

THE SANKEWINAK^wƏSÓWAKAN (CONSTITUTION) OF THE PANAWAHPKEWÍ-AHOTENÁWO (PENOBSCOT NATION)

Preamble

The sovereignty of the Pānawāhpkewí-Ahotenáwo (Penobscot Nation) is that innate, inherent, absolute power of self-determination existing, since time immemorial, to govern and manage our own affairs free from external control. We are the same Ahotenáwo (Nation) that entered into the Treaties of 1796 and 1818 with the Commonwealth of Massachusetts and the Treaty of 1820 with the State of Maine. The sovereignty of the Pānawāhpkewí-Ahotenáwo (Penobscot Nation) continues to reside within its people from which it came. It will always remain so, until such time as the Pānawāhpkewí-Ahotenáwo (Penobscot Nation), as defined by its own laws, ceases to exist.

Therefore we, the members of the Pānawāhpkewí-Ahotenáwo (Penobscot Nation), enact this Sankewinak^wəśówakan (Constitution), our supreme tribal law, to: reaffirm our sovereignty as an ahotenáwo (nation); set the form and conduct of our government; preserve our unique culture, customs, traditions and ways; reflect our values as a people; protect our land, water, and other natural resources; foster justice; and advance tribal well-being for future generations.

Name

Our name is the Pānawāhpkewí-Ahotenáwo (Penobscot Nation); hereinafter called the “Ahotenáwo” (Nation).

Article I. Territory

The Ahotenáwo (Nation’s) territory extends to all lands held in the name of the Ahotenáwo (Nation), in trust, fee, or restricted status. These rights and interests are intended to include, without limitation, air, water, mineral, and subsurface rights.

Article II. Jurisdiction

The Ahotenáwo (Nation’s) authority extends over all persons, lands, and property within its territory. Any jurisdiction not expressly waived by the Ahotenáwo (Nation) is retained.

Article III. Membership

All persons who meet the qualifications set forth in the Ahotenáwo (Nation) law are eligible for membership.

Article IV. Declaration of Rights

Section A. Civil Rights

In addition to the other rights provided for by this Sankewinak^wəśówakan (Constitution), the following rights are guaranteed to each pənawáhpškewi (tribal member):

1. to freely practice the religion of his or her choice;
2. to speak or publish statements freely so long as they are not hate speech, intended to incite violence, and do not defame or slander any person or group;
3. to peaceably gather;
4. to attend and participate in meetings of the Potáwasin (General Council) or the Potawásəwinəwak (Tribal Council), except when concerning matters deemed confidential by tribal law;
5. to petition pursuant to tribal law for action by the Potawásəwinəwak (Tribal Council) or the Potáwasin (General Council);
6. to have tepamalsəwəkan (equal) access to share in the privileges and opportunities made available by the Ahotenáwo (Nation);
7. to have one's person, possessions, and home safe from unreasonable search and seizure, and to be searched only pursuant to a Tribal Court warrant that specifically describes the person or place to be searched and the person or thing to be seized, issued based on a sworn statement and a finding of probable cause;
8. to be charged and tried only once for a criminal offense;
9. to refuse to testify against himself or herself in any criminal case;
10. to receive fair compensation when the Ahotenáwo (Nation) takes any private property for a tribal use;
11. to have a speedy and public criminal trial, to be informed of the charges and basis of the charges against him or her, to be confronted with the witnesses against him or her, and to subpoena witnesses in his or her favor;
12. to be provided with legal counsel in a criminal, juvenile delinquency, or child welfare case if he or she is poor and cannot afford to hire counsel;

13. to have only reasonable bail set and only a reasonable fine imposed in criminal cases;
14. to be free from cruel and unusual punishments;
15. to have only a sentence of less than three years imprisonment and a fine of \$15,000 or less imposed for conviction on any one offense, or in a single proceeding, a total penalty of imprisonment for a term of nine years;
16. to be treated on a tepamalsəwəkan (equal) basis to other persons within the Ahotenáwo (Nation) jurisdiction;
17. to receive due process of law before being deprived of rights, liberty, or property;
18. to be free from any law singling out an individual or an identifiable group for punishment without a trial;
19. to be free from the application of any law which retroactively makes illegal an act that was legal when committed, increases the penalties for an infraction after it was committed, or changes the rules of evidence to make conviction easier; and
20. to have a trial by a jury of six persons for a criminal offense upon timely written request.

Section B. Natural Resources Access Right

All pənawəhpskewi-əyak (tribal members) have a right to a tepamalsəwəkan (equal) share in the natural resources of the Pənawəhpkewí-Ahotenáwo (Penobscot Nation) that are located on tribal lands or waters. No member may have his or her right to hunt, fish, trap, gather fiddleheads, harvest ash, or pick sweet grass, or any other access to natural resources suspended for more than ten days without due process of law. The Pənawəhpkewí-Ahotenáwo (Penobscot Nation) Etali-təpəlomətimək (Justice System) is the exclusive forum to hear citations or review appeals of other administrative actions that may result in the suspension of more than ten days or permanent removal of the rights guaranteed in this section. Nothing in this section restricts the Ahotenáwo (Nation) from enacting regulations to ensure the sustainability of tribal natural resources.

Section C. Enforcement Actions

A member of the Pənawəhpkewí-Ahotenáwo (Penobscot Nation) may bring an action in the Etali-təpəlomətimək (Justice System) to enforce these civil rights in accordance with Article IX, Section C.

Article V. Organization of Government

Section A. Origin and Reservation of Authority

All governmental power is held by the Ahotenáwo (Nation) p̄anawáhp̄skewi-əyak (tribal membership). Any power, authority, decision-making, or responsibility not specifically delegated to a branch of the Ahotenáwo (Nation) government by this S̄ankewin̄ak^wəśówakan (Constitution) is reserved to the membership.

Section B. Branches of Government

The P̄anawáhp̄kewi-Ahotenáwo (Penobscot Nation) government is comprised of three branches: the legislative branch as embodied by the Potáwasin (General Council); the executive branch comprised of the S̄akəma (Chief), the W̄əčih̄ihket (Vice-Chief), the P̄anawáhp̄kewi-Ahotenáwo Potawásəwinəwak (Penobscot Nation Tribal Council), and the Potawásəwino (Council Chair); and the judicial branch, established as the P̄anawáhp̄kewi-Ahotenáwo Etali-təp̄əlomətimək (Penobscot Nation Justice System).

Article VI. Legislative Authority

Section A. Powers of the General Council

The p̄anawáhp̄skewi-əyak (tribal membership), when assembled as the Potáwasin (General Council), is the Ahotenáwo (Nation's) sole legislative authority. In addition, Potáwasin (General Council) approval is required for decisions concerning:

1. the Ahotenáwo (Nation) incurring a financial obligation or making a payment in excess of \$250,000 for a commercial purpose;
2. the use or licensing of the P̄anawáhp̄kewi-Ahotenáwo (Penobscot Nation) name or seal for any commercial purpose;
3. filing suit or settling any lawsuit involving the Ahotenáwo (Nation), any of its governmental departments, committees, or official as a party;
4. the sale of ten or more acres of Ahotenáwo (Nation) lands;
5. encumbering Ahotenáwo (Nation) lands or assets for a period of seven years or more;
6. endorsement of any candidate for office, political party, or political cause; and
7. any legislative proposal to state or federal legislatures submitted by or on the

Ahotenáwo (Nation's) behalf.

A pānawáhpškewi who is age 18 or older on the day a Potáwasin (General Council) meeting is held is eligible to vote. Potáwasin (General Council) decisions are binding upon the Sākəmə (Chief) and Potawásəwinəwak (Tribal Council) and may not be changed by any other branch of government. The Etali-təpəlomətimək (Justice System) has jurisdiction to determine whether this Section has been violated.

Section B. General Council Meeting Agenda

The Sākəmə (Chief) and Potawásəwinəwak (Tribal Council) will set the agenda for any Potáwasin (General Council) meeting. Any adult pānawáhpškewi (tribal member) may request in writing that the Sākəmə (Chief) and Potawásəwinəwak (Tribal Council) bring a matter before the Potáwasin (General Council). The form of the written request will be as set out in tribal law. Any proposal for a new tribal law or amendment to existing tribal law must set out in writing the exact language sought to be enacted. The Sākəmə (Chief) and Potawásəwinəwak (Tribal Council) will review the written request and if the request's format conforms to the requirements of this Section and tribal law, will set the matter for a public hearing. Upon completion of the public hearing, the matter, including any revisions made to the proposal subsequent to the public hearing, will be approved for the Potáwasin (General Council) meeting agenda by the Sākəmə (Chief) and Potawásəwinəwak (Tribal Council) (Tribal Council). The Potawásəwinəwak (Tribal Council) may make recommendations regarding the matter or proposed legislation to the Potáwasin (General Council). Notice, capable of timely informing all adult pānawáhpškewi-əyak (tribal members) of the Potáwasin (General Council) meeting's date, location and agenda, must be provided by the Noči-nəpawíhkhəmet (Tribal Clerk).

Section C. Right to Petition

The Ahotenáwo (Nation) members have the right to petition the Sākəmə (Chief) and Potawásəwinəwak (Tribal Council) to take action on any matter, to bring any legislative initiative or other matter before the Potáwasin (General Council) for action, or to present a matter to the membership for a referendum vote. The process and procedure for petitioning is as established by tribal law.

Section D. General Council Meeting Procedures

In addition to regular and emergency Potáwasin (General Council) meetings as defined by tribal law, each year an annual Potáwasin (General Council) meeting will be held on the first Ketáwsənətek (Saturday) in Kkihkayí-kisoḥs (June). In the event of an emergency or the passing of a pānawáhpškewi (tribal member), the annual Potáwasin (General Council) meeting may be postponed by the Sākəmə (Chief) to the third Ketáwsənətek (Saturday) in Kkihkayí-kisoḥs (June). The Sākəmə (Chief), Wəčíhčihket (Vice-Chief), and all Potawásəwinəwak (Tribal Council) members will attend all Potáwasin (General Council) meetings unless excused by the Sākəmə (Chief) for reasons of illness, mandatory business

travel, or other personal or family emergency.

The Sākəmə (Chief), or in the Sākəmə (Chief's) absence the Wəčihčihket (Vice-Chief), will preside over the Potáwasin (General Council) meetings. The Sākəmə (Chief) and Wəčihčihket (Vice-Chief) are entitled to vote in the Potáwasin (General Council) meeting. Decisions will be made by simple majority vote of those present. Upon request of any pənawəhpskewi (tribal member), voting may be conducted by secret ballot.

Section E. Recording General Council Actions

The Noči-nəpawihkhamet (Tribal Clerk) is responsible for recording all Potáwasin (General Council) meetings and writing and publishing the Potáwasin (General Council) meeting minutes. Upon request to the Noči-nəpawihkhamet (Tribal Clerk), any tribal member may listen to a Potáwasin (General Council) meeting recording. After a new tribal law, or an amendment to existing tribal law, has been approved by the Potáwasin (General Council), the Noči-nəpawihkhamet (Tribal Clerk) will update the Pənawəhpkewí-Ahotenáwo (Penobscot Nation) Tribal Code accordingly. The Noči-nəpawihkhamet (Tribal Clerk) will publish the new or amended law in accordance with tribal publication law.

Section F. Referendum

Pursuant to a resolution by the Sākəmə (Chief) and Potawásəwinəwak (Tribal Council) or by a valid petition, any matter that may otherwise be presented to the Potáwasin (General Council) may be referred to the voting membership by referendum. Matters that affect all pənawəhpskewi-əyak (tribal members), regardless of residence, such as amendment of this Sənkəwinəkʷəsówəkan (Constitution) or investment or distribution of the Maine Indian Claims Settlement Fund corpus. Any measure referred to the membership will take effect and be in force when approved by a majority of those voting in the referendum.

Article VII. Executive Powers

Section A. Powers of the Chief and Tribal Council

The Ahotenáwo (Nation) executive branch consists of the Pənawəhpkewí-Ahotenáwo Potawásəwinəwak (Penobscot Nation Tribal Council), the Sākəmə (Chief), the Wəčihčihket (Vice-Chief), Potawásəwino, and such administrative departments established by the Sākəmə (Chief) and Potawásəwinəwak (Tribal Council).

1. *Enumerated Powers.* The executive branch is responsible for the Ahotenáwo (Nation's) general administration, subject to the limitations imposed by this Sənkəwinəkʷəsówəkan (Constitution) or tribal law. The Sākəmə (Chief) and Potawásəwinəwak (Tribal Council), acting jointly, have and exercise the Ahotenáwo (Nation's) governmental powers and rights as follows:

- a. to preserve and protect the Ahotenáwo (Nation's) property for future generations;
- b. to safeguard and promote the Ahotenáwo (Nation's) peace, safety, morals and general welfare;
- c. to protect and defend the Ahotenáwo (Nation's) sovereignty and uphold the provisions of this Sankewinǎkwəsówakan (Constitution) and all tribal laws;
- d. to adopt and abide by rules of order for the conduct of meetings of the Sákəmə (Chief) and Potawásəwinəwak (Tribal Council). All meetings of the Sákəmə (Chief) and Potawásəwinəwak (Tribal Council) are open to pənawáhpškewi-əyak (tribal members), except as otherwise provided by Article VII, Section B (5)(d) or tribal law, and agendas will be publicly posted in three places no less than three days prior to the meeting date. A pənawáhpškewi (tribal member) may bring an action in Etali-təpəlomətimək (Justice System) for any violation of this subsection;
- e. to negotiate, make and perform contracts and agreements of any description not inconsistent with tribal law or this Sankewinǎkwəsówakan (Constitution), with any person, association, partnership, corporation, municipality, country or foreign power, local government, county, state, the United States, or other Indian ahotenáwo (nation), tribe, or band;
- f. to seek, make application for and accept grants, aid or donations from any source;
- g. to manage the Ahotenáwo (Nation's) funds and to expend such funds in accordance with Article VI, Section A;
- h. to remove or exclude from the jurisdiction of the Ahotenáwo (Nation) any non-member of the Ahotenáwo (Nation);
- i. to appoint committees needed to help achieve the purposes and goals of the Ahotenáwo (Nation). The committees shall make recommendations to the Potawásəwinəwak (Tribal Council) or to the Potáwasin (General Council). Members of all committees are nominated by the Sákəmə (Chief) and approved by the Potawásəwinəwak (Tribal Council). Committee members serve at the pleasure of the Sákəmə (Chief) and Potawásəwinəwak (Tribal Council) unless otherwise provided by tribal law. Committees may include a member of the Potawásəwinəwak (Tribal Council);
- j. to manage, protect, and preserve all lands, minerals, water, wildlife, and other natural resources owned or held by the Ahotenáwo (Nation);

- k. to initiate, regulate, and administer land use and/or development on lands owned by or within the Ahotenáwo (Nation's) jurisdiction;
 - l. to make all employment decisions in accordance with the applicable law, policies, and procedures of the Ahotenáwo (Nation);
 - m. to levy and collect taxes and license fees upon persons residing on, engaging in activity, or doing business upon property actually or constructively located within the Ahotenáwo (Nation's) territory;
 - n. to encumber, mortgage, lease, permit, sell, assign, manage, or provide for the management of Ahotenáwo (Nation) lands and other property, except as may be limited by this Sankewinǎkwəsówǎkan (Constitution) or tribal law;
 - o. to encourage and foster tribal arts, crafts, traditions, language, and culture;
 - p. to advise, consult, and negotiate with federal, state, tribal, or local governments;
 - q. to employ personnel or retain consultants necessary to operate the Ahotenáwo (Nation's) government;
 - r. to incorporate the Ahotenáwo (Nation's) economic entities and to issue charters of incorporation in accordance with tribal law;
 - s. to borrow money and to issue notes and obligations in accordance with applicable law;
 - t. to develop and adopt departmental or agency regulations and procedures as authorized by tribal law;
 - u. to conduct, within or without the Ahotenáwo (Nation) territory, any and all activity or business not otherwise prohibited by law; and
 - v. to provide or contract for services that provide for the general welfare of the Ahotenáwo (Nation) and its members.
2. *Future Powers.* The Potawásəwinəwak (Tribal Council) may exercise such further powers as may in the future be delegated to it by the Potáwasin (General Council).

Section B. Composition and Procedures of the Chief and Tribal Council

- 1. *Eligible Voters.* Tribal members age 18 or older on the day a vote is held are

eligible to participate in any P̄naw̄hpkewí-Ahotenáwo (Penobscot Nation) election, referendum, petition, or recall.

2. *P̄naw̄hpkewí-Ahotenáwo Potawásəwinəwak* (Tribal Council)

- a. *Composition.* The P̄naw̄hpkewí-Ahotenáwo Potawásəwinəwak (Penobscot Nation Tribal Council) is comprised of twelve members.
- b. *Qualifications.* A p̄naw̄hpskewi (tribal member), age eighteen years of age and older, who has not been convicted of a criminal offense punishable by a sentence of one or more years imprisonment within the ten years prior to the date of the election is qualified to serve as a Potawásəwinəwak (Tribal Council) member.
- c. *Election and Term of Office.* Six Potawásəwinəwak (Tribal Council) members will be elected by majority vote of the p̄naw̄hpskewi-əyak (tribal members) biennially on even-numbered years on the second Ketáwsənətek (Saturday) in Wikkehsəwí-kisoḥs (September) for four-year terms. Elections will be conducted in the manner set forth in tribal law. Newly elected Potawásəwinəwak (Tribal Council) members' terms will commence on the first day of Mačewatohkí-kisoḥs (October) following the biennial election. All Potawásəwinəwak (Tribal Council) members will be sworn into office by the Noči-n̄pawíhkhmet (Tribal Clerk).
- d. *Recall.* Any elected official of the Ahotenáwo (Nation) may be recalled from office by the p̄naw̄hpskewi-əyak (tribal members) in accordance with the procedures of tribal law.
- e. *Vacancies.* A special election will be held to fill any Potawásəwinəwak (Tribal Council) vacancy occurring by resignation, removal, death, or recall. No special election will be held if the remaining term of the vacancy is less than six months. Otherwise, the elected candidate will serve out the vacancy's remaining term.
- f. *Chair.* A Potawásəwino (Chair) will be elected by the Potawásəwinəwak (Tribal Council) members biennially at the first meeting of the Potawásəwinəwak (Tribal Council) occurring in Mačewatohkí-kisoḥs (September) following the biennial election. The Potawásəwino (Chair) will undertake the S̄kəmə (Chief's) duties, including presiding over Potawásəwinəwak (Tribal Council) and Potáwasin (General Council) meetings, whenever the S̄kəmə (Chief) and Wəčihčihket (Vice-Chief) are unable or unavailable to serve. The Potawásəwino (Chair) will have such other responsibilities and duties as may be established by tribal law or authorized by Potawásəwinəwak (Tribal Council) resolution.

- g. *Voting Authority.* Each Potawásəwinəwak (Tribal Council) member is entitled to one vote on matters that are presented to the Potawásəwinəwak (Tribal Council). The person presiding over the Potawásəwinəwak (Tribal Council) meeting is not entitled to a vote except in the instance where there is a tie.
3. *Chief of the Penobscot Nation*
- a. *Qualifications.* A person who is age 18 years or older, who is a pənawáhpškewi by birth, and who has not been convicted of an offense punishable by one year or more imprisonment within the ten years prior to the date of the election is qualified to serve as Sàkəmə (Chief).
 - b. *Election and Term of Office.* The Sàkəmə (Chief) will be elected by majority vote to a four-year term by the Ahotenáwo (Nation) adult pənawáhpškewi-əyak (tribal members). During the Mačewatohkí-kisoḥs following the Sàkəmə (Chief's) election, the Sàkəmə-Elect (Chief-Elect) will be inaugurated and sworn into office by the Noči-nəpawíhkhəmet (Tribal Clerk).
 - c. *Compensation.* The Sàkəmə (Chief) will be paid reasonable compensation as approved by the Potawásəwinəwak (Tribal Council). No increase, except an administration-wide employee cost of living increase, or decrease in the Sàkəmə (Chief's) compensation will take effect until after the next election for the office of Sàkəmə (Chief).
 - d. *Powers, Duties, and Responsibilities.* The Sàkəmə (Chief) has the following powers, duties, and responsibilities:
 - i. to execute, administer, and enforce Ahotenáwo (Nation) law, policies, and procedures;
 - ii. to uphold and preserve Ahotenáwo (Nation) values, traditions, and customs;
 - iii. to serve as the Ahotenáwo (Nation) chief representative to other sovereigns and to the public at large on all matters that concerns its interests and welfare;
 - iv. to notice, call, assemble, set agendas, and preside over Potáwasin (General Council) and Potawásəwinəwak (Tribal Council) meetings;
 - v. to make recommendations to the Potáwasin (General Council) and to the Potawásəwinəwak (Tribal Council) on matters of interest or benefit to the Ahotenáwo (Nation);

- vi. to vote in Potáwasin (General Council) and Potawásəwinəwak (Tribal Council) meetings in order to break a tie;
- vii. to appoint, with the advice and consent of Potawásəwinəwak (Tribal Council), the Noči-nəpawíhkhameṭ (Tribal Clerk) and any Deputy Tribal Clerks, and members of committees established by tribal law or the Potawásəwinəwak (Tribal Council);
- viii. to serve as Ahotenáwo (Nation) Chief Executive Officer;
- ix. to take action on Ahotenáwo (Nation) behalf in all emergencies or in time-sensitive matters when the Potawásəwinəwak (Tribal Council) cannot be readily convened; and
- x. to exercise such powers as may be delegated by the Potáwasin (General Council) or the Potawásəwinəwak (Tribal Council).

4. *Vice-Chief of the Penobscot Nation*

- a. *Qualifications.* A person who is age 18 years or older, who is a pəṇawáhpškewi (tribal member) by birth, who has not been convicted of an offense punishable by one year or more imprisonment within the ten years prior to the date of the election is qualified to serve as Wə́čihčihket (Vice-Chief).
- b. *Election and Term of Office.* The Wə́čihčihket (Vice-Chief) will be elected by majority vote to a four-year term by the Ahotenáwo (Nation) adult pəṇawáhpškewi-əyak (tribal members) during the same election as that held for the Sə́kəmə (Chief), unless the election is to fill a vacancy in the office of Wə́čihčihket (Vice-Chief). During the Mačewatohkí-kisoḥs following his or her election, the Wə́čihčihket-Elect (Vice Chief-Elect) will be inaugurated and sworn into office by the Noči-nəpawíhkhameṭ (Tribal Clerk).
- c. *Compensation.* The Wə́čihčihket (Vice-Chief) will be paid reasonable compensation as approved by the Potawásəwinəwak (Tribal Council). No increase, except an administration-wide employee cost of living increase, or decrease in the Wə́čihčihket (Vice-Chief's) compensation will take effect until the next election for the office of Wə́čihčihket (Vice-Chief).
- d. *Powers, Duties, and Responsibilities.* The Wə́čihčihket (Vice-Chief) has the following powers, duties and responsibilities:
 - i. to execute, administer and enforce Ahotenáwo (Nation) law, policies,

and procedures;

- ii. to uphold and preserve Ahotenáwo (Nation) values, traditions, and customs;
- iii. to fulfill the duties and responsibilities of the Sàkəmə (Chief), when the Sàkəmə (Chief) dies, is removed from or recalled from office, becomes incapacitated, or is otherwise unavailable to carry out the duties of the office of Sàkəmə (Chief);
- iv. to the extent possible, attend all Potawásəwinəwak (Tribal Council) and Potáwasin (General Council) meetings, and preside over Potawásəwinəwak (Tribal Council) and Potáwasin (General Council) meetings in the absence of the Sàkəmə (Chief);
- v. to oversee the administration and operation of all committees, boards, and working groups established by the Potawásəwinəwak (Tribal Council) and to hear and respond to any pənawáhpskewi (tribal member) grievances regarding failures of any such group to follow tribal law, Potawásəwinəwak (Tribal Council) resolutions, or established internal committee rules;
- vi. to follow up and seek to resolution to matters raised by pənawáhpskewi-əyak (tribal members) as wətamitəhəsəwəkanal (community concerns) in Potawásəwinəwak (Tribal Council) meetings, in coordination with the Tribal Administrator;
- vii. to serve as the Ahotenáwo (Nation) representative to other sovereigns and to the public at large on all matters that concern its interests and welfare; and
- viii. to ensure that matters of particular concern to tribal elders and tribal youth receive consideration in the deliberations of the Sàkəmə (Chief) and Potawásəwinəwak (Tribal Council).

5. *Tribal Council Meetings*

- a. *Generally.* The Sàkəmə (Chief) will convene, set the agenda for, and preside over all regular monthly Potawásəwinəwak (Tribal Council) meetings and any special Potawásəwinəwak (Tribal Council) meetings called as necessary. The person who presides over the Potawásəwinəwak (Tribal Council) meeting will have no vote on issues except in the event of a tie. The Sàkəmə (Chief) will cause to have notice given to each Council member no less than 72 hours before a meeting may be convened.

- b. *Tribal member passing.* No Potawásəwinəwak (Tribal Council) or official committee meeting may be held on the day of a pənawáhpskewi (tribal member)'s passing or on the two days following the passing.
- c. *Open meetings.* All meetings of the Sàkəmə (Chief) and Potawásəwinəwak (Tribal Council) are open to all members of the Ahotenáwo (Nation), except those that may be conducted in Executive Session. The Noči-nəpawíhkhəmet (Tribal Clerk) will record all minutes, resolutions, and recorded votes of the Sàkəmə (Chief) and Potawásəwinəwak (Tribal Council) and these will be made available for in-office review to members of the Ahotenáwo (Nation), with the exception of those conducted in Executive Session.
- d. *Executive session.* Executive sessions may be called to address: matters required by tribal law to be held confidential, individual employee personnel matters, and to confer with or receive advice from Ahotenáwo (Nation) legal counsel regarding proposed, potential, or current litigation. Minutes and recordings are only available by specific order of the Sàkəmə (Chief), Potawásəwinəwak (Tribal Council) or, if relevant to a pending case, the Etali-təpəlomətimək (Justice System).
- e. *Quorum.* Seven members constitute a quorum for Potawásəwinəwak (Tribal Council) meetings regardless of the existence of any vacancies.
- f. *Community Concerns.* A pənawáhpskewi (tribal member) may request that the Sàkəmə (Chief) include a concern on a Potawásəwinəwak (Tribal Council) agenda. All regular monthly meetings of the Potawásəwinəwak (Tribal Council) shall allocate a specific period of time, Wətamitəhasəwəkanal (Community Concerns), on the agenda for pənawáhpskewi-əyak (tribal members) to share their concerns.
- g. *Conflict of interest.* No Sàkəmə (Chief), Wəčihčihket (Vice-Chief), or Potawásəwinəwak (Tribal Council) member may participate in any discussion or vote on any matter in which he or she, or a member of his or her immediate family has a personal interest, including but not limited to, employment, awarding of contracts, project funding, and appointment to committees. The conflicted person must disclose the conflict prior to the start of the discussion. The term "immediate family" includes a person's spouse, significant other, in-laws, siblings, parents, children, aunts, uncles, or cousins.
- h. *Attendance.* Potawásəwinəwak (Tribal Council) members must attend all meetings unless excused in advance by the Sàkəmə (Chief), or in the Sàkəmə (Chief's) absence, the Wəčihčihket (Vice-Chief). Potawásəwinəwak (Tribal Council) members may be excused from attendance due to illness, business

travel, school attendance, employment, officially representing the Ahotenáwo (Nation) elsewhere, death in the member's family, or other family emergency.

- i. *Removal.* A Potawásəwinəwak (Tribal Council) member who is not in attendance at three successive regular monthly Potawásəwinəwak (Tribal Council) meetings, without being excused, will be removed from the Potawásəwinəwak (Tribal Council) by the Sàkəmə (Chief), with the advice and consent of the remaining Potawásəwinəwak (Tribal Council) members.
- j. *Rules of conduct.* The Potawásəwinəwak (Tribal Council) will adopt rules to govern the conduct of its meetings. The rules will be made available to all pənawəhpskewi-əyak (tribal members).

Section C. Tribal Clerk

The Ahotenáwo (Nation) will employ a Noči-nəpawíhkhəmet (Tribal Clerk). This person must be a pənawəhpskewi (tribal member) by birth. The Noči-nəpawíhkhəmet (Tribal Clerk), as a tribal employee, may be only terminated in accordance with tribal law or policies. The Noči-nəpawíhkhəmet (Tribal Clerk) will perform the following duties:

1. to keep, update, and safeguard Ahotenáwo (Nation) records;
2. to attend, record, and produce accurate minutes of all Potáwasin (General Council) and Potawásəwinəwak (Tribal Council) meetings and public hearings;
3. to administer all required nəspi-wəlamewəkan (oaths);
4. to conduct and certify all federal, state, and tribal elections;
5. to maintain and publish Ahotenáwo (Nation) laws, ordinances, regulations, and rules;
6. to recommend, in accordance with applicable employment policies and procedures, the hiring of Deputy Tribal Clerks, and be responsible for their supervision; and
7. to fulfill other such duties arising under this Sənkəwinək^wəsówəkan (Constitution) or as required by tribal law.

Article VIII. Penobscot Nation Tribal Justice System

Section A. Tribal Justice System

1. *Judicial Powers.* The judicial power of the Ahotenáwo (Nation) is vested in the Pānawāhpkewí-Ahotenáwo Etali-təpəlomətimək (Justice System) (Penobscot Nation Tribal Justice System).
2. *Separation of Branches.* The Etali-təpəlomətimək (Justice System) is separate and independent from the Ahotenáwo (Nation) legislative and executive branches. No person exercising powers of the executive or legislative branches of the government may exercise powers properly belonging to the Etali-təpəlomətimək (Justice System).
3. *Jurisdiction.* As one of the most visible expressions of the Ahotenáwo (Nation) sovereignty, the judicial power of the Etali-təpəlomətimək (Justice System) may be exercised to the fullest extent consistent with self-determination and the sovereign powers of the Ahotenáwo (Nation). The Etali-təpəlomətimək (Justice System) jurisdiction extends to all civil and criminal cases arising under this Sānkewināk^wəśówakan (Constitution), all legislative enactments of the Ahotenáwo (Nation), including laws, ordinances, and regulations, and agreements and contracts to which the Ahotenáwo (Nation) or any of its departments, agencies, or entities is a party, or the Ahotenáwo (Nation) traditions and customs. The Etali-təpəlomətimək (Justice System) has exclusive jurisdiction over internal tribal matters, unless otherwise delegated by the Potáwasin (General Council) to another tribal governmental body.
4. *Guiding Principles.* The Etali-təpəlomətimək (Justice System) shall utilize a restorative problem-solving approach respectful of tribal values, culture, traditions, customs, and ways to resolve cases and disputes brought before it. Decisions will be guided by the Nation's values of sápiḱən (fairness), esāpaməwakan (transparency), kətaməkeləkewakan (compassion), əsitəməwakan (accountability), and wewalohkewakan (efficiency).
5. *Funding and Administration.* The Sākəmə (Chief) and Potawásəwinəwak (Tribal Council) will provide sufficient funding to the Etali-təpəlomətimək (Justice System) to enable it to carry out its responsibilities competently and exercise Ahotenáwo (Nation) jurisdiction to the fullest extent possible.

Section B. Composition of the Tribal Justice System

1. *Tribal Court.* The Tribal Court is a trial court of general jurisdiction providing an initial single judge, or jury, for resolving cases and controversies arising under Ahotenáwo (Nation) jurisdiction.
 - a. The Tribal Court judiciary will consist of a Chief Judge and one or more Associate Judges.

- b. The Tribal Court may establish divisions to hear distinct types of cases, including but not limited to, a Healing to Wellness Court.
2. *Court of Appeals.* The Court of Appeals, as the sole appellate court, is empowered to review any final judgment, order, or decree of the Tribal Court in accordance with applicable tribal law and appellate court rules.
 - a. The Court of Appeals will consist of one Chief Justice and three Associate Justices. Each appeal will be heard by a panel of three Justices, including the Chief Justice, unless otherwise recused. The Chief Justice will assign two Associate Justices to hear each appeal. The assignment of Associate Justices will be rotated for each appeal.
 - b. Decisions of the Court of Appeals on all matters within its jurisdiction are final and not subject to review. There is no further appeal to the Potáwasin (General Council), the Sàkəmə (Chief), or Potawásəwinəwak (Tribal Council), or any other person or entity.

Section C. Judicial Appointment

1. *Selection and Appointment Process.* The Sàkəmə (Chief), with the advice and consent of Potawásəwinəwak (Tribal Council), will appoint the members of a Judicial Selection Committee consisting of two tribal court judges, a pənawáhpškewi (tribal member) who is a current Pənawáhpškewí-Ahotenáwo tribal bar member, the court administrator, and the Potawásəwino. The Judicial Selection Committee will review judicial candidates and make appointment recommendations to the Potawásəwinəwak (Tribal Council). The judges of the Tribal Court and the justices of Court of Appeals will be selected by an affirmative vote of a majority of the Potawásəwinəwak (Tribal Council).
2. *Initial and Succeeding Terms of Office*
 - a. Except as provided in subsection 2(d), the initial term of office for the first Tribal Court Chief Judge appointed following adoption of this Sənkəwínəkʷəsówəkan (Constitution) will be two years and any Associate Judges will be one year. The initial term of the first Court of Appeals Chief Justice will be three years. The three Associate Justices appointed following adoption of this Sənkəwínəkʷəsówəkan (Constitution) will have staggered initial terms of one, two, and three years.
 - b. Terms of office for all Tribal Court judges or the Court of Appeals justices, after expiration of the initial terms described in subsection (a) above, will be three years, subject to renewal. A judge or justice's term will be automatically

renewed so long as he or she is: (1) mentally capable; (2) has not been convicted of a felony; (3) has not been suspended from practice on disciplinary grounds by any jurisdiction; and (4) has rendered all decisions in a timely manner.

- c. Judges and justices will continue in office until their successors are duly appointed and installed in office, or until they have died, resigned, or have been removed from office.
- d. In the event that the Potawásəwinəwak (Tribal Council) has appointed any judge or justice to the Tribal Court or Court of Appeals before the adoption of the Sənkəwinəkʷəsówəkan (Constitution), such judge or justice will continue to serve for a one-year term commencing on the date of the Sənkəwinəkʷəsówəkan (Constitution's) adoption.

Section E. Qualifications of Justices and Judges

- 1. *Native American preference.* In judicial appointments, the Potawásəwinəwak (Tribal Council) will give preference to qualified candidates, in descending order to: pənawəhpskewi-əyak (tribal members) and then to Native Americans enrolled with other tribes. Only if no pənawəhpskewi (tribal member) or non-member Native American is qualified for appointment, may a non-Indian be selected.
- 2. *Judicial qualifications.* A person may be eligible to serve as a judge or justice in the Etali-təpəlomətimək (Justice System) if he or she:
 - a. is a licensed attorney in good standing in any state;
 - b. has never been suspended on disciplinary charges or disbarred in any jurisdiction; and
 - c. can demonstrate familiarity with federal Indian law, the Maine Indian Claims Settlement Act and the Maine Act to Implement the Maine Indian Claims Settlement Act, and Pənawəhpkewí-Ahotenáwo (Penobscot Nation) law and rules of court.

Section F. Application of Law and Decisions

- 1. *Applicable Law.* All matters brought before the Etali-təpəlomətimək (Justice System) will be determined in accordance with Ahotenáwo (Nation) laws, traditions, and customs. If no specific Pənawəhpkewí-Ahotenáwo (Penobscot Nation) law exists, the courts may be guided, but not bound by, principles of law applicable to similar claims arising under the laws of other tribes, the

states, or the United States.

2. *Publication of Decisions.* Written Tribal Court decisions and Court of Appeals opinions will be published in accordance with tribal law.
3. *Decisional Timelines*
 - a. The Tribal Court will endeavor to issue rulings on motions and trials within 30 calendar days after the submission of final briefs or final hearing. Upon a party's filing of a request for findings of fact and conclusions of law, the Tribal Court will, within 15 calendar days of the request's filing, issue such findings of fact and conclusions of law.
 - b. The Court of Appeals will endeavor to issue its decisions and orders within 45 calendar days following the conclusion of any oral argument or submission of final briefs, whichever is later.
 - c. A judge or justice will not receive compensation while any case before him or her remains pending and undetermined for 90 calendar days after it has been submitted for decision.

Section G. Judicial Compensation

The compensation rate or salary of each judge and justice will be set by the Sàkəmə (Chief) and Potawásəwinəwak (Tribal Council) and be commensurate with the average attorney rates in the area surrounding the Pənawəhpəkewí-Ahotenáwo (Penobscot Nation) reservation. The compensation rate or salary of any judge or justice may not be reduced during his or her service for the Etali-təpəlomətimək (Justice System).

Section H. Discipline or Removal of Judge or Justice

1. *Judicial Conduct Review Board.* There is established a Judicial Conduct Review Board with the authority to hear complaints concerning the conduct of judges and justices, and, after notice and hearing, recommend to the Potawásəwinəwak (Tribal Council) appropriate disciplinary action, including possible removal from judicial office.
2. *Board Composition.* The Judicial Conduct Review Board will consist of the Chief Justice of the Court of Appeals, the Chief Judge of the Tribal Court, and one member of the Ahotenáwo (Nation's) tribal bar chosen randomly by the Court Clerk. If the Chief Justice or the Chief Judge is the subject of the complaint, the Court Clerk will randomly select an alternate Associate Justice or Associate Judge.

3. *Adoption of Rules.* The tribal judges and justices shall adopt rules regarding notice provisions, discovery, evidentiary standards, the conduct of hearings, and decision-making process to govern all disciplinary actions.
4. *Disciplinary Authority.* The Judicial Conduct Review Board will issue written findings of fact and conclusions of law. All Board decisions in favor of discipline must be unanimous. If the Board finds that disciplinary action is warranted, the Board is empowered to issue reprimands and require corrective action. If the Board finds that the misconduct rises to the level warranting removal from judicial office, the Board will make its recommendation to the Potawásəwinəwak (Tribal Council).
5. The power to remove judges and justices of the Etali-təpəlomətimək (Justice System) is vested with the Potawásəwinəwak (Tribal Council). The Potawásəwinəwak (Tribal Council) may remove a judge or justice for good cause and must obtain a two-thirds affirmative vote of the entire Potawásəwinəwak (Tribal Council) for removal.
6. Judges and justices may only be removed for good cause. Good cause may include:
 - a. physical or mental disability that prevents the performance of judicial duties;
 - b. persistent failure to perform duties, including failure to render timely decisions;
 - c. gross misconduct that is clearly prejudicial to the administration of justice; or
 - d. conviction of a felony, or a crime of violence or fraud.

Section I. Rule-Making

The justices and judges, by consensus, will adopt rules of procedure, evidence, and such other rules of court that may be necessary to conduct the work of the Etali-təpəlomətimək (Justice System). Any rules in effect on the date this Sənkəwinək^wəsówəkan (Constitution) is enacted stay in force until subsequently amended or repealed.

Article IX. Sovereign Immunity

Section A. Tribal Immunity

The Ahotenáwo (Nation), as a sovereign nation, is immune from suit in all forums except to the extent that immunity is expressly waived as provided in this Article.

Section B. Waivers of Immunity

The Potawásəwinəwak (Tribal Council) may waive Ahotenáwo (Nation) immunity from suit in furtherance of a governmental or tribal business interest, unless otherwise prohibited by this Sankewinəkʷəsówakan (Constitution). Such a waiver must be in writing and must be approved by an affirmative vote of at least eight Potawásəwinəwak (Tribal Council) members.

Section C. Suits against the Nation in Tribal Court

1. The Ahotenáwo (Nation), Potawásəwinəwak (Tribal Council) members, the Səkəmə (Chief) and Wəčihčihket (Vice-Chief), in their official capacities, are not immune from suit brought by a pənawáhpškewi (tribal member) in Tribal Court to declare and enforce the legal rights and duties established by this Sankewinəkʷəsówakan (Constitution) or the Ahotenáwo (Nation) laws.
2. The Ahotenáwo (Nation) does not waive its immunity for suits seeking monetary damages, including exemplary or punitive damages, unless damages are specifically authorized by tribal law. Relief available to a prevailing pənawáhpškewi (tribal member) is limited to injunctive and declaratory relief and attorney's fees only. The Potawásəwinəwak (Tribal Council), by simple majority vote, may waive Ahotenáwo (Nation) immunity from suit in Tribal Court by a pənawáhpškewi (tribal member) for compensatory damages when such a waiver would remedy a serious harm suffered by the pənawáhpškewi (tribal member), promote the best interests of the Ahotenáwo (Nation), or be in the interests of justice.
3. Any suit brought pursuant to this Section must be filed in the Tribal Court and not in any other forum.

Article X. Elections and Recall

All elections of the Pənawáhpškewi-Ahotenáwo (Penobscot Nation) shall be conducted in accordance with tribal election law. All elected officials shall, prior to assuming office, take the nəspi-wələməwəkan (oath of office) administered by the Noči-nəpawíhkhəmet (Tribal Clerk). Recall of elected officials shall be conducted in accordance with tribal law.

Article XI. Savings Clause

All laws, ordinances, regulations, resolutions, and policies previously enacted by Potáwasin (General Council) or the Potawásəwinəwak (Tribal Council) shall remain in full force and effect to the extent that they are not inconsistent with this Sankewinəkʷəsówakan (Constitution). The Etali-təpələmətimək (Justice System) will have jurisdiction to determine whether a

prior enactment is inconsistent and unconstitutional.

Article XII. Severability

If in the future, any provision of this Sankewinak^wəsówakan (Constitution) shall be deemed invalid by the Etali-təpəlomətimək (Justice System), the valid portions shall remain in full force and effect.

Article XIII. Adoption of Constitution

This Sankewinak^wəsówakan (Constitution) shall become effective when adopted by a majority of adult pənawáhpsekwi-əyak (tribal members) participating in a valid referendum vote.

Article XIV. Amendments to the Constitution

Amendments to this Sankewinak^wəsówakan (Constitution) will be conducted solely by referendum. Each proposed amendment must be presented for voting in the referendum ballot separately. Twenty-percent or more of the adult pənawáhpsekwi-əyak (tribal members) eligible to vote on the closing date of the referendum must participate in order for the referendum to be valid. The amendment must be approved by two-thirds of those voting in the referendum.