



KIOWA TRIBE

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OFFICE OF THE LEGISLATURE

KIOWA TRIBE LEGISLATIVE RESOLUTION NO. KL-CY-2023-011

KIOWA TRIBE UNIFORM COMMERCIAL BUSINESS CODE OF 2023

At a duly called Session of the Legislature of the Kiowa Tribe held this 17th day of May, 2023, the following Resolution and Law were adopted.

WHEREAS; the Legislature is vested with the authority to pass laws and resolutions pursuant to Article VI, Section 6(a) of the Constitution of the Kiowa Tribe; and,


WHEREAS; the Legislature shall enact a uniform Commercial Business Code, for any lawful business purposes under the Kiowa Tribe; and,

WHEREAS; the Legislature has determined that nothing herein shall be construed as a waiver of the Kiowa Tribe sovereign immunity from suit.

NOW THEREFORE IT BE IT RESOLVED; that the Legislature hereby enacts the attached law entitled, “Kiowa Tribe Uniform Commercial Business Code of 2023”.

CERTIFICATION

The foregoing Resolution KL-CY-2023-011, was duly voted upon by the Legislature on May 17, 2023, at a Legislative Special Session II-(2) with a vote of (5) in favor and (0) opposed, (1) abstaining, and (1) absent, pursuant to the authority vested in the Legislature by the Constitution of the Kiowa Tribe.


Anita Johnson
Secretary of the Legislature



Posted: Kiowa Tribe Website on March 16, 2023. Read into Record by Michael Primus, Legislative Regular Session LXXII-(72), April 08, 2023. Legislative Regular Session LXXIII-(73), May 13, 2023. Legislative Public Hearing VI (6), May 16, 2023. Approved - Legislative Special Session II (2), May 17, 2023.

(Hàu – Yes), (Hàu:né – No), (Háun á – Abstain), (Héñgyádàu – Absent)

LEGISLATURE - RESOLUTION NO. KL-CY-2023-011:

SPONSOR: Michael Primus, Speaker/District #2

CO-SPONSOR(S): Anita Johnson, Secretary/District #5

LEGISLATORS	YES	NO	ABSTAIN	ABSENT
Kyle Ataddlety District #1				X
Michael Primus District #2	X			
Timothy Satepauhoodle District #3	X			
Alana Quetone District #4	X			
Anita Johnson District #5	X			
Ben Wolf District #6			X	
Warren Queton District #7	X			

DELIVERY OF THE RESOLUTION AND LAW TO THE CHAIRMAN

Resolution No. KL-CY-2023-011, was presented to the Chairman of the Kiowa Tribe on the 17th day of May, 2023, pursuant to the Article VI, Section 8(a)(iv) of the Constitution of the Kiowa Tribe, and will become effective after signature by the Chairman or veto override by the Legislature, and as otherwise required by the Constitution.


Anita Johnson
Secretary of the Legislature

Posted: Kiowa Tribe Website on March 16, 2023. Read into Record by Michael Primus, Legislative Regular Session LXXII-(72), April 08, 2023. . Legislative Regular Session LXXIII-(73), May 13, 2023. Legislative Public Hearing VI (6), May 16, 2023. Approved - Legislative Special Session II (2), May 17, 2023.

(Hàu – Yes), (Hàu:né – No), (Háun á – Abstain), (Héñgyádàu – Absent)

CHAIRMAN'S ACTION:

APPROVED

VETO - RETURNED TO LEGISLATURE WITH EXPLANATION:

On this 17th day of May, 2023.



Lawrence Spottedbird
Chairman of the Kiowa Tribe

Presented by the Chairman to the Legislature on the ____ day of _____, 2023.

LEGISLATURE'S ACTION:

Override of Chairman's veto:

YES

NO

Posted: Kiowa Tribe Website on March 16, 2023. Read into Record by Michael Primus, Legislative Regular Session LXXII-(72), April 08, 2023. . Legislative Regular Session LXXIII-(73), May 13, 2023. Legislative Public Hearing VI (6), May 16, 2023. Approved - Legislative Special Session II (2), May 17, 2023.

(Hàu – Yes), (Hàu:né – No), (Háun á – Abstain), (Héñgyádàu – Absent)

LEGISLATIVE OVERRIDE ORDER: KLO-CY-2023-0XX

LEGISLATORS	YES	NO	ABSTAIN	ABSENT
Kyle Ataddlety District #1				
Michael Primus District #2				
Timothy Satepauhoodle District #3				
Alana Quetone District #4				
Anita Johnson District #5				
Ben Wolf District #6				
Warren Queton District #7				

CERTIFICATION

The foregoing Legislative Order, KL-CY-2023-000 was duly voted upon by the Legislature on _____, 2023, at a Legislative Override Order Session with a vote of _____ in favor and _____ opposed, and _____ abstaining, _____ Absent. Pursuant to the authority vested in the Legislature by the Constitution of the Kiowa Tribe.

Anita Johnson
Secretary of the Legislature

Posted: Kiowa Tribe Website on March 16, 2023. Read into Record by Michael Primus, Legislative Regular Session LXXII-(72), April 08, 2023. . Legislative Regular Session LXXIII-(73), May 13, 2023. Legislative Public Hearing VI (6), May 16, 2023. Approved - Legislative Special Session II (2), May 17, 2023.

(Hàu – Yes), (Hàu:né – No), (Háun á – Abstain), (Héñgyádàu – Absent)

TITLE X. BUSINESS CODE

(Enacted Resolution KL-CY-2023-011)

Preamble: Creation of Business & Commerce Department

WHEREAS the Kiowa Tribe (the “Tribe”) is organized under a constitution, duly adopted and approved by the voters of the Tribe on April 17, 2017 (the “Constitution”); and

WHEREAS pursuant to Article VI, Section 6(b)(h) of the Kiowa Constitution, the Legislature is the governing body of the Tribe with the authority to establish regulatory commissions; and

WHEREAS the Legislature has determined that it is in the best interests of the Tribe to establish the Kiowa Tribe Business & Commerce Commission (hereinafter the “Commission”) for the purposes of regulating the conduct of businesses operating within the jurisdiction of the Kiowa Tribe;

NOW THEREFORE, the Legislature hereby establishes within the Commission, possessing all the powers, duties, rights and functions hereinafter described by this Act or which may hereafter be conferred upon it by law.

ARTICLE 1. BUSINESS LICENSES

1.0 License Required of all Businesses, No Effect on Other Laws

- 1.1 Conducting business with the Kiowa Territory or with the Kiowa Tribe is a privilege which may only be granted or revoked by the Commission in accordance with this law and any duly promulgated rules of the Commission. Once a permit to conduct business is granted, it may only be modified or revoked in accordance with Due Process of Law.
 - 1.2 Every person seeking to conduct or engage in business within the Territory of the Kiowa Tribe as defined in the Kiowa Constitution, and any person seeking to business with the Kiowa Tribe at any location in the World must obtain a license to conduct such business from the Commission prior to conducting business. Such license must be renewed yearly.
 - 1.3 The Commission shall, no later than January 1, 2024, promulgate by rule the forms upon which a person may need to establish and maintain the privilege to conduct business in the Kiowa Territory or with the Kiowa Tribe.
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- 1.4 The Commission shall, no later than January 1, 2024, establish the fees applicable to licensure to conduct business in the Kiowa Territory or with the Kiowa Tribe.
- 1.5 A person, for the purposes of this law shall include every natural person, and every corporation, business association, partnership or any business organization licensed to operate in any foreign jurisdiction.
- 1.6 Nothing in this Chapter affects, limits, alters, modifies, or waives the need for a business to obtain all licenses and permits required by applicable law. The issuance of a business license shall not be deemed or construed as a certification of a business's compliance with other applicable regulations or laws. Additional permits and licenses may be necessary before a person may lawfully conduct business.

2.0 Exemptions.

- 2.1 The following shall not be required to obtain a license under this Chapter:
 - 2.1.1 Kiowa enterprises, including Kiowa Gaming Enterprises.
 - 2.1.2 Other Tribal, federal, state, and local governmental entities.
 - 2.1.3 Persons employed by a licensed to do business pursuant to the requirements of this Chapter.
 - 2.1.4 Persons engaged in the type of sales commonly known as garage sales, rummage sales, or estate sales.
 - 2.1.5 Persons who are agents of artists or performers appearing at Kiowa Gaming Enterprises.
 - 2.2 The following shall not be required to pay a fee for the issuance of a license for this Chapter:
 - 2.2.1 Any church engaged in raising funds for religious or charitable purposes.
 - 2.2.2 Any accredited school, where no part of the income accrues to the personal benefit of any individual.
 - 2.2.3 Any other business, the entire proceeds of which, are distributed to any charitable, religious, or educational group or organization.
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3.0 Application for Business License.

3.1 An applicant intending to conduct business within lands subject to the jurisdiction of the Tribe shall complete and file with the Commission an application for business license prior to commencing business on lands under the jurisdiction of the Kiowa Tribe. The Commission shall by duly promulgated law establish fees and penalties for the failure to timely obtain or maintain a license.

3.2 All applications shall, in addition to any requirements of the Commission, include at a minimum:

3.2.1 A description of the business to be conducted by the Applicant.

3.2.2 If the Applicant is not a natural person, the name and address of the owners of the business for which the application is intended to apply.

3.2.3 Any alias or trade name, if any, to be used by the Applicant.

3.2.4 The location(s) on the lands of the Kiowa Tribe at which the Applicant will conduct business

3.2.5 A sworn statement that the applicant will comply with all laws applicable to the applicant's business.

3.2.6 A statement that the applicant consents to the jurisdiction of the Kiowa Tribe.

3.2.7 A statement that the Applicant consents to the imposition of any duly promulgated tax of the Kiowa Tribe that may apply to business conducted within Kiowa territory or with the Kiowa Tribe.

3.2.8 The name, address, and signature of the Registered Agent who will accept service of process on behalf of the Applicant.

3.2.9 If the Applicant is not a natural person, the name, address and telephone number of every person owning 10% or more of the interest in the Applicant.

3.2.10 If the Applicant is owned by a governmental entity, in whole, or in part in any amount, the name, address and Registered Agent of the governmental entity.

3.3 The Commission shall, in accordance with its duly promulgated rules, issue a License within 24 hours of the date of application. The Commission shall

establish a unique Kiowa Taxpayer Identification Number for each licensee, and such Taxpayer Identification number shall be communicated to the Applicant and to the Kiowa Tax Commission and shall be the number used to maintain and track the eligibility of any person to conduct business in the Kiowa Territory or with the Kiowa Tribe.

4.0 Classes of Licenses, Term of License.

- 4.1 Temporary Business License: All persons engaged in business on lands under the jurisdiction of the Kiowa Tribe for a period of one (1) to seven (7) days shall have a Temporary Business License. The application fee for a Temporary Business License shall be an amount established by the Commission, no less than \$75.00.
- 4.2 Seasonal Business License: All persons engaged in business on lands under the jurisdiction of the Kiowa Tribe of more than seven (7) days but less than three (3) months shall have a Seasonal Business License. The application fee for a Seasonal Business License shall be an amount established by the Commission, no less than \$100.00.
- 4.3 Annual Business License: All persons engaged in business on lands under the jurisdiction of the Kiowa Tribe for a period of three (3) months or more shall have an Annual Business License. The application fee for an Annual Business License shall be an amount established by the Commission, no less than \$150.00.
- 4.4 Peddler License: The fee for a Peddler License shall be an amount established by the Commission, no less than \$50.00.
- 4.5 For any business license in this Section, the fee for a qualified Indian-owned firm or entity shall be one-half the amount set out herein.
- 4.6 A Temporary Business License and Seasonal Business License shall expire at 11:59 p.m. on the last day of the authorized period.
- 4.7 An Annual Business License and Peddler License shall expire at 11:59 p.m. on December 31 of the year of issuance.

5.0 Grant and Denial of License or Renewal.

- 5.1 A business license shall be issued to every Applicant who intends to conduct any legal business activity. Except as established in Section 5.2 below, the Commission may not deny any person conducting a legal business a license to conduct that business in the territory of the Kiowa Tribe or with the Kiowa Tribe.
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- 5.2 A business license application, or its renewal may be denied by the Commission if it is determined upon notice and due process:
- A. That the Applicant materially misrepresented facts contained in the application;
 - B. That the business is conducting an activity that is illegal by operation of Kiowa Law, or
 - C. That the Applicant or any business operated by the Applicant has outstanding taxes, penalties or fees unpaid; however, the Applicant will be allowed to bring the balance current to obtain a license or renewal.

6.0 Conditions of License.

- 6.1 Each Applicant, whether the license is granted or not, but submitting a license, attests that it shall comply with all Kiowa Law as now enacted or as may be amended in the future.
- 6.2 Each Applicant, whether the license is granted or not, by submitting a license, consents to the general jurisdiction of the Kiowa Courts for all purposes. for
- 6.3 Each Applicant, whether the license is granted or not, by submitting a license, consents to the imposition of Kiowa taxes as now existing or as may be created or amended.
- 6.4 Each licensee shall respond in a timely manner to requests for information about the licensee's business for the purpose of establishing whether the licensee is in compliance with the terms of this Chapter.

7.0 Revocation of License; Reinstatement of License.

- 7.1 If any licensee fails, after one hundred eighty (180) days' notice in writing to the Registered Agent to pay any taxes license fees, interest, or penalties imposed by the Commission or the Tax Commission, its license shall be revoked by the Commission.
 - 7.2 Upon application, the Kiowa Tribe may reinstate a business license that has been revoked upon the payment of all license fees, penalties, and interest owed by the business pursuant to this Chapter, provided that the business is otherwise in compliance with Kiowa Tribe law. An applicant shall pay a reinstatement fee in an amount established by the Commission, in addition to any other fees and penalties due.
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8.0 Non-Transferable License.

8.1 The license provided for in this Chapter is not transferable, and is valid only for the person in whose name it is issued and for the transaction of business of the same type and at the place or places designated therein.

9.0 Posting of License.

9.1 If a business has a physical location, each person shall post its tribal business license in a conspicuous location at its place of business.

10.0 Penalties, Interest, Collection Costs.

10.1 Conducting business within the Territory of the Kiowa Tribe without a business license shall subject the person to any of the following:

10.1.1 Penalties in an amount established by the Commission; and

10.1.2 Civil fines in an amount established by the Commission.

10.2 The Commission may establish a schedule of interest rates applicable to the late payment of any charges.

10.3 Due Process. A licensee found to have violated any provision of this Chapter and before any penalty may be imposed, shall have the right to within 10 business days, file a written appeal to the Commission Director requesting any penalty assessed be reversed, along with the reason for non-compliance and corrective action plan. The Commission Director shall provide a written decision within 10 business days, and if the Commission Director does not provide the licensee with a written decision within 10 business days, the initial determination shall be vacated. If the Commission Director rejects the licensee's appeal the licensee shall have the right to file an appeal with the Kiowa Trial Court within 20 business days. The courts of the Kiowa Tribe shall have exclusive jurisdiction to resolve any disputes arising under this Chapter.

11.0 Sovereign Immunity.

11.1 Nothing herein shall be construed as a waiver of the Kiowa Tribe's sovereign immunity from suit.

**ARTICLE 2. ADOPTION OF UNIFORM COMMERCIAL CODE
(RESERVED)**

ARTICLE 3. CORPORATIONS

3.1. Purpose of incorporation and incorporators.

A corporation may be formed under this chapter by any person for any lawful purpose.

3.2. Corporate Name.

The name of any corporation formed under this chapter shall not be the same or similar to any other named corporation formed under this chapter. The name of the corporation shall end with the word "Corporation" or the word "Incorporated" or the word "Limited" or the abbreviation "Corp.", "Inc." or "Ltd." The Commission shall keep a public, searchable, list of all corporate names, which shall be accessible on a website. However, it is the responsibility of the business to ensure its proposed name does not violate any copyrights, trademarks, or patents.

3.3. Articles of Incorporation.

The incorporators of a corporation must file an Application and proposed Articles of Incorporation with the Director of the Commission along with any applicable filing fee, based on the schedule of fees approved by the Commission. The Articles of Incorporation must be signed by a person 18 years of age or older. The Articles shall include, at a minimum, the following:

ARTICLES OF INCORPORATION

I (We), the undersigned, for the purpose of forming a corporation under and pursuant to the provisions of the Kiowa Tribal Code, do hereby adopt the following Articles of Incorporation.

1. The name of the corporation is: _____ .
 2. The purposes of the corporation are as follows:
 - a.
 - b.
 - c.
 3. The period and duration of the corporation shall be _____ (number of years) or (perpetual).
-

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4. The name of the registered agent, the street address or physical location, and post office address of the registered office of the corporation within Kiowa Territory is:

 5. The total number of shares of stock which the corporation shall have the authority to issue shall be determined by resolution by the Board of Directors. The shares of stock may be paid for in money, property or services as prescribed by the Board of Directors.
 6. The amount of capital with which the corporation shall begin a business shall be _____ (\$500.00 or more).
 7. The names, post office addresses, and terms of office of the first directors are as follows:

 8. The names and post office addresses of the incorporators are as follows:

 9. The name, address, telephone and fax number of the Registered Agent of the Corporation is:

On behalf of the Corporation, by executing this Article of Incorporation, and submitting it to seek approval and issuance of a Certificate of Incorporation from the Kiowa Tribe, I agree that I as signatory, and that the Corporation set out in this Article of Incorporation is now and shall be forevermore subject to the Jurisdiction of the Kiowa Tribe, including the jurisdiction of any of its Courts, civil or criminal, for any and all purposes.

IN WITNESS WHEREOF, (I)(we), have hereunto set (my hand) (our hands) this _____ day of _____ 20____.

Incorporator

Incorporator

3.4. Certificate of incorporation.

Upon filing the Articles of Incorporation and payment of the filing fee, the Director of the Commission , if the Articles are in conformity with this chapter, may issue a Certificate of Incorporation. The Certificate of Incorporation shall be in the following form:

CERTIFICATE OF INCORPORATION

WHEREAS, Articles of Incorporation duly signed have been filed in the Kiowa Tribe Business & Commerce Department on the _____ day of _____, 20____, for incorporation of _____ (name of corporation); and

WHEREAS, the Articles of Incorporation are in conformity with the requirements of the Kiowa Code;

NOW, THEREFORE, I, , Director of the Kiowa Tribe Business & Commerce Department Commission do hereby certify that the said _____ is a legally organized and validly existing corporation under the laws of the Kiowa Tribe.

Director, Kiowa Tribe Business & Commerce Department

Upon the issuance of the Certificate of Incorporation, the corporate existence of the corporation shall begin. Certification assures that the corporation is in compliance with the organizational requirements of this chapter, but not that the corporation is in compliance with any other provision of law.

3.5. Amended articles of incorporation.

A corporation may file Amended Articles of Incorporation, upon approval by its Board of Directors and the shareholders. A filing fee in an amount approved by the Commission shall accompany that filing. Provided the proposed amended articles are consistent with this chapter, the Commission may issue an Amended Certificate of Incorporation.

3.6. Bylaws.

Every entity incorporated in the Kiowa Tribe shall be governed by a set of bylaws. Every entity incorporated in the Kiowa Tribe may adopt bylaws of their own choosing by filing its bylaws with the Commission. If no bylaws are filed with the Commission the bylaws for every company shall be as follows:

BYLAWS OF _____

ARTICLE I. PRINCIPAL PLACE OF BUSINESS

The principal place of business of the corporation shall be the address of the Registered Agent of the corporation.

ARTICLE II. SHAREHOLDERS

Section 1. Annual Meetings.

The annual meeting of the shareholders shall be on the 15th day of the month of January each year at 10:00 a.m. at the registered office of the corporation for the purpose of electing directors and for the transaction of any business which may properly come before a meeting of the shareholders. If the annual meeting is not held at the time above designated, an alternative meeting of the shareholders shall be designated by the president of the corporation.

Section 2. Voting Rights.

Each owner of a share of stock of the corporation shall be entitled at the meeting of the shareholders to one vote for each share standing in his name. A majority of the outstanding shares of the corporation represented in person shall constitute a quorum at the meeting of the shareholders and a majority of all the votes cast at any meeting of the shareholders shall be decisive of any action.

Section 3. Notice of the Meeting.

Notice stating the place, day and hour of the meeting and the purpose for which the meeting has been called shall be given to all shareholders. Written notice stating the place, day and hour of meeting shall be delivered not less than five business days prior to the date of meeting by mail to the shareholders. Notice shall be deemed delivered when deposited in the United States mail.

ARTICLE III. BOARD OF DIRECTORS

Section 1. Powers.

The affairs of the corporation shall be managed by a Board of Directors.

Section 2. Number of Directors.

The number of directors of a corporation shall be not less than three. Each director shall hold office until (a) the next annual meeting of the shareholders and until his successor has been duly elected and qualified or (b) until his death or (c) until he shall resign or shall have been removed from office by affirmative vote of the majority of the outstanding shareholders. A director may resign at any time by filing his written resignation with the secretary of the corporation.

Section 3. Meetings.

The annual meeting of the Board of Directors shall be held without any notice other than these bylaws immediately after and at the same place as the annual meeting of the shareholders or immediately after any adjourned session thereof.

Section 4. Special Meetings.

Special meetings of the Board of Directors may be called at the request of the President or any two directors. Notice of the special meeting shall be given to all directors of the corporation personally.

Section 5. Quorum.

The majority of the number of directors in section 2 shall constitute a quorum for the transaction of any business at any meeting of the Board of Directors. The act of the majority of the directors present at the meeting at which a quorum is present shall be the act of the Board of Directors.

Section 6. Vacancies.

Any vacancies occurring on the Board of Directors shall be filled by affirmative vote of the remaining directors then in office, though less than a quorum of the Board of Directors.

Section 7. Compensation.

The Board of Directors may establish reasonable compensation for all directors for services rendered to the corporation as directors.

ARTICLE IV. OFFICERS

Section 1. Number.

The Board of Directors shall elect a President, Secretary, and a Treasurer, and such officers and agents as they may so desire. Any two offices may be held by the same person.

Section 2. Election.

The officers of the corporation shall be elected by the Board of Directors and shall be elected annually by the Board of Directors at the first meeting of the Board of Directors held after the annual meeting of the shareholders or any adjournment thereof.

Section 3. Removal and Vacancies.

Any officer appointed by the Board of Directors may be removed by the Board of Directors with or without cause. A vacancy in any of the principal offices because of death, resignation, removal or disqualification or otherwise shall be filled by the Board of Directors for the unexpired portion of the term.

Section 4. President.

The President shall be the principal executive officer of the corporation and shall supervise and control all of the business affairs of the corporation subject to the direction and control of the Board of Directors.

Section 5. Secretary.

The Secretary shall:

- (a) Keep all minutes of the shareholders' meetings and of meetings of the Board of Directors;
- (b) See that all notices are duly given in accordance with the provisions set forth in these bylaws;
- (c) Be custodian of the corporate records; and
- (d) In general, perform all duties incident to the office of secretary and have such other duties and exercise such authority as from time to time may be delegated or assigned by the President or by the Board of Directors.

Section 6. Treasurer.

The Treasurer shall be the chief financial officer of the corporation and shall exercise general supervision over the receipt, custody, and disbursement of corporate funds.

Section 7. Salaries.

The salaries of the principal officers shall be fixed from time to time by the Board of Directors. The salaries so fixed must be reasonable in relation to the services rendered.

ARTICLE V. AMENDMENTS

These bylaws may be altered, amended or repealed and new bylaws may be adopted by the shareholders at any annual or special meeting of the shareholders.

3.7. Dissolution.

A corporation formed pursuant to this chapter may be dissolved whenever a resolution is adopted by at least two-thirds of the shareholders requesting dissolution and a certified copy of the resolution is filed with the Kiowa Tribe Business Commerce Department. The resolution may designate a trustee or trustees to conduct

the winding up of the corporation's affairs. The trustee or trustees appointed shall, as speedily as practicable after appointment, proceed to:

- (1) Collect all sums due or owing to the corporation;
- (2) Sell and convert into cash all corporate assets; and
- (3) Pay all debts and liabilities of the corporation.

Any property remaining after discharging the debts and liabilities of the corporation shall be distributed by the trustee or trustees to the shareholders.

ARTICLE 4. CORPORATIONS (NON-PROFIT)

4.1. Purpose of incorporation and incorporators.

A non-profit corporation may be formed under this chapter for any lawful purpose not involving pecuniary gain to its owners and not paying dividends or other pecuniary remuneration, directly or indirectly, to its owners.

4.2. Corporate name.

The name of any non-profit corporation formed under this Article shall not be the same or similar to any other named corporation formed under this Article. The name of the corporation shall end with the word "Corporation" or the word "Incorporated" or the word "Limited" or the abbreviation "Corp.", "Inc." or "Ltd."

4.3. Articles of incorporation.

The incorporators of a non-profit corporation must file an Application and proposed Articles of Incorporation with the Director of the Commission. No fee shall be required for a non-profit corporation. The Articles of Incorporation must be signed by a person 18 years of age or older. The Articles shall include, at a minimum, the following:

ARTICLES OF INCORPORATION

I (We), for the purpose of forming a non-profit corporation under and pursuant to the provisions of the Kiowa Tribal Code, do hereby adopt the following Articles of Incorporation.

1. The name of the corporation is .
 2. The purposes of the corporation are as follows:
 - a.
 - b.
 - c.
 3. The corporation does not afford pecuniary gain, incidentally or otherwise, to its owners.
 4. The period and duration of the corporation shall be _____ (number of years) (perpetual).
 5. The name of the registered agent, the street address or physical location, and post office address of the registered office of the non-profit corporation on the Kiowa Tribe's lands is:
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6. The corporation does not have members.
 7. The names, post office addresses, and terms of office of the first directors are as follows:

8. The names and post office addresses of the incorporators are as follows:

IN WITNESS WHEREOF, (I)(we), have hereunto set (my hand) (our hands) this _____ day of _____, 20____.

Incorporator

Incorporator

Note: Non-profit corporations seeking certification to receive tax deductible contributions under section 501(c)(3) or other provisions of the Internal Revenue Code must separately seek status as a non-profit as required by the United States Internal Revenue Service.

4.4. Certificate of incorporation.

Upon filing the Articles of Incorporation of a Non-profit entity with the Director of the Commission, if the Articles are in conformity with this ordinance, shall issue a Certificate of Incorporation. The Certificate of Incorporation shall be in the following form:

CERTIFICATE OF INCORPORATION

WHEREAS, Articles of Incorporation duly signed have been filed for record in the Kiowa Tribe Business & Commerce Department on the ____ day of _____ 20__, for incorporation of _____ (name of corporation); and

WHEREAS, the Articles of Incorporation are in conformity with the requirements of the Kiowa Tribe Code;

NOW, THEREFORE, I, _____, Director of the Kiowa Tribe Business & Commerce Department do hereby certify that the said _____ is a legally organized and validly existing non-profit corporation under the laws of the Kiowa Tribe.

Director, Kiowa Tribe Business & Commerce Department

Upon the issuance of the Certificate of Incorporation, the corporate existence of the corporation shall begin. Certification assures that the corporation is in compliance with the organizational requirements of this chapter, but not that the corporation is in compliance with any other provision of law.

4.5. Amended articles of incorporation.

A non-profit corporation may file Amended Articles of Incorporation, upon approval by its Board of Directors and the members, if any. A filing fee of \$25.00 shall accompany that filing. Provided those amended articles are consistent with this chapter, the Kiowa Tribe Business & Commerce Department shall issue a Certificate of Amendment to the Corporation.

4.6. Bylaws.

A not-for-profit corporation created pursuant to this chapter may adopt such bylaws at it deems necessary and appropriate, which shall become effective when filed with the Commission. Unless there is submitted to the Kiowa Tribe Business & Commerce Department a different form of bylaws, the bylaws shall be as follows:

BYLAWS OF _____
*ARTICLE I. PRINCIPAL PLACE OF
BUSINESS*

The principal place of business of the corporation shall be located within the boundaries of the Kiowa Tribe at the registered office of the corporation.

ARTICLE II. MEMBERS (if any)

Section 1. Annual Meetings.

The annual meeting of the members (if any) shall be on the 15th day of the month of January each year at 10:00 a.m. at the registered office of the corporation for the purpose of electing directors and for the transaction of any business which may properly come before a meeting of the members. If the annual meeting is not held at the time above

designated, an alternative meeting of the members shall be designated by the president of the corporation.

Section 2. Voting Rights.

Each member (if any) shall be entitled at the meeting of the members to one vote. A majority of the members represented in person or by proxy shall constitute a quorum at the meeting of the members and a majority of all the votes cast at any meeting of the members shall be decisive of any action.

Section 3. Notice of the Meeting.

Notice stating the place, day and hour of the meeting and the purpose for which the meeting has been called shall be given to all members. Written notice stating the place, day and hour of meeting shall be delivered not less than five business days prior to the date of meeting by mail to the members. Notice shall be deemed delivered when deposited in the United States mail.

ARTICLE III. BOARD OF DIRECTORS

Section 1. Powers.

The affairs of the corporation shall be managed by a Board of Directors.

Section 2. Number of Directors.

The number of directors of a corporation shall be not less than five. Each director shall hold office until (a) until his/her successor has been duly elected and qualified or (b) until his/her death or (c) until he/she shall resign or shall have been removed from office by affirmative vote of the majority of the outstanding members or by a two-thirds vote of the full Board of Directors. A director may resign at any time by filing his/her written resignation with the secretary of the corporation.

Section 3. Meetings.

The annual meeting of the Board of Directors shall be held without any notice other than these bylaws immediately after and at the same place as the annual meeting of the members or immediately after any adjourned session thereof.

Section 4. Special Meetings.

Special meetings of the Board of Directors may be called at the request of the President or any two directors. Notice of the special meeting shall be given to all directors of the corporation personally.

Section 5. Quorum.

The majority of the number of directors in section 2 shall constitute a quorum for the transaction of any business at any meeting of the Board of Directors. The act of the majority of the directors present at the meeting at which a quorum is present shall be the act of the Board of Directors.

Section 6. Vacancies.

Any vacancies occurring on the Board of Directors shall be filled by affirmative vote of the remaining directors then in office, though less than a quorum of the Board of Directors.

Section 7. Compensation.

The Board of Directors may establish reasonable compensation for all directors for services rendered to the corporation as directors.

ARTICLE IV. OFFICERS

Section 1. Number.

The Board of Directors shall elect a President, Secretary, and a Treasurer, and such officers and agents as they may so desire. Any two offices may be held by the same person.

Section 2. Election.

The officers of the corporation shall be elected by the Board of Directors and shall be elected annually by the Board of Directors at the first meeting of the Board of Directors held after the annual meeting of the shareholders or any adjournment thereof.

Section 3. Removal and Vacancies.

Any officer appointed by the Board of Directors may be removed by the Board of Directors with or without cause. A vacancy in any of the principal offices because of death, resignation, removal or disqualification or otherwise shall be filled by the Board of Directors for the unexpired portion of the term.

Section 4. President.

The President shall be the principal executive officer of the corporation and shall supervise and control all of the business affairs of the corporation subject to the direction and control of the Board of Directors.

Section 5. Secretary.

The Secretary shall:

- (a) Keep all minutes of the membership meetings and of meetings of the Board of Directors;
- (b) See that all notices are duly given in accordance with the provisions set forth in these bylaws;
- (c) Be custodian of the corporate records; and
- (d) In general, perform all duties incident to the office of secretary and have such other duties and exercise such authority as from time to time may be delegated or assigned by the President or by the Board of Directors.

Section 6. Treasurer.

The Treasurer shall be the chief financial officer of the corporation and shall exercise general supervision over the receipt, custody, and disbursement of corporate funds.

Section 7. Salaries.

The salaries of the principal officers shall be fixed from time to time by the Board of Directors. The salaries so fixed must be reasonable in relation to the services rendered.

ARTICLE V. AMENDMENTS

These bylaws may be altered, amended or repealed and new bylaws may be adopted by the members (if any) at any annual or special meeting of the members. If there are no members, the bylaws may be altered, amended, or repealed and new bylaws may be adopted by the Board of Directors at any annual or special meeting of the Board.

4.7. Dissolution.

A corporation formed pursuant to this chapter may be dissolved whenever a resolution is adopted by the Board of Directors requesting dissolution, approved by a majority of the members, if any, and a certified copy of the resolution is filed with the Kiowa Tribe Business & Commerce Department. The resolution may designate a trustee or trustees to conduct the winding up of the corporation's affairs. The trustee or trustees appointed shall, as speedily as practicable after appointment, proceed to:

- (1) Collect all sums due or owing to the corporation;
- (2) Sell such assets as are necessary to pay the debts and liabilities of the corporation; and
- (3) Pay all debts and liabilities of the corporation.

Any assets remaining after discharging the debts and liabilities of the corporation shall be distributed to another non-profit corporation organized for the same or similar purposes as the corporation, or to the Kiowa Tribe for public and charitable purposes.

ARTICLE 5. Tribally Owned Corporations Act of 2022 (CORPORATIONS OWNED BY THE KIOWA TRIBE)

GENERAL PROVISIONS

5.1 Authority.

a. Article III of the Constitution recognizes the jurisdiction of the Kiowa Tribe to extend to all territory of the Tribe, including but not limited to all water, property, airspace, surface rights, subsurface rights, water, natural resources and any interest therein, and to any and all persons or activities therein.

b. Article VI, Section 6 of the Constitution gives the Legislature the power to make laws, including codes, ordinances, and resolutions.

c. Article VI, Section 6 of the Constitution gives the Legislature the power to establish Executive Boards and Commissions for economic or other purposes, and to regulate their activities.

2. Purpose.

a. This Act provides for the establishment and regulation of activities of Tribally owned corporations.

b. The Tribe, through its Legislature, finds that the formation of tribally-owned corporations will serve the best interests of the Tribe, its members and its enterprises, and will protect the political integrity, economic security and health and welfare of the Tribe and its members by, among other things:

1. Creating a legal structure which provides for the segregation of the Tribe's governmental assets and liabilities from the Tribe's business assets and liabilities; and
2. Creating a legal structure which provides for the segregation of discrete Corporation assets and liabilities into separate Corporation subdivisions, without divesting either the Corporation or the Tribe of the privileges and immunities arising pursuant to their legal status under federal and tribal law.

c. The Tribe, through its Legislature, adopts this Tribally Owned Corporations Act in order to meet the following independent goals:

1. To exercise constitutional legislative powers pursuant to Article VI,

Section 6 of the Constitution over chartered businesses;

2. To increase the land base for the reinvestment of Tribal governmental assets including, but not limited to, properties on or near Kiowa Tribe ancestral lands;
 3. To develop the Tribe's resources to obtain the highest value possible taking into consideration factors deemed relevant, including but not limited to monetary value as well as intangible value such as that derived from the creation of opportunities for the Tribe's people and the promotion of the Tribe's traditional customs and unique cultural heritage;
 4. To raise the standard of living and opportunities for all Tribal citizens;
 5. To enter into, take advantage of and realize business and commercial opportunities to benefit the Tribe;
 6. To promote and maintain the jurisdiction of the Tribe to the greatest extent possible; and
 7. To promote and perpetuate the unique cultural heritage of the Kiowa Tribe.
- d. To accomplish any legal purpose, which may include the economic development of the Tribe's resources including, but not limited to:
1. The Tribe's labor force;
 2. Lands;
 3. Water;
 4. Air;
 5. Fish and wildlife;
 6. Agricultural products and livestock;
 7. Energy;
 8. Commercial and industrial enterprises;
 9. Timber, minerals, oil and gas;
 10. Intellectual property;
 11. Interstellar;
 12. Artificial intelligence;
 13. Health, including but limited to that related to the Tribe's members, health sciences and health technologies; and
 14. Virtual properties & technologies.
- e. To accomplish the goals set out in subsections (c) and (d) of this Section, the Legislature finds that, for purposes of efficiency and wise stewardship, it is necessary for the management of the commercial and economic development of the Tribe's resources to be separated from other governmental functions of the Tribe and

the Legislature.

f. The Tribe shall not be limited in its operation of its businesses.

3. **Applicability.** The provisions of this Act shall apply to all corporations as chartered under Kiowa Law that are wholly or partially owned by the Kiowa Tribe, and whether such corporations are owned directly or owned indirectly as a subsidiary of another entity wholly or partially owned by the Tribe. Preexisting corporations shall not be subject to this Act. Except as otherwise provided, the provisions of this Act do not apply to the business or undertakings of the Tribe that are not conducted by a corporation.

4. **Rules of Construction.** Rules of construction set forth in this section are applicable for the purposes of this Act.

a. It is the policy of this Act to provide for the governance of corporations and the proper exercise of sovereignty by those corporations.

b. It is the policy of this Act to provide tribal corporations the freedom of contract and to ensure the enforceability of their agreements.

c. The principles of law and equity supplement this Act.

d. It is the intention of the Legislature to provide a corporation subject to this Act the greatest possible opportunity to profit and succeed.

e. It is the intention of the Legislature that Subsidiaries of Corporations are subject to the jurisdiction of the Tribe and are subject to this Act as provided herein. It is expressly provided that, in addition to this Act and to the actions, laws or policies of the Kiowa Tribe as set forth in subsection 4(e), the laws of the Kiowa Tribe under which a Subsidiary is organized and formed shall apply to such Subsidiary.

f. No corporation formed by the tribe under this law shall be taxed by the Kiowa Tribe.

5. **Definitions.** Terms used in this Act have the following meaning:

a. "Articles of Incorporation" includes amended and restated articles of incorporation for a tribally owned corporation organized under Kiowa Law.

b. "Board of Directors" means a person or a group of persons vested with management of the affairs of the corporation.

c. "Bylaws" mean the code of rules adopted for the regulation or management of the affairs of a corporation.

d. "Cause" means conduct (including a failure to act) that is deemed unauthorized, illegal or unethical, including but limited to conduct as follows:

1. conduct that involves dishonesty, deceit or moral turpitude;
2. any felony conviction or the discovery of previous felony conviction in any jurisdiction not disclosed at the time of appointment or employment;
3. any criminal act involving, or the misappropriation of, the corporation's funds or other funds or the funds of the Tribe or any tribal entity or enterprise of the Tribe;
4. any breach of the individual's obligations under this this Act, or breach of the fiduciary duty owed by the individual to the corporation arising as a consequence of the individual's performance of the duties, including, but not limited to, any violation to the Tribe's Criminal Code;
5. willful misconduct or gross negligence in connection with the performance of his/her duties, or failure to comply with any laws, statutes, rules, regulations, policies, or directions governing as may be established from time to time by the Corporation or Tribe and communicated to the individual;
6. unethical business conduct, including, without limitation, self-dealing, acceptance of any item having a value exceeding \$100 from any person or business entity conducting business with the Corporation, the Tribe or any tribal entity or enterprise of the Tribe, or otherwise utilizing the individual's position for personal gain;
7. conduct of the individual which harms the business reputation of the Corporation, the Tribe or any of the other business or tribal operations or undertakings of the Tribe or any of their respective services or products;
8. abandonment by the Corporation of its support for the individual based on circumstances reasonably attributed to the individual;
9. commission of any act of fraud or dishonesty; and
10. failure to reasonably perform all duties and meet all responsibilities required under the terms of this Act, or otherwise incident to the individual's position, or as mandated by operational circumstances, or as directed by the Board of Directors of the Corporation; provided moreover that there shall exist a presumption of such failure if an individual fails to participate in three (3) consecutive Board of Director's meetings.

e. "OIWA Charter" means a federal corporate charter issued by the Secretary

of the Interior to the Tribe under 25 U.S.C. § 45A.

f. "Control" means the power to vote twenty-five percent (25%) or more of the outstanding voting stock or similar ownership interest of a Subsidiary.

g. "Corporation" means a Tribally owned corporation organized under the Kiowa Business Code.

h. "OIWA Corporation" means a corporation chartered under 25 U.S.C. § 45A.

i. "State Business Entity" means a partnership, limited liability company, corporation, or such other business entity organized under the laws of State of the United States.

j. "Court" means the Kiowa Tribe Courts.

k. "Entity" means corporations, associations, trusts, estates, partnerships, limited liability companies, individuals, Indian tribes or Native groups, states, municipalities, the United States, and foreign governments.

l. "Liaison" means the person appointment a Liaison by the Executive, Legislative and General Council branches of the Kiowa Tribe as provided in Section 14 of this Act.

m. "Member" means tribal members of the Kiowa Tribe who are eligible to vote pursuant to the Kiowa Tribe's Constitution.

n. "Tribe" or "Owner" means the Kiowa Tribe.

o. "Public Official" means any person who holds elective office of the Tribe or who is a candidate for elective office, including the Chairman, Vice Chairman, Legislator, and appointed professionals of the Tribe such as Judges, Departmental Executive Directors, Executive Board members and alternatives, and any person who serves on a Kiowa Tribe governmental board, committee or commission.

p. "Quarterly Report" means minutes of the meeting of the Board of Directors and of any committee of the Board of Directors, the Corporation's balance sheet, income statement and cash flow statement for the period then ended prepared in accordance with generally accepted accounting principles, a report of compensation and expense reimbursements or payment to directors of the Corporation, prospective sale of any corporate assets or property, any other information as the Owner may request regarding the Corporation, and any other information the Board deems, in good faith, important to the Owner with or without Owner's request.

q. "Shareholder" means the Kiowa Tribe as Owner unless the Charter other provides that Members are shareholders in which case Shareholder means Member even though Shares shall only be issued to the Tribe as Owner of the Corporation.

r. "Shareholder Representative" means the Chairman of the Kiowa Tribe.

s. "Shares" mean the interests in a corporation as such interests are vested in the Kiowa Tribe as Owner of the Corporation.

t. "Subsidiary" means an Entity over which a Corporation has Control, regardless of the jurisdiction of its business activities.

u. "Tribal law" means the laws of the Kiowa Tribe.

v. "Trust Land" means land held in trust by the United States for the benefit of the Kiowa Tribe, a Corporation, or the Tribe's members.

6. Name.

a. The name of a corporation shall be as set forth in its Charter. All corporations formed under this Act shall contain the phrase "A Kiowa Tribe Corporation."

7. Privileges and Immunities.

a. Generally

1. Tribally owned Corporations shall have the powers, privileges and immunities granted by federal law and the laws of the Tribe and embodied in the Corporation's charter.

2. Tribally owned Corporations shall have the same immunities under federal law as the Tribe. No Articles of Incorporation shall be deemed to waive, or permit to waive, the sovereign immunity of the Tribe.

3. A Tribally owned Corporation shall retain the Tribe's tax exemption status and shall enjoy any tax advantages available to both the Tribe and the Corporation.

4. Except as otherwise provided by this Act or by a Tribal Corporation's Articles of Incorporation, Corporations and their directors, officers and employees shall be entitled to all of the privileges and immunities enjoyed by the Tribe, including but not limited to immunities from suit in federal, state and Tribal courts, and exemption from federal and state taxation or regulation. The right to consent to suit may be stated by the Incorporator in the bylaws of the Corporation, or by the Board of Directors in any amendment to the bylaws of the corporation.

5. Jurisdictional immunities.

(a) All of the rights, privileges and immunities of the Tribe concerning federal, state, or local taxes, regulations and jurisdiction are hereby conferred on a Tribally owned Corporation to the same extent that the Tribe would have such rights, privileges and immunities if it engaged in the activities undertaken by the Corporation.

(b) Sovereign immunity. The sovereign immunity of the Tribe is conferred on all Tribally Owned Corporations. A Corporation shall have the power to sue and is authorized to consent to be sued in the Kiowa Tribal Court, and in all other courts of competent jurisdiction, provided, however, that no such consent to suit shall be effective against the Corporation unless such consent is:

6. Permitted by the Kiowa Constitution for the Tribe itself;
7. Permitted in the Bylaws of the Corporation;
8. Stated explicitly and to be interpreted to apply only to the minimum degree sufficient to give the waiver meaning;
9. Contained in a written contract to which the corporation is a party; and
10. Specifically approved by the Board of Directors of the Corporation; and
11. Specifically approved by the Kiowa Tribal Chairman.

b. Any recovery against a Corporation or any of its respective Subsidiaries shall be limited to the waiver of immunity and to the assets of the Corporation or Subsidiary.

c. Any consent to suit may be limited to the court or courts in which suit may be brought, to the matters that may be made the subject of the suit and to the assets or revenues of the Corporation against which any judgment may be executed.

d. The Corporation shall not be immune to any suit brought against it by the Chairman of the Kiowa Tribe.

8. Organization and Powers of Corporations.

a. Corporations shall be issued Articles of Incorporation subject to the terms and conditions thereof.

b. General Powers. Unless its Articles of Incorporation provides otherwise, every Corporation shall have the following powers:

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1. To do any lawful act.
 2. To exist perpetually.
 3. To sue and be sued and to complain or defend in its corporate name, except that the extent of the Corporation's liability shall be limited to the assets of the Corporation and shall be subject to the limitations contained in Section 7 of this Act.
 4. To have a corporate seal, which may be altered at will, and to use it or a facsimile of it by impressing or affixing it or in any manner reproduce it.
 5. To purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with real or personal property or intangible property, including virtual properties, intellectual properties and copyrights, or any interest in property of whatever kind and wherever located.
 6. To sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property.
 7. To purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of and deal in and with shares or other interests in or obligations of any other entity.
 8. To make contracts and incur liabilities, borrow money, issue notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of any of its property, franchises, and income; provided, however, that no activity described in this subsection 8(c)(7) shall be taken that results in any adverse effect upon, or otherwise impedes, the Tribe's ability to incur debt, borrow money, issue notes or bonds or incur other obligations.
 9. To lend money, invest its funds, and receive and hold real and personal property as security for repayment.
 10. To be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity.
 11. To conduct its business, locate offices, and exercise the powers granted by this Act within or without land held in trust for the Tribe.
 12. To elect or appoint officers and agents of the Corporation, define their duties and fix their compensation.
 13. To pay pensions and establish pension plans, trusts, profit sharing plans,

share bonus plans, and benefit or incentive plans for any or all its current or former directors, officers, and employees.

14. To indemnify any director or officer against their expenses incurred in connection with the defense of any action suit or proceeding in which they are a party by reason of their service with the Corporation, except in cases where the director or officer is adjudged liable for negligence or misconduct in the performance of duty.
15. To make and amend bylaws, not inconsistent with its Charter or this Act, for managing the business and regulating the affairs of the Corporation.
16. To make do for the public welfare or for charitable, scientific, or educational purposes.
17. To transact any lawful business that, without the prior consent of the Tribe's Legislature, is not contrary to the values and culture of the Tribe and does not unnecessarily compete either directly or indirectly with any of the Tribe's businesses.
18. To adopt, apply and enforce any of the Tribe's laws, including but not limited to any Tribal Employment's Right's Ordinances and/or any Employment Relations Act.
19. To have and exercise all powers necessary or convenient to affect its purposes.

9. Registered Office and Agent.

a. Each Tribally owned Corporation shall continuously maintain within the Kiowa Territory a registered office and registered agent. The registered office may, but need not, be the same as any of its places of business. The registered agent shall be any of the following:

1. A natural person who maintains an office in the Territory of the Tribe.
2. A corporation or a limited liability company incorporated, registered, or organized under the laws of the Tribe.
3. A foreign corporation or limited liability company authorized to transact business within the jurisdiction of the Tribe.

10. Shares, Earnings and Ownership.

- a. Ownership. The Tribe shall be the sole and exclusive owner of a Corporation.
- b. Shares. No certificates shall be issued, but the total number of shares shall

be maintained on the books of the company.

c. Exercise of Powers and Voting. The Board of Directors of any Tribal Corporation shall exercise all powers of any corporation formed under this law. Until an Initial Board is appointed, upon confirmation by the Legislature, the Chairman shall exercise the powers of the Board. Members of the Board of a Corporation created under this law shall serve as provided in the bylaws of the corporation.

d. Earnings. The Board of Directors shall provide a yearly report to the Chairman of the Kiowa Tribe and to the legislature, and shall include in its report, at a minimum: audited financial statements, a narrative of the activities of the prior year, a narrative of any significant plans or opportunities, and a narrative of any significant risks or obligations of the Corporation.

e. Information provided to the Kiowa Chairman and Legislature. The Kiowa Chairman and the Legislature shall maintain a right to request information from the Corporation as they see fit, and the Board of the Corporation shall supply the requested information within 10 business days. Such information shall include, without limitation:

1. The Corporation's books and records; and
2. A Subsidiary's books and records, to the extent that:
 - (a) The Corporation has actual possession and control of such records of such Subsidiary; or
 - (b) The Corporation could obtain such records through the exercise of control over such Subsidiary.

11. **Board of Directors.**

a. The business and affairs of the Corporation shall be managed by a Board of Directors, except as may be otherwise provided in this Act or the Charter. No Kiowa Legislator nor the Kiowa Chairman shall serve as a director. However, the Kiowa Vice-Chairman and a designee of the Kiowa Legislature shall sit as ex-officio members of the Board of Directors of every Tribally chartered corporation. The Charter or bylaws may prescribe qualifications for directors. A director need not be a member of the Kiowa Tribe unless the Charter or bylaws so prescribe.

b. Unless the Charter otherwise provides, the Board of Directors shall elect a chairperson, vice-chairperson, and a secretary.

c. Bylaws.

1. The Incorporator of a Tribally owned Corporaiton shall adopt and the

Board of Directors thereafter amend at any time the bylaws of the Corporation for the regulation of the internal affairs of the Corporation.

2. A certified copy of the bylaws and any amendment shall be filed with the Commission before they become effective.
- d. Number and Election.
1. A Board of Directors must consist of one or more individuals with the number established in the Corporation's Articles of Incorporation or bylaws.
 2. Initial directors shall be elected or appointed as provided in the Corporation's Articles of Incorporation. The Tribe's Legislature shall first ratify the Corporation's Articles of Incorporation and then, by Resolution, ratify the appointment of the initial directors. Thereafter, directors shall be elected at the Corporation's annual shareholders' meeting, subject to ratification by the Legislature.
 3. The first meeting of the initial directors shall be held within thirty (30) days of their appointment.
 4. Terms. Unless otherwise provided in the Corporation's Articles of Incorporation, the terms of the initial directors shall be as follows: The directors shall be classified into two classes and, except for the initial term as hereafter provided, shall be elected for a term of two years. Each class of directors shall be as equal in number as possible. One half of the initial directors shall be designated as Class I Directors and shall serve a term that shall expire at the second annual shareholders' meeting next ensuing; and, one half of said directors shall be designated as Class II Directors and shall serve a term that shall expire at the fourth annual shareholders' meeting next ensuing. Each director shall hold office until his/her successor is duly elected or appointed and has qualified and, following the initial terms as immediately above provided, successors to the class of directors whose term shall then expire shall be elected to hold office for a term of four years so that the term of the office of one class of directors shall expire every two years. Without diminishing the term of an elected Director, the Board shall have the authority to designate subsequent nominees to a particular Class in order to maintain the sizes of the Classes as equal in number as possible.
 5. Directors appointed to fill a vacancy shall be designated to a particular Class as deemed appropriate and shall serve until the next shareholders' meeting at which directors in that Class are elected. Despite expiration of a director's term, a director continues to serve until the successor is elected and qualifies or until the board size is decreased.
- e. Resignation. A director may resign at any time by delivering written notice

to the Board of Directors and the Tribe's Chairman.

f. Removal.

1. Unless the Corporation's Articles of Incorporation provides that directors may be removed only for cause; however, and notwithstanding the prior restriction, the Kiowa Chairman, may remove directors with or without cause.
2. Unless the Corporation's Articles of Incorporation otherwise provides, by the unanimous vote of the remaining directors the Board of Directors may remove one or more directors without cause.
3. Unless the Corporation's Articles of Incorporation otherwise provides, a director may be removed only at a duly called meeting of the Board of Directors. The notice for such meeting must state that the purpose, or one of the purposes, of the meeting is for the removal of the director. Notice of a meeting for such purpose shall be provide in all instances to the Tribe's Chairman with a copy to the Legislature at least fourteen (14) days prior to such meeting.

g. Vacancies. Unless the Corporation's Articles of Incorporation otherwise provides, a vacancy on the board shall be filled as prescribed by the Constitution with the Chairman nominating a board member subject to confirmation by the Legislature. In the event there are no board members as a result of a board member's removal, resignation or death, or if the board of directors lacks a quorum (*e.g.*, Articles of Incorporation require a quorum of 3 board of directors) then the Legislature, in an emergency session, may appoint the Tribe's Chairman or his designee to temporarily serve as the Board or in the vacant position for up to 60 days to fill the vacancy or vacancies to the board in order to ensure continued business operations. The Legislature may extend a temporary appointment to a Board of Directors under this scenario in up to 90-day additional increments, until a quorum of directors is confirmed by the Legislature.

h. Compensation. Unless the Corporation's Articles of Incorporation or bylaws otherwise provide, the Board of Directors may establish the compensation of directors which amount shall be approved by resolution of the Legislature.

i. Meetings.

1. The Board of Directors may hold regular or special meetings in person or virtually (on Kiowa trust lands OR and need not meet on or near land held in trust by the United States for the Tribe). The Kiowa Chairman may request a special meeting of the Board of Directors. The request shall designate the purpose of the meeting and be provided to the Chairperson of the Corporation. Thereafter the Chairperson of the Corporation shall

call and provide notice as may be required for said meeting to occur within 10 days of the request by the Kiowa Chairman.

2. Unless the Corporation's Articles of Incorporation otherwise provides, the board may permit any or all directors to conduct or participate in a meeting through the use of any means of communication by which all directors may simultaneously hear each other during the meeting, including telephonic or other electronic means. A director so participating is deemed present.
3. Notice.
 - (a) Unless the Corporation's Articles of Incorporation or bylaws otherwise provide, or unless provided otherwise in this law, 3 days prior notice shall be provide for all meetings of the board. Notice of such meeting shall be provided to the Kiowa Chairman, the Speaker of the Kiowa Legislature, and shall be posted on the Kiowa webpage.
 - (b) Unless the Corporation's Articles of Incorporation or bylaws otherwise provide, special meetings of the board must be preceded by at least 24 hours notice of the date, time, and place of the meeting. Notice of such meeting shall be provided to the Kiowa Chairman, the Speaker of the Kiowa Legislature, and shall be posted on the Kiowa webpage.
4. Quorum and Voting.
 - (a) Unless the Corporation's Articles of Incorporation or bylaws otherwise provide, a quorum consists of a majority of the Directors then appointed and confirmed.
 - (b) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the Board of Directors unless the Corporation's Articles of Incorporation , this Act or the bylaws require the vote of a greater number.
 - (c) Unless the Corporation's Articles of Incorporation or bylaws or this law otherwise provides, action by the Board of Directors may be taken without a meeting if all members unanimously approve the action. Such action must be evidenced in writing, signed by each director, and included in the minutes or filed with the corporate records.
 - (d) A vote of the Board of Directors of a Corporation may be conducted electronically.
5. Conflicts of Interest. This Section of the Act shall apply unless the Corporation's bylaws otherwise provides. No member of the Board of Directors shall engage in any transaction that is, or creates the appearance

of, a conflict of interest. Any transaction that is a conflict of interest and or creates the appearance of conflict of interest shall be immediately disclosed to the Board of Directors. A conflict of interest transaction is a transaction with the Corporation in which a director of the Corporation has a pecuniary interest. A conflict of interest by one or more members of the Board of Directors of the Corporation does not void the act of the Corporation solely because of the conflict of interest if any of the following is true:

- (a) The material facts of the transaction and the director's interest were disclosed or known to a majority of the Board of Directors or a committee of the Board of Directors, excluding the interested director or directors, and a majority of the Board of Directors or committee authorized, approved, or ratified the transaction.
- (b) The material facts of the transaction and the director's interests were disclosed or known to the Shareholders entitled to vote and the Shareholders authorized, approved, or ratified the transaction.
- (c) The transaction was not adverse to the best interests of the Corporation.

12. **Officers of the Corporation.**

a. Unless the Corporation's Articles of Incorporation or bylaws otherwise provide, the officers of the Corporation shall consist of a president, vice president, secretary, and treasurer. The Board of Directors, in accordance with the bylaws, may appoint these and any other officers.

b. Each officer has the authority and shall perform the duties set forth in the Corporation's bylaws.

c. Resignation and Removal. Any officer may resign at any time by delivering notice to the Chairman of the Board. Officers of the Corporation serve at the pleasure of the Board of Directors.

d. Contract Rights. The appointment of an officer does not itself create contract rights nor does the resignation or removal of an officer affect the contract rights, if any, of the officer or Corporation. However, the Board of Directors may enter into a contract of employment with an officer as an inducement for the service of the officer.

13. **General Standards for Directors and Officers.**

a. Directors and officers shall discharge their duties in good faith with the care an ordinarily prudent person in a like position would exercise under similar circumstances and in a manner they reasonably believe to be in the best interests of

the Corporation.

b. In discharging their duties, directors and officers are entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by one or more of the following:

1. One or more officers or employees of the Corporation whom they reasonably believe to be reliable and competent in the matters presented
2. Legal counsel, public accountants, or other persons as to matters they reasonably believe are within the person's professional or expert competence.
3. A committee of the Board of Directors if they reasonably believe the committee merits confidence.

c. Directors and officers are not liable for any action taken in their corporate capacity, or any failure to take any action, if they performed their duties of office in accordance with reasonable prudence and good business practice.

d. Directors and officers shall create, adopt and enforce policies or agreements related to director, employee and/or agent non-competition, non-circumvention and non-solicitation. *See Appendix A.*

e. A Corporation may not lend money to or guarantee the personal obligation of a director, officer or employee of the Corporation under any circumstances.

14. Use of Tribal Employees, Products and Services.

a. A Corporation or its Subsidiaries shall have the authority in the conduct of its business to contract with the Tribe or the appropriate department of the Tribe to use the services of the Tribe's employees, the Tribe's products or the Tribe's services.

b. Contracts for such purposes shall be on terms deemed reasonable by the Corporation or Subsidiary and the Tribe or the appropriate department of the Tribe as the case may be.

15. Shareholder Meetings.

a. Meetings.

1. A Corporation shall hold a meeting of shareholders annually at a time and place as determined by the Board of Directors. Annual meetings shall be held at a location that is reasonably accessible to the Members. Annual meetings need not be held on or near lands held in trust by the United States for the Tribe. The failure to hold an annual meeting does not affect the validity of any corporate action.

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2. A Corporation may hold a special meeting of shareholders at the call of its Board of Directors and with the approval of the Tribe's Chairman as representative of the Owner or upon direction of the Tribe's Chairman as representative of the Owner through Resolution.
 3. The Board of Directors shall conduct shareholders meetings, unless a Corporation is partially owned and operated by the Tribe in which case the Shareholder Representative shall vote the Tribe's ownership interests at the meeting.

b. Notice of Shareholders Meetings. A Corporation shall mail written notice to the Shareholders, the Tribe's Legislature and the Tribe's Chairman at the address as then provided in the enrollment records of the Tribe the date, time, place and purpose(s) of each annual or special shareholders meeting at least thirty (30) days before the meeting.

c. Quorum and Voting.

1. Unless the Corporation's Articles of Incorporation otherwise provides, a quorum at any annual or special meeting of the shareholders is obtained by the attendance at the meeting by the Kiowa Chairman. If the Chairman is not present, the Board of Directors shall set a new date and issue an appropriate notice thereof. If two attempts to properly convene an annual meeting shall fail, no further requirement shall be imposed for an annual meeting for that fiscal year of the Corporation.

16. **Actions by Legislature.**

a. General.

1. Whenever the Consent or Approval of the Tribe's Legislature, in its governmental capacity shall be required, the following shall apply:
 - (a) Notice shall be filed with the Legislature's Secretary.
 - (b) Notice shall be in writing and delivered by mail, return receipt requested, or in person whereby a dated stamped copy of the Notice shall be obtained in person.
 - (c) In those situations where Legislative Consent or Approval is required in connection with the Notice, if the Legislature of the Kiowa Tribe takes no action within 60 days, the matter shall be deemed denied and rejected and no further action shall be taken in regard to the request by the Corporation, and the matter shall not be re-presented for 6 months.

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2. Business by the Tribe's Legislature in its governmental capacity shall be conducted during a session of the Tribe's Legislature.

17. Actions by Tribal Chairman.

a. General.

1. Whenever Notice to or the Consent or Approval of the Kiowa Chairman, shall be required, the following shall apply:
 - (a) Notice shall be filed with the Chairman in his governmental capacity and/ or as representative of the Owner.
 - (b) Notice shall be in writing and delivered by mail, return receipt requested, or in person whereby a dated stamped copy of the Notice shall be obtained in person.
 - (c) if the Kiowa Chairman takes no action within 20 days, the matter shall be deemed denied and rejected and no further action shall be taken in regard to the request by the Corporation, and the matter shall not be re-presented for 6 months.
2. Sale of Real Property and Other Assets of the Corporation – Right of First Refusal.
 - (a) Notice of any sale, conveyance or other disposition of any land or, unless such sale or disposition is in the ordinary course of business, of any sale or disposition of substantially all of the assets of the Corporation or any Subsidiary shall be given the Kiowa Chairman in his governmental capacity at least twenty (20) days prior to such sale, conveyance or other disposition. The Notice shall contain information reasonably necessary for the Tribe's Chairman to act upon the matter described in the Notice.
 - (b) The Tribe's Chairman in his governmental capacity and acting on behalf of the Tribe shall in all such instances be afforded the right of first refusal to acquire such land or assets upon terms and conditions comparable to those under which it is proposed that such land or assets be sold, conveyed or otherwise disposed. The Tribe's Chairman in his governmental capacity shall have a reasonable amount of time in which to make a decision and, if a decision is made to exercise the right of first refusal, to consummate a transaction for the purchase of such land or assets.

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- b. Board of Director Vacancies. Notice of any vacancy on the Board of Directors shall be immediately given by the Corporation to the Kiowa Chairman and to the Legislature. If the Corporation's Articles of Incorporation provides that the Tribe's Chairman is required to fill the vacancy, a special meeting of the Tribe's Legislature shall be called for the purpose of initiating necessary action to confer with the Tribe's Chairman and/or confirm or reject the Chairman's nominee(s) to fill the vacancy.

18. Challenges to Corporate Actions.

a. Except as provided in paragraph b, below, the validity of corporate action may not be challenged on the ground that the Corporation lacks or lacked power to act.

b. A Corporation's power to act may be challenged only in a proceeding before the Kiowa Tribal Court by any of the following:

1. The Tribe's Chairman as representative of the Owner or a director against the Corporation to enjoin the act or to compel action for a failure to act; or
2. The Corporation, directly, derivatively, or through a receiver, trustee, or other legal representative, against an incumbent or former director, officer, employee, or agent of the Corporation to enjoin the act or to compel action for a failure to act.

19. Merger, Consolidation, Sale of Assets.

a. Unless the Corporation's Articles of Incorporation otherwise provides and subject to tribal and /or federal law, a Corporation may merge or consolidate on terms as its Board of Directors deems expedient and for the best interests of the Corporation.

b. The approval of the Tribe's Chairman as representative of the Owner shall be required in connection with such merger or consolidation by the Corporation.

c. Unless the Corporation's Articles of Incorporation otherwise provides and subject to tribal and/or federal law, a Corporation may sell, lease, exchange or other dispose of all or substantially all of its properties and assets, including its goodwill and its corporate franchise, on terms as its Board of Directors deems expedient and for the best interests of the Corporation. For this Section, substantially all of its properties and assets, including its goodwill and its corporate franchise shall be the sale, lease, exchange or other disposition of such properties and assets constituting fifty one percent (51%) or more of the fair market value of all of the Corporation's properties and assets, including its goodwill and its corporate franchise. Fair market value shall be established by commercially reasonable means as of the date that the

transaction is approved by the Board of Directors of the Corporation.

d. The approval of the Kiowa Chairman shall be required in connection with such sale, lease, exchange or other disposition of all or substantially all of the properties and assets, including goodwill and corporate franchise by the Corporation.

20. Dissolution of Tribally Owned Corporation. All Tribally Owned Corporations formed under this section may be dissolved as follows:

a. Dissolution by board of directors and shareholders.

1. A Corporation's Board of Directors may propose dissolution for submission to the shareholders.
2. The Board may condition its submission of the proposal for dissolution on any basis.
3. The Tribe's Chairman as representative of the Owner may propose dissolution to the Board.
4. The Corporation shall notify each shareholder of the proposed shareholders' meeting and the notice shall state that the purpose, or one of the purposes, of the meeting is to consider and to act upon dissolving the Corporation.
5. Unless this chapter, the Articles of Incorporation, bylaws adopted under authority granted in the Articles of Incorporation, the proposal to dissolve is adopted if approved by a majority of all the votes entitled to be cast on the proposal. Dissolution is authorized upon adoption of the proposal.

b. Grounds for Judicial Dissolution. The Tribal Court may dissolve a corporation in a proceeding:

1. By the Tribe's Executive Branch Attorney, if any of the following is established:

(i) That the Corporation obtained its Articles of Incorporation through fraud.

(ii) That the Corporation has continued to exceed or abuse the authority conferred upon it by law.

2. By the Tribe's Chairman, if any of the following is established:

(i) That the directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock and,

because of the deadlock, either irreparable injury to the Corporation is threatened or being suffered or the business and affairs of the Corporation can no longer be conducted to the advantage of the shareholders generally.

(ii) That the directors or those in control of the Corporation have acted, are acting or will act in a manner that is illegal, oppressive or fraudulent.

(ii) That the Tribe's Chairman as representative of the Owner shareholder has failed, for a period that includes at least 2 consecutive annual meeting dates, to elect successors to directors whose terms have expired or would have expired upon the election and, if necessary, qualification of their successors.

(iv) That the Corporate assets are being misapplied or wasted.

3. By the Corporation, to have its voluntary dissolution continued under Tribal Court supervision.
4. The Tribal Court in a judicial proceeding brought to dissolve a corporation may appoint one or more receivers to wind up and liquidate the business and affairs of the Corporation. The Tribal Court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the Tribal Court, before appointing a receiver. The Tribal Court appointing a receiver has exclusive jurisdiction over the Corporation and all of its property wherever located. The Tribal Court shall describe the powers and duties of the receiver in its appointing order, which may be amended from time to time.

ARTICLE 6. Federal Charters.

The Chairman of the Kiowa Tribe is hereby authorized now or in the future to organize and charter any entity under any federal law, including but not limited to the Oklahoma Indian Welfare Act, 25 U.S.C. §§ 5201, *et. seq.*, or the Indian Reorganization Act, 25 U.S. C. § § 5101, *et. seq.*

APPENDIX

A

The following Standards shall apply to all directors and employees (collectively referred to in this Appendix A as an "Insider") of a Corporation or a Corporation's Subsidiary. All capitalized terms used in this Appendix A shall have the same meaning as ascribed to them in the Act.

Section 1. Confidential Information and Non-Disclosure

- 1.1 **"Confidential Information"** shall mean all information of any nature whatsoever obtained or generated in connection with the conduct of the Corporation's or Subsidiary's (collective referred to in this Appendix A as the "Corporation") business, including but not limited to results, work product, trade secrets, intellectual property, inventions, improvements, discoveries, records, analysis, methods, plans, findings, conclusions, derivative, improvements, and proceeds of efforts in connection with the conduct of the Corporation's business, existing and potential business and marketing plans and strategies, financial information, business relationships or proposed relationships, business opportunities, know-how, concepts, reports, processes, techniques, operations, devices, and the like, whether or not the foregoing information is patented, tested, reduced to practice, or subject to copyright or any other intellectual property right and regardless of whether the Corporation intends to patent such information. The term Confidential Information includes all analysis, compilations, forecasts, studies, notes, reports, records, findings, conclusions or other documents which contain or reflect any Confidential Information. Notwithstanding the foregoing, the term "Confidential Information" does not include information which (i) is or becomes generally available to the public other than as a result of disclosure by the Insider in breach of this Agreement; or (ii) was available to the Insider on a non-confidential basis prior to the Insider's engagement with the Corporation as a director or an employee.
- 1.2 **Covenant of Confidentiality.** An Insider shall keep the Confidential Information secret and confidential and shall not disclose to any third party in any fashion or for any purpose whatsoever any Confidential Information except as authorized in writing by the Corporation or as otherwise expressly provided in this Appendix A. An Insider may disclose any of the Confidential Information to those persons who actually need such information in connection with the conduct of the Corporation's business.

Ownership of Confidential Information. The Confidential Information shall be works made-for-hire and the Corporation shall be deemed the sole owner of any and all rights, titles and interests of any nature whatsoever therein, whether or not now or hereafter known, existing, contemplated,

recognized or developed, with the right to use the same in perpetuity in any manner Corporation determines in its sole discretion without any further payment to an Insider whatsoever. If, for any reason, such Confidential Information shall not legally be a work-for-hire and/or there are any rights which do not accrue to Corporation under the proceeding sentence, then an Insider irrevocably assigns and agrees to assign any and all of an Insider's right, title and interest thereto, including without limitation, any and all copyrights, patents, trade secrets, trademarks and/or other rights of whatsoever nature therein, whether or not now or hereafter known, existing, contemplated, recognized or developed to the Corporation, and Corporation shall have the exclusive right to use the same in perpetuity in any manner the Corporation determines without any further payment to an Insider whatsoever. An Insider waives his/her rights to attribution or integrity with respect to the Confidential Information. An Insider shall, from time to time, as may be requested by the Corporation, do any and all things which the Corporation may deem useful or desirable to establish or document the Corporation's ownership of any and all rights in any such Confidential Information including, without limitation, the execution of appropriate copyright and/or patent applications or assignments.

- 1.3 **Use of Information by Insider.** An Insider shall not use any Confidential Information for any reason other than as may be necessary for the conduct of the Corporation's business. An Insider shall not incorporate any Confidential Information into any other work or product except as such work or product relates to the conduct of the Corporation's business.
- 1.4 **No License or Right to Other Use.** An Insider does not have, and shall not acquire by implication or otherwise, any right in or title to or license in respect of the Confidential Information.

Section 2. Non-Competition and Non-Solicitation

- 2.1 **Application to Certain Insiders.** This Section 2 shall apply to any Insider that is a director or an executive officer (collectively referred to in this Appendix A as a "Designated Insider"). An executive officer is any employee that serves the Corporation in the capacity of president, chief executive officer, chief financial officer or a managerial position having similar duties and responsibilities.
- 2.2 **Restrictive Covenant.** In consideration of the engagement of a Designated Insider as a director and/or executive officer and payment of compensation related thereto, the Designated Insider shall not, except with the express prior written consent of Corporation:
- A. use the Confidential Information in any way for his/her benefit or for the benefit of others or for the detriment of the Corporation or its shareholders, parent, subsidiaries, affiliates, successors or assigns;

and

B. during the term of engagement as a director and/or executive officer of the Corporation and for a period of two (2) years after the termination of the Designated Insider's engagement as director and/or executive officer of the Corporation (the "Restrictive Period"), directly or indirectly compete with the business of the Corporation with respect to the following particulars:

1. within a geographic area of 200 miles from any Trust Land of the Tribe, directly or indirectly own, manage, operate, control, or directly or indirectly serve as an employee, officer or director of, or consultant to, any person, business, firm, partnership, corporation, trust or other entity that operates, directly or indirectly, a business similar to that conducted by Corporation (a "Competing Entity");

2. solicit or induce, or attempt to solicit or induce an employee or agent of the Corporation to terminate employment or engagement with the Corporation, or to establish a relationship with a Competing Entity; or

3. solicit or induce, or attempt to solicit or induce, any client or account of the Corporation to terminate its relationship with the Corporation or establish a business relationship with a Competing Entity.

2.3 **Computation of Time.** If a Designated Insider violates the Restrictive Covenant and the Corporation initiates legal action for injunctive or other relief, the Corporation shall not, as a result of the time involved in obtaining such relief, be deprived of the benefit of the full period of the Restrictive Covenant. Accordingly, the Restrictive Covenant shall be deemed to have the duration specified in this Section 2 computed from the date the relief is granted. Notwithstanding anything contained herein to the contrary, the foregoing Restrictive Covenant shall not prohibit a Designated Insider from owning directly or indirectly capital stock or similar securities, which are listed on a securities exchange or quoted on the NASDAQ, which do not represent more than one percent (1%) of the outstanding capital stock of any Competing Entity.

Section 3. Remedies. Insiders acknowledge that money damages may be incalculable and that any such breach may cause the Corporation irreparable harm. Therefore, an Insider agrees that, in the event of any breach or threatened breach of this Appendix A, the Corporation, in addition to any other remedies at law or in equity it may have, shall be entitled to seek equitable relief, including injunctive relief and specific performance without the necessity of posting any bond.

Section 4. Survival. The termination of the engagement or employment of an Insider, however effectuated, shall not release the Corporation from its rights under this Appendix A and, moreover, the provisions of this Appendix A shall survive the termination of the engagement or employment of an Insider.

Section 5. Forum. All conflicts and any action to enforce this Appendix A shall be brought in the Court and an Insider expressly consents to the jurisdiction of such Court, and agrees that such Court shall have personal jurisdiction over the Insider for all matters arising out of or relating to this Appendix A.

Section 6. Savings Provision. The Corporation and the Insider each acknowledge and agree that each of the agreements, representations and covenants of the Insider within this Appendix A are reasonable in geographical and temporal scope, if and as applicable, and in other respects are all reasonably necessary for the protection of the legitimate interest of the Corporation and in consideration of the Corporation's agreements given in connection with the engagement or employment of an Insider. If any court determines that any of the agreements, representations and covenants of this Appendix A, or any part thereof, are invalid or unenforceable, the remainder of this Appendix A shall not thereby be affected and shall be given full effect, without regard to the invalid or unenforceable portions and such invalid or unenforceable portions shall be deemed, without further action on the part of the Corporation and Insider, modified, amended and limited to the extent necessary to render the same valid and enforceable in such jurisdiction. Moreover, if any court determines that any of the agreements, representations or covenants of this Appendix A, or any part thereof, are unenforceable because of the duration or geographic scope of such provisions, such court shall have the power to reduce the duration or scope of such provision, as the case may be, and, in its reduced form, such provision shall then be enforceable.