

**FLANDREAU SANTEE SIOUX TRIBE**

**HEMP PLAN**

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## CHAPTER 1. GENERAL PROVISIONS

### Section 30-1-1. Short Title.

This document may be cited as the “Hemp Plan” or “Plan.”

### Section 30-1-2. Findings and Purpose.

The Tribe hereby finds and declares that:

- (a) The United States recognizes Indian tribes as unique nations with sovereignty over their members and territories.
- (b) The Preamble and Article VIII of the Flandreau Santee Sioux Tribal Constitution authorizes the governing body of the Tribe to engage in business activities which promote the economic well-being of the Tribe and its members.
- (c) Hemp is a strain of Cannabis that has grown naturally in North America. It predates the foundation of the United States of America and continues to grow in the wild.
- (d) Hemp was historically utilized for a variety of products and functions including paper, cloth, and rope, but its uses have greatly expanded, in more recent times.
- (e) The cultivation of Hemp was a staple of American agriculture until it was outlawed through state law, the Marijuana Tax Act in the 1930’s, and the Controlled Substances Act of 1970, 21 U.S.C. § 801 *et seq.* (“Controlled Substances Act”), because Hemp is derived from the same plant as Marijuana.
- (f) Prior to the 2018 amendments to the Controlled Substances Act, contained in the Agriculture Improvement Act of 2018 (the “2018 Farm Bill”), the Controlled Substances Act classified Hemp as a Schedule 1 drug and prohibited any possession or use of Hemp except in the course of federally approved research projects. The Controlled Substances Act also made it unlawful for any person to cultivate, manufacture, distribute, dispense, or possess (with intent to manufacture) Hemp.
- (g) The Agriculture Improvement Act of 2018, also amended the Agricultural Marketing Act of 1946 (7 U.S.C. § 1621 *et seq.*) by adding Subtitle G entitled “Hemp Production,” which now allows the Tribe’s controlled cultivation of Hemp in accordance with that Act, and a Tribal Plan approved by the Secretary of Agriculture.
- (h) The Tribe has decided to open specific lands within its jurisdiction to the cultivation, Processing, and distribution of Hemp by ratifying this Plan and submitting it to the United States Department of Agriculture for approval.

### Section 30-1-3. Scope of the Tribal Plan.

- (a) This Plan shall govern the cultivation, processing, and distribution of Hemp on lands within the Tribe’s Jurisdiction as required in Subsection G of the 2018 Farm Bill and will

allow the Tribe to exercise its inherent sovereignty over its Tribal territory, exercise its inherent right to stimulate its economy, create jobs, develop and operate Tribal businesses, create an additional source of revenue for Tribal programs and operations and provide funding for its members and the community.

(b) Tribal regulation of the possession, cultivation, Processing and distribution of Hemp on lands within the Tribe's Jurisdiction is necessary to protect the health, security, and general welfare of the Tribal community. In order to further these goals, the Tribe has adopted this Plan which shall be liberally construed to fulfill the purposes for which it has been adopted.

(c) Nothing in this Plan shall be deemed to be in positive conflict with the Controlled Substances Act. In the event of a conflict between this Plan as approved by the Secretary of the USDA or his designee and the Tribal Hemp Ordinance, the terms of the Plan shall govern.

(d) The regulations and penalties imposed by this Plan extend to any person within the Tribe's Jurisdiction, whether Licensed or not.

#### **Section 30-1-4. Sovereign Immunity.**

Nothing in this Plan shall be construed to limit the jurisdiction of the Tribe, the Tribal Court, or the Tribal Police, and nothing herein shall limit or constitute a waiver of the sovereign immunity of the Tribe or its officers, instrumentalities, employees, elected officials, and agents, or authorize any form a prospective waiver of such sovereign immunity.

#### **Section 30-1-5. Exemption from Prosecution for Certain Acts.**

No employee or Key Participant of a Hemp Business or Licensed Producer or Processor shall be subject to prosecution or civil penalty in the Tribal Court for the cultivation, production, or distribution of Hemp when acting in accordance with this Plan and with applicable Tribal and federal law.

#### **Section 30-1-6. Effective Date.**

This Plan shall be effective upon the ratification by the Executive Committee and approval by the Secretary of the United States Department of Agriculture or his designee.

#### **Section 30-1-7. Savings Clause.**

In the event that any phrase, provision, part, paragraph, subsection, or section of this Plan is found by a court of competent jurisdiction to violate the Constitution or laws of the Tribe or any federal law, such phrase, provision, part, paragraph, subsection or section shall be considered to stand alone and be deleted from this Plan. The entirety of the balance of this Plan shall remain in full and binding force and effect.

## CHAPTER 2. DEFINITIONS

### Section 30-2-1. Definitions.

Within this Plan, the following definitions apply:

(a) “Acceptable Hemp THC Level” means when a laboratory tests a sample, it must report the delta-9 tetrahydrocannabinol content concentration level on a dry weight basis and the measurement of uncertainty. The acceptable hemp THC level for the purpose of compliance with the requirements of this hemp plan is when the application of the measurement of uncertainty to the reported delta-9 tetrahydrocannabinol content concentration level on a dry weight basis produces a distribution or range that includes 0.3% or less. For example, if the reported delta-9 tetrahydrocannabinol content concentration level on a dry weight basis is 0.35% and the measurement of uncertainty is +/-0.06%, the measured delta-9 tetrahydrocannabinol content concentration level on a dry weight basis for this sample ranges from 0.29% to 0.41%. Because 0.3% is within the distribution or range, the sample is within the acceptable hemp THC level for the purpose of plan compliance. This definition of “Acceptable Hemp THC Level” affects neither the statutory definition of hemp, 7 U.S.C. 1639o(1), in the 2018 Farm Bill nor the definition of “marihuana,” 21 U.S.C. 802(16), in the CSA.

(b) “Act” means the Agricultural Marketing Act of 1946 as amended.

(c) “Agricultural Marketing Service” or “AMS” refers to the Agricultural Marketing Service of the U.S. Department of Agriculture and is the agency the Secretary of Agriculture has charged with the responsibility to oversee the administration of this new Program.

(d) “Cannabis” means a genus of flowering plants in the family Cannabaceae of which *Cannabis sativa* is a species, and *Cannabis indica* and *Cannabis ruderalis* are subspecies thereof. Cannabis refers to any form of the plant in which the Delta-9 Tetrahydrocannabinol concentration on a Dry Weight Basis has not been determined.

(e) “CBD” means cannabidiol.

(f) “Conviction” means any plea of guilty or nolo contendere, or any finding of guilt, except when the finding of guilt is subsequently overturned on appeal, pardoned, or expunged. For purposes of this Plan a Conviction is expunged when the Conviction is removed from the individual’s criminal history report and there are no legal disabilities or restrictions associated with the expunged Conviction, other than the fact that the Conviction may be used for sentencing purposes for subsequent Convictions. When an individual is allowed to withdraw an original plea of guilty or nolo contender and enter a plea of not guilty and the case is subsequently dismissed, the individual is no longer considered to have a Conviction for purposes of this Plan.

(g) “Criminal History Report” means the individual’s Federal Bureau of Investigation’s Identity History Summary.

(h) “Culpable Mental State Greater Than Negligence” means to act intentionally, knowingly, willfully, recklessly, or with criminal negligence.

- (i) “DEA” means the United States Drug Enforcement Administration.
- (j) “Decarboxylated” means the completion of the chemical reaction that converts THC-acid into delta-9 Tetrahydrocannabinol. The decarboxylated value is also calculated using a conversion formula that sums delta-9 Tetrahydrocannabinol and eighty-seven and seven tenths (87.7) percent of THC-acid.
- (k) “Delta-9 Tetrahydrocannabinol” or “THC” means delta-9-tetrahydrocannabinol concentration (the primary intoxicating component of Cannabis). For purposes of this Plan, Delta-9 Tetrahydrocannabinol and THC are interchangeable.
- (l) “Directly related to” means immediate family relations as defined in the Tribe's Constitution or any other Tribal ordinance defining nepotism.
- (m) “Dry Weight Basis” means the ratio of the amount of moisture in a sample to the amount of dry solid in a sample. In the case of Cannabis, a percentage of THC on a Dry Weight Basis means the percentage of THC, by weight in a Cannabis item (plant, extract or other derivative) after excluding moisture from the item.
- (n) “Executive Committee” means the duly elected Executive Committee of the Tribe, which is the governing body of the Tribe.
- (o) “FSA” means the Farm Service Agency of the U.S. Department of Agriculture.
- (p) “Gas Chromatography” or “GC” means a type of chromatography in analytical chemistry used to separate, identify, and quantify each component in a mixture. GC relies on heat for separating and analyzing compounds that can be vaporized without decomposition.
- (q) “Geospatial Location” means a location designated through a global system of navigational satellites used to determine the precise ground position of a place or object.
- (r) “Financial Interest” means a person or entity that has more than a five (5) percent interest, share, or ownership in an operation(s).
- (s) "GPS" means Global Positioning System.
- (t) “Handle” means to harvest, transport, or store Hemp plants or Hemp plant parts prior to the delivery of such plants or plant parts for further Processing. Handle also includes the Processing of Cannabis plants that are not Hemp for purposes of chemical analysis and disposal of such plants.
- (u) “Handler” means a person or entity which Handles Hemp.
- (v) “HCO” means the Tribe’s Hemp Control Officer as established by this Plan. The term may include employees, agents, and designees of the HCO.
- (w) “Hemp” means the plant Cannabis sativa L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a Delta-9 Tetrahydrocannabinol concentration of not more than 0.3 percent on a Dry Weight Basis



(x) “Hemp Business” means a growing facility, cultivating facility, transportation company, Processing facility, distribution facility, or any combination thereof.

(y) “High-Performance Liquid Chromatography” or “HPLC”. A type of chromatography technique in analytical chemistry used to separate, identify, and quantify each component in a mixture. HPLC relies on pumps to pass a pressurized liquid solvent containing the sample mixture through a column filled with a solid adsorbent material to separate and analyze compounds.

(z) “Indian Country” means those lands which meet the definition contained in 18 U.S.C. § 1151.

(aa) “Hemp Products” means products derived from, or made by, Processing Hemp plants or plant parts.

(aa) “Information Sharing System” means the database mandated under the Act which allows USDA to share information collected under State, Tribal and USDA plans with Federal, State, Tribal, and local law enforcement.

(bb) “Key Participants” means a person or persons who have a direct or indirect financial interest in the Hemp being cultivated or in the entity producing the Hemp, such as an owner or partner in a partnership. A Key Participant also includes persons in a corporate entity with executive managerial control. Key Participant does not include non-executive managers such as farm, field, and shift managers.

(cc) “Law Enforcement Agency” means the Flandreau Santee Sioux Tribe Police Department, DEA, or other federal Law Enforcement Agency or drug suppression unit, but does not include any state law enforcement agency.

(dd) “License” means a valid License issued by the Tribe to grow, Handle, store, Process, transport, or market Hemp.

(ee) “License Agreement” means an agreement between the Tribe and Licensed Grower, Producer, transporter or Handler pursuant to which the Tribe regulates the conduct of that Licensee.

(ff) “Licensed Grower” means a person or entity Licensed by the HCO to grow, Handle, store, and market Hemp under the terms established by this Plan.

(gg) “Licensed Processor” means a person or entity Licensed by the HCO to Process, Handle, store, and market Hemp under the terms established by this Plan.

(hh) “Location” or “Land” means the particular land, building, or buildings where Hemp will be grown, Handled, stored, or Processed, which can include a field name or building name.

(ii) “Location ID” means the unique identifier established by the applicant for each unique set of Geospatial Location coordinates where Hemp will be grown, Handled, stored, or

Processed, which can include a legal description, field name, or building name.

(jj) “Lot” means a contiguous area in a field, greenhouse, or indoor growing structure containing the same Variety or strain of Hemp throughout the area. The Lot shall match the growing area reported by the Producer to the FSA for which the Lot number or numbers are received from the FSA.

(kk) “Marijuana” means all Cannabis that tests as having a concentration level of THC on a Dry Weight Basis of higher than 0.3 percent.

(ll) “Measurement of Uncertainty” means the parameter, associated with the results of a measurement that characterizes the dispersion of the values that could reasonably be attributed to the particular quantity subject to the measurement.

(mm) “Negligence” means a failure to exercise the level of care that a reasonably prudent person would exercise in complying with this Plan.

(nn) “Nonviable Seed” means a seed that has been crushed, dehulled, or otherwise rendered to have a zero percent germination rate.

(oo) “Ordinance” or “Tribal Ordinance” means any and all laws of the Tribe enacted to authorize, implement or enforce this Plan.

(pp) “Phytocannabinoid.” Cannabinoid chemical compounds found in the cannabis plant, two of which are Delta-9 tetrahydrocannabinol (delta-9 THC) and cannabidiol (CBD).

(qq) “Pesticide” means any substance or mixture of substances intended to:

- (1) Prevent, destroy, control, repel, attract, or mitigate any pest.
- (2) Be used as a plant regulator, defoliant, or desiccant.
- (3) Be used as a spray adjuvant, once they have been mixed with a U.S. Environmental Protection Agency registered product.
- (4) Any substance or mixture classified as a pesticide by the Tribe or any agent of the Federal Government.

(rr) “Permit” means a Tribally issued certificate that authorizes a Licensed Producer to plant, grow, or store Hemp, any part of Hemp, or Hemp related products in a specifically described location.

(ss) “Produce” means to grow Hemp plants for market, or for cultivation for market, in the United States.

(tt) “Producer” means an owner, operator, landlord, tenant, or sharecropper who shares the risk of cultivating a crop and who is entitled to share in the crop available for market, or would have shared had the crop been Produced. A producer includes a grower of hybrid seed.

(uu) “Prohibited Variety” means a Variety or strain of Cannabis excluded by this Plan or regulations promulgated pursuant thereto.

(vv) “Process” means the harvesting of the plant Cannabis or the use of any process or equipment, including, but not limited to, dehydrators or humidifiers that may be necessary to convert raw Hemp plants or plant parts into a consumable product.

(ww) “Processor” or “Processor Facility” means a commercial entity that purchases Hemp from a grower and extracts resin from the Hemp or creates a Hemp-infused product for sale and transfer in packaged form.

(xx) “Processor Licensing Agreement” means a document executed by a person or entity and the HCO authorizing the person or entity to Process, Handle, transport or store Hemp at one (1) or more specified locations.

(yy) “Program” means the HCO’s Hemp Program.

(zz) “Propagule” means a plant or plant part that can be utilized to grow a new Hemp plant.

(aaa) “Publicly Marketable Hemp Product” means a Hemp product that meets one (1) or more of the following descriptions:

- (1) The product does not include any living Hemp plants, viable seeds, leaf materials, or floral materials that contain THC content above zero and three-tenths (0.3) percent. Publically marketable Hemp product does include, without limitation, the following products: bare stalks, bast fiber, hurd fiber, nonviable roots, Nonviable Seeds, seed oils, and plant extracts (excluding products containing THC above zero and three-tenths (0.3) percent).
- (2) The product is CBD that was derived from Hemp as defined by this Plan.
- (3) The product is CBD that is approved as a prescription medication by the United States Food and Drug Administration.

(bbb) “Regulations” means the official regulations, policies, and procedures, if any, related to the implementation and enforcement of this Plan, adopted by the Executive Committee. The Regulations may also be referred to in this Plan as the “Tribal Hemp Regulations.”

(ccc) “Tribal Court” means the courts of the Flandreau Santee Sioux Tribe as established pursuant to the Tribe Constitution, and the Tribe’s Law and Order Code.

(ddd) “Tribe” means the federally recognized Flandreau Santee Sioux Tribe of South Dakota recognized as possessing powers of self-governance.

(eee) “Tribe’s Jurisdiction” means all lands within the Indian Country that are within the civil and criminal jurisdiction of the Tribe as that jurisdiction is defined in the Tribe’s

Constitution and by applicable federal law.

(fff) “Tribal Police” or “Tribal Law Enforcement” shall mean the Flandreau Santee Sioux Tribe Police Department.

(ggg) “USDA” means the United States Department of Agriculture.

(hhh) “Variety” or “Strain” means a subdivision of a species that is:

- (1) Uniform, in the sense that the variations in essential and distinctive characteristics are describable;
- (2) Stable, in the sense that the variety will remain unchanged in its essential and distinctive characteristics and its uniformity if reproduced or reconstituted as required by the different categories of varieties; and
- (3) Distinct, in the sense that the variety can be differentiated by one (1) or more identifiable morphological, physiological, other characteristics from all other publicly known varieties, or other characteristics from all other publicly known varieties.

(iii) “Volunteer Cannabis Plant” means any Cannabis plant that grows of its own accord from seeds or roots in the years following an intentionally planted Cannabis crop and is not intentionally planted.

## **CHAPTER 3. AUTHORIZATION AND REGULATION OF HEMP**

### **Section 30-3-1. Exemption from Prosecution for Certain Acts.**

No employee of a Licensed Producer or Licensed Processor shall be subject to prosecution or civil penalty in the Tribal Court for the cultivation, production, transportation, Handling or distribution of Hemp in accordance with this Plan, applicable laws and Regulations of the Tribe, and applicable federal law.

### **Section 30-3-2. Hemp Regulations.**

Tribal policies and procedures related to the regulation of Hemp may further the purposes of this Plan. The Executive Committee, or its designee, shall approve all policies, procedures, and forms, including:

- (a) Licensing of applicants
- (b) Permitting locations where Hemp is authorized
- (c) Reporting and recordkeeping
- (d) Agreements between growers and Processors
- (e) Procedures for sampling, THC testing, and post-testing actions
- (f) Pre-harvest and post-harvest retesting
- (g) Procedures for destruction of Hemp
- (h) Pesticide use
- (i) Prohibited products or activities
- (j) Penalties
- (k) Remedies

## **CHAPTER 4. HEMP CONTROL OFFICER**

### **Section 30-4-1. Position Establishment; Attributes.**

The Tribe hereby establishes the HCO as an instrumentality of the Tribe. The HCO shall function as an arm of the Tribe and shall have the power and responsibility to enforce the provisions of this Plan, all Tribal Hemp-related Ordinances, and the federal Hemp Regulations within the Tribe's Jurisdiction. The HCO shall be under the supervision and direction of the Executive Committee.

### **Section 30-4-2. Duration.**

The HCO shall exist until replaced or abolished by the Executive Committee.

### **Section 30-4-3. Qualifications.**

(a) The HCO shall be one person appointed by the Executive Committee following a comprehensive background check and must:

- (1) not have any felony or drug related misdemeanor convictions in the last ten years in any Tribal, state, or federal jurisdictions, and
- (2) not have a financial interest in any Hemp operation.

(b) The following persons are ineligible to serve as HCO:

- (1) employees of any Hemp operation,
- (2) Hemp contractors (including any principal of a management or other contracting company), or
- (3) persons directly related to or sharing a residence with any of the above.

(c) The Tribe may, in the future, authorize the HCO to hire support staff, which must meet the same qualifications detailed in (b) and (c) above.

### **Section 30-4-4. Removal.**

The Executive Committee may remove the HCO for the following reasons: Conviction of a felony or any drug offense, neglect of duty, malfeasance in office, misfeasance, misconduct in office, any conduct that threatens the honesty or integrity of the position or otherwise violates the letter or intent of this Plan or other applicable Tribal or federal law, or for other good cause shown.

### **Section 30-4-5. Vacancies.**

The Executive Committee shall appoint a new HCO when the position becomes vacant.

#### **Section 30-4-6. Training, Equipment; Staff.**

The Tribe will provide or arrange for the HCO to have adequate training, equipment, staff, and compensation to fully carry out its duties.

#### **Section 30-4-7. Powers and Duties.**

The HCO shall have the power and responsibility to enforce the provisions of this Plan, all Tribal Hemp related ordinances and all applicable Tribal and federal Hemp Regulations. The HCO shall:

- (a) Issue Licenses, Permits, negotiating, and signing License Agreements, and rescinding those agreements in a manner consistent with the provision of this Plan and applicable Tribal law.
- (b) Proposing Tribal Hemp Regulations and Hemp related amendments to Tribal law.
- (c) Ensuring the geospatial surveys of sites and approving Permits for sites, locations, or lands within the Tribe's Jurisdiction.
- (d) Assessing and evaluating the potential environmental impacts of a Hemp Business' proposed operations.
- (e) Inspecting, examining, and monitoring all Hemp imports (including the import of seeds, plants, and Propagules), cultivation, Handling, transportation, storage, and all other Hemp-related operations and activities. This includes performing Tribal testing and inspections including random inspections.
- (f) Insuring, at a minimum, annual inspections of a random sample of Producers to verify that Hemp is not being produce in violation of this Plan.
- (g) Collecting, developing, maintaining, and filing all appropriate or required records related to Hemp activities within the Tribe's Jurisdiction and submitting all required reports to the Executive Committee, law enforcement, and the USDA.
- (h) Proposing one or more contracts with testing labs, background check companies, and other third-party contractors beneficial to the performance of the Tribe, and/or necessary and appropriate to fulfill the requirements and intent of this Plan and remain compliant with applicable federal and Tribal law.
- (i) Ensuring compliance with all Tribal and Federal laws, rules and Regulations regarding Hemp. This includes working cooperatively with USDA, the FSA, and federal and Tribal law enforcement, developing and maintaining all required records and filing all required federal and Tribal reports, and cooperating fully with all federal inspections and audits of Hemp activities within the Tribe's Jurisdiction.

(j) Investigating any suspicion of wrongdoing associated with any Hemp activities and reporting any potential criminal violations to USDA, the U.S. Attorney General, and applicable law enforcement.

(k) Supervise the destruction of all Hemp crops that are to be destroyed pursuant to the provisions of this Plan or federal law.

(l) Complying with all federal and Tribal reporting, recordkeeping, and USDA audit requirements. Including developing and implementing a system to collect, maintain and report to the Secretary of the USDA relevant, real-time information for each Producer Licensed or authorized to Produce Hemp under this Plan.

(m) Providing written notice of adverse decisions to applicants and Licensees.

(n) Imposing and collecting necessary relevant fees and/or penalties.

(o) Adopting departmental procedures to support the enforcement of this Plan and any related Tribal Ordinance or regulations.

(p) Ensuring that the Tribal Hemp Office prepares for and cooperates fully with the USDA audit.

(q) Supervising any HCO support staff and ensuring that they act in compliance with this Plan and all applicable federal and Tribal law.

(r) Cooperating fully with all federal inspections and USDA auditors.

#### **Section 30-4-8. Limitation of HCO Powers.**

(a) The HCO shall not regulate the Tribe or any Tribal entities except with respect to their activities involving the cultivation, Processing, and distribution of Hemp.

(b) The HCO shall not regulate the use of any the surplus funds generated from the Tribe's cultivation, Processing, and distribution of Hemp once the net revenues have been distributed to the Tribe or to an entity of the Tribe utilizing those funds.

(c) The HCO shall not require members of the Executive Committee to obtain an employee License.

#### **Section 30-4-9. Compensation of the HCO.**

The HCO shall be paid in the amount and manner determined by the Executive Committee.

#### **Section 30-4-10. Sovereign Immunity of HCO.**

When acting under the color of his authority, the HCO shall enjoy all of the privileges and immunities of the Tribe, except as specifically limited by this Plan, including sovereign immunity from suit in the state, federal, or Tribal Court.



(a) The HCO shall have no authority to waive the sovereign immunity of the Tribe, or any other Tribal entity.

(b) Nothing in this Plan shall be deemed or construed to be a waiver of the HCO's sovereign immunity from suit.

(c) Notwithstanding any other provision herein, as an entity of the Tribe, the HCO's immunity from suit shall at all times be deemed waived for actions against the HCO initiated by the Executive Committee of the Tribe.

## **CHAPTER 5. LICENSING APPLICATIONS**

### **Section 30-5-1. License Required to Grow, Handle, Transport, Store or Process Hemp.**

Any person who wishes to Produce, Process, Handle, transport, or store Hemp, and any Key Participant in that activity within the Tribe's Jurisdiction, must possess a valid Tribal License to do so.

### **Section 30-5-2. Licenses to be Issued and Regulated by the Tribe.**

The Executive Committee shall determine the appropriate number of Hemp Licenses in each category that will be issued each year. The Tribe or its designee shall adopt uniform licensing applications and a uniform process for approval or denial of Licenses. These forms and processes shall be incorporated into the Tribal Hemp Regulations. The HCO retains the discretion to issue or deny Licenses to any person or applicant in accordance with this Plan and the Tribal Hemp Regulations. Any person convicted of a felony related to a controlled substance under State or Federal or Tribal law before, on, or after the enactment of the 2018 Farm Bill shall not be eligible for any type of tribal hemp license and is prohibited from producing hemp for 10-years following the date of conviction. An exception applies to a person who was lawfully growing hemp under the 2014 Farm Bill before December 20, 2018, and whose conviction also occurred before that date.

### **Section 30-5-3. Licensing Entities.**

Businesses that provide products or services related to the Hemp industry may be organized under the Tribal Law and Order Code. All Key Participants of such business must still undergo a comprehensive background check.

### **Section 30-5-4. Waiting Period.**

A person who has had a License terminated shall not be eligible to reapply to the HCO for a period of five (5) years from the date of termination.

### **Section 30-5-5. Background checks.**

Applicants for a License and all of the Key Participants in their proposed activities must undergo a Criminal History Report as part of an application for licensing. The HCO or the Executive Committee may require such other background checks as it deems necessary or appropriate. When a person or entity applies for a License, Key Participants must each submit to those relevant background checks.

### **Section 30-5-6. Indian Trader Designation Required.**

All business Licensees, if not owned by the Tribe, are required to obtain an Indian Trader License as contemplated by the Code of Federal Regulations, Title 25 § 140.9 or by similar federal legislation as amended. If an Indian Trader License is not issued by the Bureau of Indian Affairs, a tribal business license shall serve as its equivalent.

### **Section 30-5-7. Fees.**

The Executive Committee shall set and the HCO shall collect License application fees that are reasonable to the processing of License applications. Failure to pay the fees will result in the denial of an application.

### **Section 30-5-8. Application Contents.**

- (a) Applications shall include at a minimum:
- (1) The applicant's full name, residential address, telephone number, and email address, if an email address is available.
  - (2) If the applicant represents a business entity, the full name of the business, the principal business location address, EIN number, the full name, title, and email address (if available) of each individual who will be a Key Participant in the venture for whom the entity is required to submit a Criminal History Report.
  - (3) Documentation showing either a valid tenancy, ownership or other legal interest in the proposed property including whether the property is held in trust, fee or allotted status and who its beneficial owners are.
  - (4) Street address, Location ID, legal description and, to the extent practicable, the Geospatial Location coordinates for each field, greenhouse, building, or site where Hemp will be Produced, Handled, Processed or stored.
  - (5) Information regarding any other Hemp growing location or Processing facility that is licensed in any other jurisdiction and a copy of the license(s).
  - (6) A listing of all persons who have a direct or indirect involvement in the Hemp or Hemp related activities or who otherwise fall into the category of a Key Participant in the proposed activity.
  - (7) Proof of Insurance that includes worker's compensation insurance for any employees, and general liability insurance.
  - (8) A business plan and operations plan that includes at a minimum the following, as applicable to the type of activity sought to be licensed:
    - (i) The proposed acreage or greenhouse or indoor square footage to be Produced or used for Processing
    - (ii) The type of activity proposed for Processing, the information required shall be of the same type the Tribe requires for licensing any type of business within the Tribe's Jurisdiction.

- (iii) A description of the type of facility proposed and the anticipated or actual number of employees. The name of the proposed Manager of the Facility.
- (iv) A security plan which shall include a general description of the security systems(s), fencing, and lighting plan showing the outside lighting, and current centrally alarmed and monitored security system service agreements.
- (v) A list of Pesticides, and other chemicals proposed for use.
- (vi) A description and plan of all equipment and methods that will be employed to stop any impact to adjacent uses, including assurances that no odor will be detected from outside the Location.
- (vii) A plan for the disposal of Hemp, chemicals and related byproducts.
- (viii) A statement of previous farming experience.
- (ix) Planned source of seeds or Propagules.

**Section 30-5-9. Application Processing.**

(a) The HCO shall review the application for completeness and compliance with this Plan and applicable Tribal law. In so doing, the HCO shall pay special attention to the background check materials presented, the applicant's relationship with the land, and whether the applicant has shown a willingness in the past to abide by Tribal and Federal law.

(b) The HCO will then issue a conditional approval of the License application subject to the applicant meeting the additional requirements of this Plan and Tribal Law.

(c) Any License Application that is missing required information shall be subject to denial.

(d) Any person who materially falsifies any information contained in an application shall be ineligible to participate in Hemp production under this Plan.

(e) The HCO shall notify applicants by letter or email whether the application has been denied or conditionally approved. Upon conditional approval, the HCO shall assign each Licensee with a License or authorization identifier in a format prescribed by USDA.

## CHAPTER 6. LICENSE AGREEMENTS

### Section 30-6-1. License Agreement Required.

An applicant shall not be Licensed until the applicant is finally approved and the applicant and the HCO have executed a Production or Processor/Handler License Agreement.

### Section 30-6-2. Agreement Contents.

Any License Agreement shall contain at a minimum:

- (a) The Licensee's full name, residential address, telephone number, and email address, if an email address is available.
- (b) If the Licensee represents a business entity, the full name of the business, the principal business location address, the full name, title, and email address (if available) of each individual which will be a Key Participant in the venture for whom the entity is required to submit a Criminal History Report and agreement to advise the HCO when a Key Participant leaves or joins the licensee.
- (c) The agreement shall contain the Licensee's consent to entry onto the Licensed site and to the inspection and sampling pursuant to this Plan of all premises where Hemp or other Cannabis plants or materials are located, or Licensed to be located, by the HCO, representatives of the HCO, law enforcement agencies, and USDA inspectors with or without cause, with or without advance notice.
- (d) The Licensee consents to forfeiture and destruction, without compensation, of:
  - (1) Material found to have a measured THC content in excess of zero and three-tenths (0.3) percent on a Dry Weight Basis.
  - (2) Hemp whether growing or not growing located in an area that is not permitted by the Tribe.
  - (3) Hemp whether growing or not growing not accounted for in required reporting to the HCO.
- (e) The Licensee agrees to apply for a separate Permit for each growing, Processing, Handling, Production and storage location, which shall include a legal description of the location, Geospatial Location (to the extent practicable), the Hemp seeds or Propagules to be used, or the activities to be conducted at the location and receive approval for each of those Permits prior to having Hemp on those premises.
- (f) The Licensee acknowledges that all Licensed Producers or Processors/Handlers shall submit a Site Modification Request Form, and obtain prior written approval from a representative of the HCO before implementing any change to the Licensed sites or Hemp Varieties or Strains stated in the License Agreement.

- (g) Acknowledgement by the Licensee that Hemp shall not be grown, Processed, Handled, or stored in any location other than the location listed in the License Agreement or Permit.
- (h) Agreement by the Licensee not to interplant Hemp with any other crop without express written permission from the HCO.
- (i) Acknowledgement by the Licensee that anyone applying Pesticides to Hemp shall hold any required Pesticide License and apply Pesticides in accordance with Tribal or federal regulations.
- (j) Acknowledgement by the Licensee that the Licensee shall comply with restrictions established by the HCO limiting the movement, Handling, transportation or Processing of Hemp plants and plant parts.
- (k) Acknowledge that the risk of financial or other loss shall be borne solely by the Licensed Producer and/or Processor.
- (l) Agreement that any time Hemp is in transit, a copy of the Producer and/or Processor Licensing Agreement shall be available for inspection upon the request of a representative of the HCO or a Law Enforcement Agency. Post cultivation the Hemp transported shall be accompanied by a copy of the report of the laboratory test results on the Hemp being transported.
- (m) Agreement that, upon request from a representative of the HCO or a Law Enforcement Agency, a Licensed Producer and/or Processor shall immediately produce a copy of his or her License Agreement for inspection.
- (n) Agreement to submit Planting Reports, Harvest/Destruction Reports, and Production Reports, and any other reports required by the HCO, the FSA or the USDA, to which the Producer and/or Processor has agreed, on or before the deadlines established in this Plan.
- (o) Agreement to scout and monitor adjacent unregistered fields for Volunteer Cannabis Plants and to destroy those Volunteer Cannabis Plants for three (3) years past the last date of planting reported to the HCO.
- (p) Agreement not to employ or to rent land to cultivate Hemp from any person who had a Tribal Hemp License revoked or denied for one (1) or both of the following reasons:
- (1) Failure to obtain an acceptable Criminal History Report; or
  - (2) Failure to comply with an order from a representative of the HCO.
- (q) Agreement to notify the HCO of any Hemp-related interaction with law enforcement immediately by phone and to follow-up in writing within three (3) calendar days of the occurrence.

(r) Agreement to notify the HCO of any theft of Cannabis materials, whether growing or not.

(s) Agreement to pay all fees imposed by the Tribe.

(t) Failure to agree or comply with terms and conditions established in Producer licensing and/or Processor agreement shall constitute grounds for the withdraw of conditional approval, suspension or termination of the License, an HCO report to law enforcement or the USDA, or other appropriate HCO or Executive Committee action.

(u) Failure to agree and sign the Producer licensing and/or Processor agreement shall terminate conditional approval and a licensing agreement shall not be executed.

(v) The signatures of the Tribe and Licensee(s).

### **Section 30-6-3. Operating Fees.**

Licensees shall pay the Tribe and the HCO such fees and taxes as the Tribe may establish at the time and location as the Executive Committee shall mandate.

## **CHAPTER 7. PERMITS**

### **Section 30-7-1. Location Permits Required.**

A Permit is required for each location or site that Hemp is planted, grown, Handled, Processed, or stored.

### **Section 30-7-2. Location Permits to be Issued and Regulated by the Tribe.**

The Tribe or its designee shall adopt a uniform location permitting application and approval or denial process of these Permits. These forms and processes shall be incorporated into the Tribe's Hemp Regulations. The HCO retains the discretion to issue or deny Permits in accordance with this Plan and any Tribal laws or regulations.

### **Section 30-7-3. Tribal License Required.**

Permits may only be issued to individuals and entities with a Tribal Hemp License.

### **Section 30-7-4. Prohibited Locations.**

Permits may not be issued for the following sites or locations:

- (a) Any place that is not listed in the Licensee's licensing agreement.
- (b) On property that is not owned or completely controlled by the Licensee for the Permit unless the HCO determines that the activity has been properly approved in compliance with Tribal and applicable federal law by the owner(s).
- (c) On property owned by, leased from, or previously submitted in a License application by any person who is ineligible or was terminated, or denied a License.

### **Section 30-7-5. Co-Locating Permitted.**

Permits may be issued to Licensed Producers and Licensed Processors to co-locate at the same location.

### **Section 30-7-6. Site Modifications.**

A Licensed Producer who elects to grow or Process Hemp in a new location or store or Handle hemp at a site other than the sites specified by the legal description and geospatial location listed in the Producer and/or Processor Licensing Agreement and Permit shall submit a Site Modification Request Form, and obtain written approval from a representative of the HCO, prior to planting, Processing or storing at the proposed location.

### **Section 30-7-7. Site Access.**

No person shall have an expectation of privacy with respect to any location or site that is permitted under this Chapter. Licensees, whether present or not, shall allow representatives of



the HCO and Tribal and/or federal law enforcement agencies to enter the premises with or without cause and with or without advanced notice.

**Section 30-7-8. Fees.**

The Tribe may collect fees approved by the Executive Committee that are reasonable to the processing of Permit applications and site modifications. Non-payment of fees shall result in an application for a Permit to be denied.

## **CHAPTER 8. REPORTING AND RECORDKEEPING**

### **Section 30-8-1. Reporting Requirements of HCO.**

At a minimum, the HCO must collect and maintain records and report on the following:

(a) All information required in this Plan, and all Tribal Ordinances and Regulations related to Hemp including all information related to the Hemp Producing and Processing locations including the legal description and Location ID and geospatial coordinates for every site or location where the Tribe has approved Hemp to be Produced or Processed.

(b) Information about approved growing, Processing, Handling, and storage site locations must be reported to the Tribe, the DEA, and other law enforcement agencies whose representatives request registered site information.

(c) All applications for licensure, grants or denials of Licenses, receipts of fees, distribution of fees and revenues must be reported to the Tribe.

(d) A quarterly report to the Executive Committee summarizing the HCO's official actions, activities, investigative reports, License suspensions or revocations, findings of Negligence or potentially criminal activities, and reports received from any Hemp Business.

(e) Any and all report requested by USDA.

### **Section 30-8-2. HCO to Submit Growing locations and Grower License Information to United States Secretary of Agriculture.**

By the first of each month, and not more than thirty (30) days after receiving the following information, the HCO shall provide it to the United States Secretary of Agriculture or the Secretary's designee in a format that is compatible with USDA's Information Sharing System whenever possible. Note—if the first of the month falls on a weekend or holiday, the report is due by the first business day following the due date:

(a) For each new Producer who is an individual and is Licensed under this Plan, the report shall include the full name of the individual; License identifier; business address; telephone number; email address (if available); the legal description of the land on which the Licensee will Produce Hemp including, to the extent practicable, its geospatial location; and the scope of activity authorized;

(b) For each new Producer that is an entity and is Licensed under this Plan, the report shall include the full name of the entity; the principle business location address; EIN number; License or authorization identifier; the full name; title; and email address (if available) of each Key Participant of that entity; the legal description of the land on which the Licensee will Produce Hemp including, to the extent practicable, its geospatial location; and the scope of activity authorized;

(c) For each Producer that was included in a previous report and whose reported information has changed, the report shall include the previously reported information and the new information;

(d) The status and number of each Producer's License;

(e) The period covered by the report;

(f) An indication that there were no changes during the current reporting cycle, if applicable.

### **Section 30-8-3. HCO to Submit Hemp Disposal Report to the United States Department of Agriculture.**

(a) **Monthly Reports:** By the first of each month, and not more than thirty (30) days after receipt, the HCO shall provide to the United States Secretary of Agriculture or the Secretary's designee in a format that is compatible with USDA's Information Sharing System whenever possible a report notifying USDA of any occurrence of non-conforming plants or plant material and providing a disposal record of those plants and materials. This report shall include information regarding name and contact information for each Producer subject to a disposal during the Producer's reporting period, and date disposal was completed. In addition, the report shall contain the information described in Section 30-11-1(c) (1)-(5) of this Plan. Note—If the first of the month falls on a weekend or holiday, the report is due by the first business day following the due date.

(b) **Immediate Reports:** In addition to the monthly report required in Section 30-8-3(a) of this Plan, the HCO shall promptly notify the United State Secretary of Agriculture or the Secretary's designee by certified mail or electronically of any occurrence of Cannabis plants or plant material that do not meet the definition of Hemp in this Plan and attach the test results and records demonstrating the appropriate disposal of all of those plants and materials in the Lot from which the representative samples weretaken.

### **Section 30-8-4. Planting Reports for Outdoor Plantings.**

A Licensed Producer shall submit to the HCO a complete and current Field Planting Report, within fifteen (15) days after every planting, including replanting, of seeds or Propagules in an outdoor location. Each Field Planting Report shall identify the:

(a) Correct Variety of Hemp planted.

(b) Field Location ID as listed in the License Agreement.

(c) Primary intended use of the harvest for each planting.

A Licensed Producer who does not plant Hemp in an approved outdoor site listed in the Producer License Agreement shall submit a Field Planting Report, on or before July 31, stating that Hemp has not and shall not be planted at that site.

**Section 30-8-5. Planting Reports for Indoor Plantings.**

(a) A Licensed Producer shall submit to the HCO a complete and current Greenhouse/Indoor Planting Report within fifteen (15) days after establishing plants at an indoor location. Each Greenhouse/Indoor Planting Report shall identify the:

- (1) Correct Variety of Hemp planted.
- (2) Greenhouse or indoor growing Location ID as listed in the License Agreement.
- (3) Primary intended use for the harvest of each planting.
- (4) In addition to the initial Greenhouse/Indoor Planting Report, a Licensed Producer with an approved greenhouse or indoor growing site shall submit quarterly growing reports for each Location ID to the HCO, such Reports shall be due no later than March 31, June 30, September 30, and December 31.

**Section 30-8-6. Establishing records with USDA Farm Service Agency**

(a) All Producers Licensed to Produce Hemp under this Plan shall report their Hemp crop acreage to the FSA and shall provide, at a minimum, the following information:

- (1) The street address and Location ID and, to the extent practicable, the Geospatial Location for each Lot or greenhouse where Hemp is permitted to be grown under this under this Plan and under the License and location Permits issued by the HCO . If more than one location is permitted for an individual License holder, such information shall be provided for all production sites;
- (2) Acreage dedicated to the production of Hemp, or greenhouse or indoor square footage dedicated to the production of Hemp; and
- (3) License and Permit identifier.

**Section 30-8-7. Annual Report.**

(a) The HCO shall submit an annual report to USDA. The report form shall be submitted by December 15 of each year and contain the information described in this section:

- (1) Total planted acreage.
- (2) Total harvested acreage.
- (3) Total acreage disposed.

- (4) Such other information as the USDA may request.

**Section 30-8-8. Test Results Report.**

The HCO must ensure that the DEA-registered laboratory that conducts the test of the sample(s) from Licensees reports the test results for all samples tested to USDA. The test results report shall contain the information described in this Section for each sample tested:

- (a) Licensee's License and Permit number(s).
- (b) Name of Licensee.
- (c) Business address of Licensee.
- (d) Lot identification number for the sample.
- (e) Name and DEA registration number of the laboratory.
- (f) Date of test and report.
- (g) Identification of a retest.
- (h) Test result.

**Section 30-8-9. Failure to Submit.**

The Executive Committee shall take action against an HCO which fails to submit accurate and complete reporting as required under this Plan before the deadline.

## **CHAPTER 9. SEED OR PROPAGULE ACQUISITION**

### **Section 30-9-1. Seed or Propagule Acquisition Within the United States.**

- (a) A person shall not acquire seeds or Propagules from a source within the United States without first submitting a complete Domestic Seed/Propagule Request form and obtaining written approval of the Domestic Seed/Propagule Request from a representative of the HCO.
- (b) The HCO shall not approve a Domestic Seed/Propagule Request unless:
  - (1) The Licensed Producer affirms in writing that the requested seed or Propagule acquisition plan shall not infringe on the intellectual property rights of any person, and
  - (2) The seed or Propagule has been certified by a state or seed or Propagule certification body to produce Cannabis defined as Hemp, which has a floral material THC content of not more than 0.3 percent on a Dry Weight Basis, or
  - (3) The seed has been shown to the satisfaction of the HCO to have Produced Cannabis which has a floral material THC content of not more than 0.3 percent on a Dry Weight Basis at another location in not less than two other grows.

### **Section 30-9-2. Seed or Propagule Acquisition from a Source Outside of the United States.**

- (a) A person seeking to obtain seeds from an international source shall submit a complete International Seed Request form to the HCO.
- (b) A person shall not acquire Propagules from outside the United States.
- (c) All Licensed Producers intending to plant the requested seed shall be listed on the request form.
- (d) The HCO shall not approve an International Seed Request form unless the Producer affirms in writing that the Producer's planned activities shall not infringe on the intellectual property rights of any person.
- (e) A person submitting an International Seed Request form shall submit to the HCO documentation showing that mature plants grown from that seed Variety have a floral material THC content of not more than 0.3 percent on a Dry Weight Basis. Additionally:
  - (1) If the seed is imported from Canada the Producer must document that:
    - (i) The seed importation meets all USDA seed importation regulations and all other applicable federal law, and

(ii) The Seed is accompanied by either: a phytosanitary certification from Canada's national plant protection organization to verify the origin of the seed and confirm that no plant pests are detected; or a Federal Seed Analysis Certificate (SAC, PPQ Form 925) for Hemp seeds grown in Canada.

(2) If the Hemp seed is imported from a country other than Canada it must be accompanied by

(i) A phytosanitary certificate from the exporting country's national plant protection organization to verify the origin of the seed and confirm that no plant pests are detected, and

(ii) proof that the importation complies with all applicable USDA Animal and Plant Health Inspection Service (APHIS) regulations.

(f) A person acquiring seeds from a source outside the United States shall arrange for the seeds to arrive at the HCO's designated facility, for inventory and distribution.

(g) Upon request from a representative of the HCO, a Licensed Producer shall provide a distribution list showing locations where and to whom the imported Hemp seeds were distributed following inventory at the HCO's designated facility.

**Section 30-9-3. Seeds of Wild, Landrace, or Unknown Origin.**

(a) A person shall not acquire or grow Hemp or Cannabis seeds or Propagules of wild, landrace, or unknown origin without first obtaining written approval from a representative of the HCO.

(b) The HCO shall not permit Hemp or Cannabis seeds or Propagules of wild, landrace, or unknown origin to be planted, cultivated, or replicated by any person without the HCO first arranging for replication and THC testing of mature plants grown from the seeds or Propagules by the HCO or its designee.

(c) Any Licensed Producer or Licensed Processor found to have saved seed, Propagules, or cuttings, or cultivated seeds, Propagules, or cuttings from a Cannabis plant of wild, landrace, or unknown origin, without advance written permission from the HCO shall be subject to suspension or revocation of his or her License and forfeiture without compensation of his or her Hemp as well as the wild seed and Propagules including any cultivated Cannabis or Hemp from that variety.

## CHAPTER 10. HARVESTING

### Section 30-10-1. Producer Responsibilities.

Producers shall:

(a) Allow the HCO to collect random samples of any Cannabis material or investigate other grow related matters at any time prior to harvest. The Producer is obligated to cooperate fully with such sampling or investigation. The Producer or an authorized representative shall be present at the growing site for any the sample collection. All samples become the property of the Tribe and are non-returnable.

(b) Allow representatives of the HCO complete and unrestricted access to all Hemp and other Cannabis plants and seeds, whether growing or harvested, and all land, buildings, and other structures used for the cultivation, Handling, and storage of all Hemp and other Cannabis plants and seeds, and all locations listed in the License Agreement.

(c) Register and report his cultivation activities to the FSA and any other Tribal or federal agency that requires such registration and reporting.

(d) Comply fully with the pre-harvest sampling required in 30-10-2 below.

(e) Harvested materials from varieties of concern shall not be commingled with other plantings or harvests without prior written permission from the HCO.

(f) Floral materials harvested for Phytocannabinoid extraction shall not be moved outside the Tribe's Indian Country or beyond a Processor's permitted location, nor commingled, nor extracted, until the HCO releases the material in writing.

### Section 30-10-2. Pre Harvest Sampling Required

(a) A Producer shall not harvest any Cannabis crop, including Hemp, prior to pre-harvest samples being taken in the manner described herein.

(b) At least 30 days prior to the anticipated harvest of Tribally Licensed Hemp, a Tribally Licensed Producer shall contact the HCO to arrange for a Federal or Tribal Law Enforcement Agency or other Federal or Tribal person designated by the Tribe and properly trained, to collect samples from the flower material from such Cannabis plants for Delta-9 Tetrahydrocannabinol concentration level testing as described in this Plan. This sampling cuts shall then be collected within 15 days of anticipated cultivation of the crop.

(c) The method used for sampling from the flower material of the Cannabis plant must be sufficient to determine, at a confidence level of 95 percent, that no more than one percent (1%) of the plants in the Licensed Lot would exceed the Acceptable Hemp THC Level under this Plan. The method used for sampling must ensure that a representative sample is collected and that it represents a homogeneous composition of the Lot.

(d) During a scheduled sample collection, the Producer or an authorized



representative may be present at the collection site.

(e) All Licensed Growers and Producers must provide the representative(s) of the sampling agency with complete and unrestricted access during business hours to all Hemp and other Cannabis plants, whether growing or harvested, and to all land, buildings, and other structures used for the cultivation, handling, and storage of all Hemp and other Cannabis plants and seeds, as well as to all locations listed in the Producer's License and Permit(s).

(f) A Tribally Licensed Producer shall not harvest their Cannabis crop prior to these samples being taken and receipt of approval to harvest from the HCO. Violation of this requirement shall be grounds for License revocation.

### **Section 30-10-3. Pre-Harvesting Sampling Procedures.**

Samples are taken to obtain specimens for the measurement of tetrahydrocannabinol (THC) content, which determine whether the specimens are Hemp or Marijuana. The measurements are intended to be representative of the THC content in a Lot of Hemp crop acreage as identified by the Producer's Tribal License. Hemp Producers may not harvest Hemp prior to the Hemp being sampled and receipt of permission to harvest from the HCO. Testing procedures are provided in Section 30-10-4 of this Plan. Sampling shall be completed in accordance with USDA Guidelines.

### **Section 30-10-4 Testing**

(a) The HCO, acting on behalf of the Tribe, shall contract with one or more DEA-registered testing laboratories which have the ability to utilize a reliable methodology for testing the THC level of Hemp using post-decarboxylation or other similar methods where the THC concentration level reported accounts for the conversion of Delta-9 Tetrahydrocannabinolic acid (THC-A) into THC. Current testing methodologies meeting these requirements include those using Gas or High Performance Liquid Chromatography with detection. At the request of a Producer, the Producer may select its own DEA-registered laboratory to test its Hemp provided its laboratory meets the same standards listed below.

(b) The lab's Hemp testing method must consider the potential conversion of delta 9 tetrahydrocannabinolic acid (THC-A) into THC and must measure the total available THC derived from the sum of the THC and THC-A.

(c) The labs results must also be accompanied by a scientifically accurate, consistent and reliable Measurement of Uncertainty and the potential range of THC concentration which results from the application of those uncertainty factors

(d) Any lab selected by the Tribe shall meet the following additional standards:

(1) Its quality assurance standards must ensure the validity and reliability of its test results.

- (2) Its selection of its testing methods and its validation and verification must ensure that the testing methods used are appropriate (fit for the purpose) and that its laboratory can successfully perform the testing.
- (3) Its demonstration of testing validity must ensure consistent, accurate analytical performance.
- (4) Its method performance specifications must ensure analytical tests are sufficiently sensitive for the purposes of the detectability requirements of this Plan.
- (5) It must use only appropriate, validated methods and procedures for all testing activities and measures of uncertainty.
- (6) Samples of Hemp material from one Lot shall not be comingled with Hemp material from other lots during the sampling or testing process.

(e) A test of a representative sample resulting in a higher than the Acceptable Hemp THC Level shall be conclusive evidence that the Lot represented by the sample is not in compliance with this Plan.

(f) The results of all sampling tests shall be returned by the lab to the Producer and the HCO and the testing agent. The USDA Lab Report shall contain the items required by Section 30-8-8 of this Plan.

(g) A Licensed Producer, who believes that the original lab results were in error, may request a retesting of the original sample. Such retesting shall be arranged by the HCO as soon as possible and conducted in compliance with the same methods and standards this Plan made applicable to the original sampling and test. Retesting shall be at the expense of the Licensed Producer and shall be performed in the same way and to the same standards as the original sampling and testing. However, at the request of the Producer, a different DEA-certified laboratory may be used. The results of the retesting shall be sent to the Producer, the HCO, and the testing agent.

(h) The HCO shall notify the Producer of the test results and authorize the harvest or order the destruction of the Lot in compliance with the terms of this Plan. The HCO shall also notify law enforcement and notify the USDA by certified mail or electronically of any test results that do not meet the requirements of this Plan or applicable federal law.

(i) Lots with samples failing this test may not be Handled or entered into the stream of commerce.

(j) The Tribe reserves the right to seek USDA and DEA approval for its own testing procedures in the future.

#### **Section 30-10-5. Post-Testing Removal.**

After the Lot has been sampled for testing and the HCO approves harvest, the Producer may harvest the Hemp for storage at a Licensed Location. The Producer shall not remove the Hemp from a Licensed Location until the HCO receives the test results showing an Acceptable Hemp THC Level and releases the Hemp. Under no circumstance may the Hemp enter into the chain of commerce until tested and released by the HCO.

**Section 30-10-6. Handling of Post-Harvest Samples.**

All samples become the property of the Tribe and are non-returnable.

**Section 30-10-7. Fees.**

The Tribe may collect fees that are reasonably related to the costs of regulating Hemp harvests, including the cost of pre- and post-harvest sampling. Non-payment of fees after 30 days shall be considered a violation of the License Agreement.

## CHAPTER 11. CROP DESTRUCTION

### Section 30-11-1. Licensees Required to Submit Crops Destruction Request and Crop Destruction Report.

(a) Mandatory disposal- A Producer whose Hemp is tested and found to exceed the Acceptable Hemp THC Level shall cooperate fully in the disposal of that Hemp or Hemp material by a person authorized under the Controlled Substance Act to Handle Marijuana, such as a DEA-agent or a duly authorized Federal or Tribal or law enforcement officer. The manner of disposal shall be in accordance with the Controlled Substance Act and DEA regulations found at 21 CFR 1317.15.

(b) Producer Requested Destruction- A Producer who unilaterally determines that his Hemp crop or Hemp material must be destroyed under this Plan shall submit to the HCO a Crops Destruction Request at least 30 days prior to the proposed crop destruction. Upon receipt of this request, the HCO shall visit the site, determine the status of the grow, and either authorize the Producer's destruction of the crop in the presence of the HCO if the destruction will be more than 60 days from harvest, or arrange for the crop or other Hemp material to be collected for destruction by a person authorized under the Controlled Substance Act to Handle Marijuana, such as a DEA-agent or a duly authorized Federal or Tribal law enforcement officer, if it is less than 60 days from harvest.

(c) A Licensee whose crop is destroyed by a person authorized under the Controlled Substance Act to Handle Marijuana, such as a DEA-agent or a duly authorized Federal or Tribal law enforcement officer and in accordance Controlled Substance Act and DEA regulations found at 21 CFR 1317.15, shall submit a Crop Destruction Report to the HCO. In the event that a Licensee fails to complete a destruction report, the HCO shall prepare it. This report shall contain at a minimum the following:

- (1) Name and address of the Licensee.
- (2) The License number of the Licensee.
- (3) Location information, such as Lot number, location type, and Geospatial Location or other location descriptor for the production area subject to disposal.
- (4) Information on the agent handling the disposal.
- (5) Total acreage.
- (6) The date of the proposed destruction.
- (7) Photos of the Hemp Lot.
- (8) Signature of the Licensee.

**Section 30-11-2. Expense of Crop Destruction.**

The Licensee shall be responsible for the cost of crop destruction.

**Section 30-11-3. Penalty for Failing to Submit Crops Destruction Report.**

Any Licensee that destroys hemp without the prior approval of the HCO or that fails to submit a destruction report shall have his/her License revoked, shall be banned from holding a Hemp License in the future, and shall be subject to a Tribal civil penalty of up to \$2,500 as well as possible federal enforcement.

## **CHAPTER 12. PROHIBITED ACTIVITIES**

### **Section 30-12-1. Growing or Processing Prohibited Varieties of Hemp Prohibited.**

No person may grow, cultivate, Handle, transport, Process, broker, store, or market Hemp or other Cannabis that does not fall within the definition of a Publicly Marketable Hemp Product at any location within the Tribe's Jurisdiction.

### **Section 30-12-2. Restrictions on Sale or Transfer.**

Licenses shall not cultivate, Handle, transport, Process, broker, store, or market any Cannabis that is not Hemp.

### **Section 30-12-3. Operating Without a License Prohibited.**

A person without a License from the Tribe shall not: cultivate, Handle, transport or Process; or broker, store, or market Hemp or other Cannabis.

### **Section 30-12-4. Intermingling Hemp With Other Crops.**

Hemp shall be physically segregated from other crops unless prior approval is obtained in writing from the HCO.

### **Section 30-12-5. Operating Minimum.**

A Licensed Producer shall not plant Hemp in an outdoor growing location of less than one-quarter acre and 1,000 plants unless prior approval is received in writing from the HCO.

### **Section 30-12-6. Restrictions on Sale or Transfer.**

The following restrictions apply:

(a) No Licensee may sell, Handle, store, transport, or transfer, or permit the sale, transport, transfer, or storage of living plants, viable seeds, leaf material, or floral material to any person without prior approval by the HCO.

(b) No Licensee may transport live Hemp plants, viable seeds, leaf materials, or floral materials to unapproved locations including trade shows, county fairs, educational or other events, or any other address not listed on the Licensed Producer's current License Agreement without the prior written approval of the HCO which shall be granted only in compliance or furtherance of this Plan.

(c) No Licensee may ship or transport, or allow to be shipped or transported, live Hemp plants, cuttings for planting, or viable seeds from a Variety that is currently designated by the HCO as a Prohibited Variety.

### **Section 30-12-7. Public Access to Hemp Restricted.**

The public may not access Hemp Lots for activities such as a maze. Licensees shall not allow the unsupervised public on permitted sites.

## CHAPTER 13. PENALTIES

### Section 30-13-1. Applicability.

Anyone who violates this Plan or any Tribal Hemp Ordinance or regulation, whether intentionally or negligently, is subject to the penalties set forth within.

### Section 30-13-2. Immediate License Suspension.

The HCO shall immediately suspend a License, without an opportunity for a hearing, if:

(a) The Licensed person pleads guilty to, or is convicted of, any felony or drug-related misdemeanor.

(b) The Licensed person or his or her agent admits to or has been found to have made any false statement to the HCO or its representative or failed to comply with any instruction or order from the HCO, a representative of the HCO, or any law enforcement officer on a hemp-related matter.

### Section 30-13-3. License Suspension and Revocation.

The HCO shall notify a Licensee in writing that the Producer and/or Processor's Licensing Agreement has been temporarily suspended or revoked if a representative of the HCO receives information supporting an allegation that a Licensee has:

(a) Violated the Regulations.

(b) Made a false statement to the HCO or a Law Enforcement Agency.

(c) Been found to be growing or in possession of *Cannabis sativa* L. or any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a Delta-9 Tetrahydrocannabinol concentration of more than 0.3 percent on a Dry Weight Basis.

(d) Failed to comply with an order from a representative of the HCO or a Law Enforcement Agency.

(e) The HCO shall notify the Tribal President of any temporary suspension of any Producer or Processor's Licensing Agreement.

### Section 30-13-4. Consequences of License Suspension.

(a) A person whose License Agreement has been temporarily suspended shall not harvest, Process, or remove Cannabis from the premises where Hemp or other Cannabis was located at the time when the HCO issued its notice of temporary suspension, except as authorized in writing the HCO.



(b) As soon as possible after the notification of temporary suspension, the HCO shall inspect the Licensed premises and perform an inventory of all Cannabis, Hemp, and Hemp products that are in the Licensee's possession.

**Section 30-13-5. Corrective Action Plans for Negligent Violations.**

(a) As used in this Plan, negligent violations shall include, but not be limited to:

- (1) Negligently failing to provide an accurate legal description of land on which the Producer Produces Hemp;
- (2) Negligently failing to obtain a License, license renewal, or other required authorization from the HCO; or
- (3) The unintentional production or possession of Cannabis sativa L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a Delta-9 Tetrahydrocannabinol concentration of more than 0.3 percent on a Dry Weight Basis.

(b) Hemp Producers do not commit a negligent violation if they Produce plants that exceed the acceptable Hemp THC level of 0.3 percent if they have used reasonable efforts to grow or possess Hemp as defined in this Plan, and the plant does not have a THC concentration of more than 0.5 percent on a Dry Weight Basis.

(c) A Producer who negligently cultivated or possessed Hemp in violation of this Plan three times in a five-year period shall be ineligible to cultivate Hemp for a period of five years from the date of the third violation.

(d) A person who is found by the HCO to have negligently Produced or possessed Cannabis sativa L. or any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a Delta-9 Tetrahydrocannabinol concentration of more than 0.3 percent on a Dry Weight Basis or who violated any statute or administrative regulation under this Plan shall be subject to a corrective action plan imposed by the HCO after a consultation with the Licensee.

(e) Corrective action plans issued by the HCO shall include, at a minimum, the following information:

- (1) A reasonable date by which the Producer shall correct the negligent violation.
- (2) A requirement for periodic reports from the Licensee to the HCO about the person's compliance with the corrective action plan, statutes, and administrative regulations for a period of not less than two (2) years from the date of the negligent violation.

- (3) A Producer that negligently violates this Plan or their License Agreement shall not as a result of that violation be subject to any criminal enforcement action by the Federal, State, Tribal or local government.
- (4) The HCO shall conduct such inspections as it deems necessary to determine if the corrective action plan has been implemented. Any Licensee who fails to cooperate in this follow up inspections or who knowingly or intentionally violates a corrective action plan shall have their License suspended.

**Section 30-13-6. Culpable violations.**

(a) **Mandatory Reporting.** If the HCO determines that a Producer or Processor has violated the Plan or any Tribal or federal statute or administrative regulation governing that person's participation in the Plan with a Culpable Mental State Greater Than Negligence, the HCO shall immediately report them to:

- (1) The U.S. Attorney General;
- (2) USDA; and
- (3) The chief law enforcement officer of the Tribe.

(b) Section 30-14-5 shall not apply to culpable violations.

**Section 30-13-7. Felonies.**

(a) A person with a State or Federal felony Conviction related to a controlled substance is subject to a 10-year ineligibility restriction on participating in processing and producing Hemp under this Plan from the date of the Conviction. An exception applies to a person who was lawfully growing Hemp under the 2014 Farm Bill before December 20, 2018, and whose Conviction also occurred before that date.

(b) For Producers and Processors that are entities, Key Participants of all Licensees shall be considered to be participating in Hemp production under this Plan and subject to the felony Conviction restriction for purposes of paragraph (a) of this section.

**Section 30-13-8. Termination of Licensing Agreement.**

A License is a privilege and not a right. The Tribe may unilaterally revoke licensing agreements upon the HCO's finding that a Licensed Producer and/or Processor has committed a violation of this Plan, any Tribal Hemp related Ordinance or Regulations, or violated any provision of an applicable licensing agreement.

**Section 30-13-9. Termination of Employment.**

Tribal employees, including employees of the HCO, may be terminated for violating provisions of this Plan or any Tribal Hemp related Ordinance or Regulations.

**Section 30-13-10. Civil Penalties.**

If the HCO receives information supporting a finding that it is more likely than not that a person has engaged in conduct violating a provision this Plan, any Tribal Hemp related Ordinance, or the Regulations, or their licensing agreement, then the HCO may assess a monetary civil penalty not to exceed \$2,500 per violation.

**Section 30-13-11. Forfeiture.**

Any Hemp within the Tribe's Jurisdiction is subject to forfeiture and destruction, without compensation, if it is possessed without a License or at an unpermitted location.

**Section 30-13-12. Stacking of Penalties Allowed.**

If the HCO determines that an offense or offenses have been committed under this Plan, the HCO is permitted to stack various penalties.

**Section 30-13-13. Advise ment of Rights.**

Any time the HCO issues a penalty under this Plan or a Tribal Hemp licensing agreement, the Licensee shall be provided with a written notice of their rights, including the right to a hearing.

## **CHAPTER 14. REMEDIES**

### **Section 30-14-1. Burden of Proof.**

Prior to issuing a penalty or an adverse decision, the HCO must base decisions on a preponderance of the evidence. In the case of the cultivation or possession of Cannabis, which does not fall within the definition of Hemp, the laboratory test showing that violation shall constitute a preponderance of evidence.

### **Section 30-14-2. Right to Review of Adverse Decisions.**

Any person who has been issued an adverse decision under this Plan or the Tribal Hemp Regulations may seek the Executive Committee's review of such decision.

### **Section 30-14-3. Requesting a Review Hearing.**

A hearing will not be conducted unless a written petition for review is provided to the Tribal President within thirty (30) calendar days of service of the written notice of the HCO's adverse decision. The petition must state the bases that support the person's position. If no request is provided within the time allotted, the HCO's decision shall be deemed final.

### **Section 30-14-4. Review Hearing.**

At the review hearing, the person and the HCO may provide evidence and testimony. Upon consideration of these, the Executive Committee may overturn the decision of the HCO, subject to such conditions as it deems reasonable under the circumstances to protect the public health, safety, and welfare of the Tribe and its Tribal members, or the Executive Committee may affirm the decision of the HCO. The decision of the Executive Committee shall be provided in writing. It shall be final and is not subject to judicial review. Hearings shall be open to the public.

### **Section 30-14-5. Legal Standard.**

The legal standard for review shall be clear and convincing.

## **LEGISLATIVE HISTORY**

This Plan was enacted by the Flandreau Santee Sioux Tribe Executive Committee on November 6, 2019 by Resolution Number 19-92. This Plan was approved by the Secretary of the United States Department of Agriculture on \_\_\_\_\_.