attorney General enters into this MOU out of respect for the sovereignty of the Tribe; in recognition that Tribal Lending Enterprises are an important component of economic development for Indian tribes; and to continue the era of tribal-state cooperation in areas of mutual concern between the Attorney General and Indian tribes; and

**WHEREAS**, the Attorney General has a legitimate interest in regulating lending activities in New Mexico, and the Tribe and the Attorney General share a joint sovereign interest in ensuring that tribal lending activities are free from criminal and other undesirable elements, including but not limited to ensuring compliance with federal lending laws and protecting New Mexico consumers; and

**WHEREAS**, this MOU shall serve as evidence of the goodwill and cooperation between the Tribe and the Attorney General in fostering a mutually respectful government-to-government relationship that will serve the mutual interests of the parties.

**NOW, THEREFORE**, the Parties hereby agree as follows:

**I. DEFINITIONS**

Terms not defined elsewhere in this MOU shall have the following meanings:

“Attorney General” means the New Mexico Attorney General’s Office, and its agencies and subdivisions, an agency of the State of New Mexico.

“MOU” means this Memorandum of Understanding, as the same may be amended by mutual written agreement of the Tribe and the Attorney General from time to time.

“NAFSA” means the Native American Financial Services Association.

“Tribe” means a federally recognized Indian Tribe that is a member of NAFSA.

“Party” means the Attorney General or the Tribe.

“Parties” means the Attorney General and the Tribe.

“State” means the State of New Mexico.

“Tribal Lending Enterprise” means a Tribal lending entity that is wholly owned and operated by the Tribe, and formed under the Tribe’s duly enacted laws.

“Tribal Regulatory Authority” means the Tribe’s regulatory authority, which independently regulates and oversees the activities of its Tribal Lending Enterprise(s).

“Tribal Regulatory Agent” means an individual who will serve as the primary contact point for purposes of dispute resolution between the Tribal Regulatory Authority and the Attorney General. The Tribal Regulatory Agent will also serve as the primary contact point for purposes of processing all consumer complaints presented to the Tribal Regulatory Authority for the respective Tribal Lending Enterprise.

“Tribe” means the Habematolel Pomo of Upper Lake, a federally recognized Indian tribe.

## **II. DUTIES AND RESPONSIBILITIES OF THE TRIBE**

### **A. Establish Rules and Regulations for the Operation and Management of the Tribal Lending Operations.**

The Tribe and its respective Tribal Regulatory Authority will voluntarily demonstrate the following to the Attorney General under this MOU:

- (1) The Tribe's governing body has duly passed a resolution allowing for the formation of its Tribal Lending Enterprise(s), and has enacted tribal laws authorizing lending activities. Such tribal laws demonstrate that each Tribal Lending Enterprise is wholly owned and operated by the Tribe. The Tribe will provide the Attorney General with copies of these Tribal laws and resolutions.
- (2) The Tribe created its Tribal Lending Enterprise(s) to expedite the development of its economy in order to improve the Tribe's economic self-sufficiency, to enable the Tribe to better serve the social, economic, educational, and health and safety needs of its members and visitors, and to provide its members with opportunities to improve their own economic circumstances; and
- (3) The Tribe has duly enacted a tribal lending ordinance, which establishes the legal guidelines and regulations under which the Tribe may conduct lending activities on its lands, and creates a Tribal Regulatory Authority to independently regulate and oversee the activities of its Tribal Lending Enterprise(s). The Tribe will provide the Attorney General with copies of these tribal lending ordinances. Moreover, the Tribal Regulatory Authority ensures that each Tribal Lending Enterprise within the Tribe's jurisdiction operates under bona fide tribal law and regulations, maintains all applicable licenses, and adheres to all NAFSA Best Practices. A true and correct copy of NAFSA Best Practices is attached hereto as Exhibit 1.

### **B. Identify a Tribal Regulatory Agent to the Attorney General.**

- (1) The Tribal Regulatory Agent will serve as the primary contact point for receiving and processing all consumer complaints referred by the Attorney General or presented directly to the Tribal Regulatory Authority for the appropriate Tribal Lending Enterprise.
- (2) The Tribal Regulatory Agent will serve as the primary contact

point for facilitating and coordinating regular meetings between the Attorney General and the Tribal Regulatory Authority. These regular meetings, which the Attorney General and the Tribe agree to hold on a quarterly basis, are intended to ensure that the spirit and intent of the MOU is fully carried out.

- (3) The Tribal Regulatory Agent will serve as the primary contact point for purposes of dispute resolution between the Tribal Regulatory Authority and the Attorney General.

**C. Tribal Lending Enterprises Voluntarily Shall Abide by Federal Laws and Regulations Relevant to Lending.**

- (1) All Tribal Lending Enterprises voluntarily abide by such federal laws and regulations including, but not limited to: the Truth in Lending Act, the Electronic Fund Transfer Act, the Fair Debt Collection Practices Act, the Fair Credit Reporting Act, the Gramm-Leach-Bliley Act, and the Equal Credit Opportunity Act.
- (2) The Tribe recognizes that the Attorney General has the right to enforce applicable laws within the state of New Mexico.

**III. DUTIES AND RESPONSIBILITIES OF THE ATTORNEY GENERAL**

**A. Recognize the Sovereign Authority of the Tribe To Engage in Tribal Lending.**

- (1) The Attorney General recognizes that the Tribe has the sovereign authority to engage in tribal lending on the Tribe's tribal lands and to establish its regulatory framework applicable to its Tribal Lending Enterprises.
- (2) In order to avoid potentially costly litigation and in acknowledgment of the government-to-government relationship between the Parties, the Attorney General agrees to consult with the Tribe in advance of commencing litigation to determine whether informal settlement of the issues is possible.

**B. Identify a Point of Contact to the Tribe.**

- (1) The Attorney General's point of contact will serve as the primary contact point for discussing issues relating to the Tribal Lending Enterprise including, but not limited to, the forwarding of New Mexico consumer complaints to the Tribal Regulatory Agent for processing.

- (2) The Attorney General's point of contact will serve as the primary contact for purposes of dispute resolution between the Attorney General's Office and the Tribal Regulatory Authority.

**C. Notify the Tribe if a Request Is Made Under the Public Inspection of Records Act.**

- (1) If the Attorney General receives a request for information relating to the Tribe's Tribal Lending Enterprise(s) pursuant to the New Mexico Public Inspection of Records Act, the Attorney General agrees to contact the Tribal Regulatory Agent to discuss whether the information requested is protected as contemplated by Section IV(B) of this MOU.

**IV. EFFECT OF THIS MOU**

**A.** No provision of this MOU is intended to, and no provision of the MOU shall be construed to, limit or otherwise affect the authority of the Attorney General, the Tribe, or the Tribe's Tribal Regulatory Authority to administer, implement, or enforce any provision of any law subject to their respective jurisdictions. Moreover, no provision of this MOU is intended to, and no provision of the MOU shall be construed to, limit or otherwise affect the authority of the Tribal Lending Enterprises from carrying out their operations pursuant to tribal law.

**B.** The Parties agree that information shared pursuant to this MOU will remain confidential to the extent authorized by law. The Parties expressly reserve all evidentiary privileges and immunities applicable to the information shared under this MOU.

**V. TERM AND TERMINATION**

**A. Effective Date.** The general effective date of this MOU is the date that it has been signed by both the Tribe and the Attorney General.

**B. Termination.**

- (1) Written Notice Required for Early Termination. This MOU will remain in effect until superseded by a signed, mutual agreement of the Parties. A Party may withdraw from or otherwise terminate its participation in this MOU no less than thirty (30) days after written notice provided to the other Parties.
- (2) Information Retained After Termination of MOU. To the extent that a Party retains information upon termination of this MOU, all information provided by either Party shall continue to be treated in accordance with the terms of this MOU.

- (3) Effect of Expiration or Termination. Except as set forth in Section VI.B(2) above, upon the expiration or termination of this MOU, the provisions of this MOU shall be of no further force or effect and none of the provisions of this MOU shall survive termination.

## **VI. MISCELLANEOUS**

### **A. Sovereign Immunity.**

- (1) Nothing in this Agreement shall be construed as a waiver of the Tribe's or the Attorney General's sovereign immunity, express or implied, or the sovereign immunity of any of its instrumentalities, political subdivisions, corporations, agents, departments, or agencies, or their respective officers, directors, employees, or agents.

### **B. Severability.**

- (1) If any provision of this MOU is held by a court of competent jurisdiction to be illegal, invalid, unenforceable, unauthorized, annulled, voided or set aside, under present or future laws, the remaining provisions of this MOU shall remain in full force and effect and shall not be affected by such provision or by its severance from this MOU. In the event of any such determination, the Parties shall enter into good faith negotiations to replace the prohibited or invalid provision with a valid provision, the effect of which comes as close as possible to that of the invalid provision.

- (2) In the event that the entire MOU is declared null and void or the actions of the Party or its officials in connection with the approval, execution, or delivery of this MOU are set aside, voided, or annulled, the Parties shall enter into good faith negotiations to negotiate a new agreement.

**C. Binding Agreement.** This MOU is intended to be, and shall be construed to be, binding upon the Parties and all successors and successors-in-interest of each Party.

**D. Notice.** All notices required by this MOU will be deemed to have been given when made in writing and delivered or mailed to the respective Party and their representatives at their respective addresses as set forth below, or such other address as they may provide to the other Party from time to time:

For the Tribe:

Attn: Sherry Treppa, Chairperson  
Habematolel Pomo of Upper Lake  
375 E. Hwy. 20, Suite 1  
P.O. Box 516  
Upper Lake, CA 95485  
Telephone: (707) 275-0737  
Facsimile: (707) 275-0757

With a copy to:

Rosette, LLP  
565 W. Chandler Blvd, Suite 212  
Chandler, AZ 85255  
Telephone: (480) 889-8990  
Facsimile: (480) 889-8997

For the New Mexico Attorney General's Office:

Attorney General Gary King  
New Mexico Attorney General's Office  
P.O. Drawer 1508  
Santa Fe, NM 87504-1508  
Telephone: (785) 296-2266  
Facsimile: (505) 827-5826

**D. Amendments.** The Parties may amend this MOU from time to time, provided that such amendments are agreed to in writing by all Parties.

**E. Execution.** This MOU may be executed in counterparts and by signature sent by facsimile or electronically, each of which shall be deemed an original for all purposes.

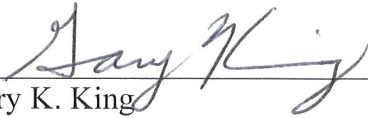
**F. Construction of MOU.** This MOU, together with all Exhibits hereto, constitutes the entire agreement between the Parties relating to the subject matter hereof and supersedes all prior negotiations, representations, or other agreements, whether written or oral. In the event of a dispute between or among the Parties as to the language of this MOU or the construction or meaning of any term hereof, this MOU shall be deemed to have been drafted by the Parties in equal parts so that no presumptions or inferences concerning its terms or interpretation may be construed against, or in favor of, any Party based on the preparation or negotiation of this MOU. The headings contained in this MOU are for convenience of reference only and shall not affect the construction or interpretation hereof.

**G. Authority.** Each Party to this MOU represents and warrants that it has the requisite legal authority to enter into this MOU.

IN WITNESS WHEREOF, the Parties have executed this MOU as of the date first set forth above.

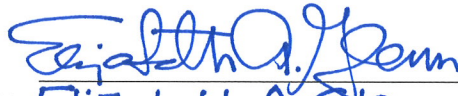
NEW MEXICO ATTORNEY GENERAL'S OFFICE

Date: \_\_\_\_\_, 2014

By:   
Gary K. King  
Attorney General

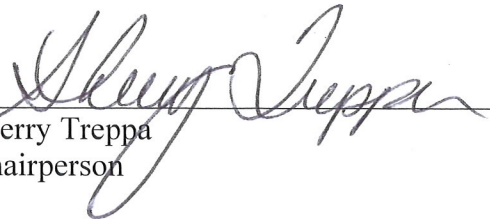
APPROVED AS TO LEGAL FORM BY  
GENERAL COUNSEL:

Date: 18, 2014

By:   
Name: Elizabeth A. Glenn  
Its: Chief Deputy Attorney General

HABEMATOLEL POMO OF UPPER LAKE

Date: Dec 24<sup>th</sup>, 2014

By:   
Sherry Treppa  
Chairperson

APPROVED AS TO LEGAL FORM BY  
LEGAL COUNSEL TO THE TRIBE:

Date: Dec. 18, 2014

By:   
Robert A. Rosette  
Legal Counsel