

**AMENDED AND RESTATED  
OGLALA SIOUX TRIBE “WARRIORS IN THE GARDEN” HEMP REGULATORY  
ORDINANCE**

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## **GENERAL PROVISIONS**

### **Section 100. SHORT TITLE.**

This Ordinance shall be known as, and may be cited as, the “2020 Amended and Restated Oglala Sioux Tribe “Warriors in the Garden” Hemp Regulatory Ordinance.”

### **Section 200. FINDINGS AND INTENT.**

1. The Oglala Sioux Tribe is a sovereign entity with the power and authority for self-governance. The Oglala Sioux Tribe adopted its Constitution and By-Laws by referendum vote on December 14, 1935, in accordance with Section 16 of the Indian Reorganization Act of 1934 (25 U.S.C. § 5123).
2. The Preamble of the Oglala Sioux Tribe’s Constitution states that this Tribal Constitution was adopted to “establish a more perfect organization, promote the general welfare, conserve and develop our lands and resources, and to secure to the Oglala people and their posterity the power to exercise certain rights of home rule not inconsistent with Federal law, and our Treaties.”
3. Pursuant to Article III of the Oglala Sioux Tribal Constitution, the Oglala Sioux Tribal Council is the governing body of the Oglala Sioux Tribe.
4. Among the powers of the Oglala Sioux Tribal Council, enumerated in Article IV of that Constitution, are the powers to:
  - a. To promulgate and enforce ordinances, Article IV, Section (k);
  - b. To protect and preserve the property, wild life, and natural resources, gases, oils and other minerals etc. of the Tribe and to regulate the conduct of trade and the use and disposition of property upon the Reservation, Article IV, Section (m);
  - c. To manage all economic affairs and enterprises of the Oglala Sioux Tribe in accordance with the terms of a charter that may be issued to the tribe by the Secretary of the Interior. Article IV, Section (f);
  - d. To approve or veto any sale, disposition, lease, or encumbrance of tribal lands, interests in land, or other tribal assets, Article IV, Section (c); and
  - e. To negotiate with the Federal, State and local governments on behalf of the tribe, and to advise and consult with the representatives of the Interior Department on all activities of the Department that may affect the Pine Ridge Indian Reservation.
5. The Oglala Sioux Tribe wishes to continue to exercise its inherent sovereign authority over its own internal affairs.
6. The Oglala Sioux Tribe desires to create and support methods for maintaining and enhancing its tribal economy to help to insure its self-sufficiency and the welfare of its tribal community.

7. Within the provisions of Ordinance No. 98-27, the Oglala Sioux Tribe decriminalized the cultivation, possession and processing of industrial hemp and amended the Tribe's penal code to decriminalize those activities under tribal law. In so doing it provided for the cultivation and processing of industrial hemp as a means of tribal agricultural and economic development.
8. Oglala Sioux Tribal Ordinance No. 98-27, also retained the Tribe's existing laws against marijuana.
9. Following its approval by the Oglala Sioux Tribal Council, Ordinance No. 98-27, was approved by the Pine Ridge Agency Superintendent of the United States Bureau of Indian Affairs on July 30, 1998, pursuant to Department of Interior procedures and regulations.
10. The Congress of the United States has recently enacted the Agriculture Improvement Act of 2018, which clarifies the Tribe's right to claim primary regulatory authority over the production of hemp within the Tribe's territory, provided that the hemp meets the scientific definition of hemp contained in that statute, and provided that the Tribe legalizes the activity under tribal law and regulates hemp activities under a tribal hemp plan that meets the other requirements of the Agriculture Improvement Act of 2018.
11. Because the Oglala Sioux Tribe wishes to comply with those provisions of the Agriculture Improvement Act of 2018 relating to the cultivation and processing of hemp on tribal lands, the Tribe hereby updates its existing Ordinance No. 98-27 as follows:

A. The definition of Marijuana in Title 9, Section 106.00 (e) of the Oglala Sioux Tribe's Penal Code is hereby amended to read as follows:

"Marijuana shall mean: all parts of the plant of the genus *Cannabis* whether growing or not, the resin extracted from any part of such plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its resin that contains in excess of 0.3% or more concentration of tetrahydrocannabinol by dry weight. The term Marijuana does not include: "Hemp"- defined as the plant *Cannabis sativa L* whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.

Marijuana also does not include:

"Hemp product" or "industrial hemp product" defined as all products derived from or made by processing hemp plants or plant parts."

B. Repeals the first "BE IT FURTHER ORDAINED in Ordinance 98-27, which currently reads: "that any members of the Oglala Sioux Tribe who wish to harvest or cultivate industrial hemp must first organize, or join an existing a land use association. Such land use association making use of industrial hemp will then appoint, and arrange for the compensation of, a

liaison who will file a quarterly report to the Land Committee of the Oglala Sioux Tribal Council, delineating with specificity, the industrial hemp acreage to be cultivated and/or harvested, the end products to be manufactured and the progress since the previous report. The liaison will serve as the interface between the land use association, the Oglala Sioux Tribal Council and any interested law enforcement agencies.”

C. Repeals and updates all other language in Ordinance No. 98-27 which conflicts with the hemp provisions of the Agriculture Improvement Act of 2018 or this new Ordinance and replaces and supplements Ordinance No. 98-27 with the following provisions which shall be codified under a new title: “Oglala Sioux Tribe “Warriors in the Garden” Hemp Regulatory Ordinance.”

### **Section 300. DEFINITIONS.**

1. “Acceptable hemp THC level” means 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.
2. “AMS” means the Agricultural Marketing Service.
3. “Applicant” means a person, or a person who is authorized to sign for an entity, who submits an application for any type of tribal hemp license authorized by this Ordinance or by the Oglala Sioux Tribal Hemp Regulatory Commission.
4. "Brokering" means engaging or participating in the marketing of hemp by acting as an intermediary or negotiator between prospective buyers and sellers
5. "Cannabis":
  - a. Means all parts of the cannabis plant, whether growing or not, including its seeds, resin, compounds, salts, derivatives, and extracts; and
  - b. Cannabis does not include "publicly marketable hemp products," as defined in this Ordinance.
6. “CBD” means cannabidiol.
7. “Commercial sale” means the sale of a product in the stream of commerce at retail or at wholesale, including on the internet.
8. “Commission” means the Oglala Sioux Tribal Hemp Regulatory Commission.
9. “Commissioner” means a duly appointed member of the Oglala Sioux Tribal Hemp Regulatory Commission.

10. "Decarboxylated" means the completion of the chemical reaction that converts THC-acid into delta-9-THC, the intoxicating component of cannabis. The decarboxylated value is also calculated using a conversion formula that sums delta-9-THC and eighty-seven and seven tenths (87.7) percent of THC-acid.
11. "Delta-9-THC" means delta-9-tetrahydrocannabinol concentration (the primary intoxicating component of cannabis).
12. "Entity" means a group of two or more persons joined together for a common purpose. An entity may be a company, partnership, or corporation.
13. "Handling" means possessing or storing hemp for any period of time on premises owned, operated or controlled by a person licensed to cultivate, handle, process or broker hemp. "Handling" also includes possessing or storing hemp in a vehicle or storage container for any period of time other than during its actual transport from the premises of one license holder to the premises of another license holder or legally authorized processor.
14. "Hemp" means the plant species *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. As used in this Ordinance, the term "hemp" encompasses all parts of the plant, whether growing or not, including its seeds, resin, compounds, salts, derivatives and extracts and all Propagule of hemp.
15. "Hemp product" or "industrial hemp product" means all products finished or unfinished derived from or made by processing hemp.
16. "IFR" means Interim Final Rule.
17. "Licensed processor" means a person licensed by the Commission to process, handle, store, and market hemp under the terms established in a tribal processor licensing agreement, and applicable tribal and federal law.
18. "Location ID" means the unique identifier established by the Commission and the applicant which defines where hemp may be grown, handled, stored, or processed by a specific license holder. The term location may include a field name or building name. All Location ID's used by the Commission shall be readily identifiable by the Tribe and the United States Bureau of Indian Affairs.
19. "Lot" means a contiguous area in a field, greenhouse, or indoor growing structure containing the same variety or strain of cannabis throughout the area.
20. "Nonviable seed" means a seed that has been crushed, dehulled, or otherwise rendered to have a zero percent germination rate.
21. "Person" means an individual or entity.

22. "Pesticide" means any substance or mixture of substances intended to:
- Prevent, destroy, control, repel, attract, or mitigate any pest;
  - Be used as a plant regulator, defoliant, or desiccant; or
  - Be used as a spray adjuvant, once they have been mixed with a U.S. Environmental Protection Agency registered product.
23. "Post-harvest sample" means a sample taken from a particular lot's growing area post-harvest in accordance with procedures established by the Commission, the testing lab, and applicable tribal and federal law. The entire plot's harvest shall be in the same form (for example, intact-plant, flowers, ground materials, etc.), homogenous, and not mixed with non-hemp materials or hemp from another plot.
24. "Pre-harvest sample" means a representative portion from plants in a hemp plot collected in accordance with the procedures established by the Commission, the testing lab, and applicable tribal and federal law.
25. "Processing" means converting a hemp agriculture product into a second marketable form.
26. "Processor licensing agreement" means a licensing document executed by a person and the Commission authorizing the person or entity to process, handle, and store already cultivated hemp at one (1) or more specified locations within the **territory** of the Tribe under the terms established by that person's processing license, processing license agreement and applicable tribal and federal law.
27. "Produce means to grow hemp plants for market, or for cultivation for market, As used in this ordinance.
28. "Producer," or "Licensed Producer" means an Oglala Sioux Tribal Member (or an entity owned by an Oglala Sioux Tribal Member), the Oglala Sioux Tribe (or an entity owned by the Oglala Sioux Tribe), who is authorized and licensed by the Commission to produce and grow hemp and/or hybrid hemp seeds at one (1) or more specified locations within the territory of the Tribe under the terms established in a producer's licensing agreement and applicable tribal and federal law, including 7 C.F.R. § 718.2 to the extent that the definition of "producer" thereunder is consistent with producers licensed to grow hemp on tribal lands under this Ordinance. "Producer" also means "Grower."
29. "Prohibited variety" means a variety or strain of cannabis prohibited by applicable federal or tribal law, a decision of the Commission, or a decision of the Oglala Sioux Tribal Council.
30. "Propagule" means a plant or plant part that can be utilized to grow a new plant.
31. "Publicly marketable hemp product" means a hemp product that meets one (1) or more of the following descriptions:

- a. The product does not include any living hemp plants, viable seeds, leaf materials, floral materials, or delta-9-THC content above three-tenths of one percent (0.3 %) on a dry weight basis; and 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 delta-9-THC above zero and three-tenths (0.3) percent);
  - b. The product is a CBD that was derived from hemp.
  - c. The product is a CBD that is approved as a prescription medication by the United States Food and Drug Administration where required.
32. "Secondary pre-harvest sample" means a pre-harvest sample that is taken:
- a. In a given plot after the first pre-harvest sample is taken; and
  - b. On a different day than the initial pre-harvest sample.
33. "Seed source" means the origin of the seed or propagules as determined by the Commission.
34. "Signing authority" means an officer or agent of an entity with written authorization to commit the entity in writing to a binding agreement.
35. "Territory" means all lands within the original exterior boundaries of the Pine Ridge Indian Reservation as defined by Section 1 of the Act of March 2, 1889, 25 Stat. 888.
36. "USDA" means the United States Department of Agriculture.
37. "Variety" means a subdivision of a hemp species that is:
- a. Uniform, in the sense that the variations in essential and distinctive characteristics are describable;
  - b. Stable, in the sense that the variety will remain unchanged in its essential and distinctive characteristics and its uniformity even if reproduced or reconstituted as required by the different categories of varieties; and
  - c. 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.
38. "Variety of concern" means any variety of hemp that tests above 0.3000 percent delta-9-THC in one (1) or more pre-harvest samples. A hemp variety designated as a "variety of concern" may be subject to restrictions and additional testing or may be prohibited altogether. A variety of concern may also include a wild variety of hemp that grows naturally, and any other variety of hemp that the Commission has designated as prohibited.
39. "Volunteer cannabis plant" means any cannabis plant that:

- a. Grows of its own accord from seeds or roots in the years before or following an intentionally planted cannabis crop; and
  - b. Is not intentionally planted.
40. Any term not specifically defined in this ordinance shall be construed and defined under 7 C.F.R. § 990.1.

**Section 400. HEMP AUTHORIZED.**

The Oglala Sioux Tribe hereby reaffirms the possession, cultivation, transportation, production and use of hemp and hemp products within the territory of the Tribe, when those activities are licensed by the Tribe and conducted in full compliance with the requirements of this Ordinance and applicable law.

## **HEMP REGULATORY COMMISSION**

### **Section 500. THE OGLALA SIOUX HEMP REGULATORY COMMISSION.**

#### **1. Creation.**

The Oglala Sioux Tribe hereby creates an Oglala Sioux Hemp Regulatory Commission and vests it with the authority to license and manage the possession, cultivation, transportation, production and use of hemp and hemp products within the territory of the Tribe so long as it does so in compliance with this Ordinance and applicable tribal and federal law.

The Commission, as a whole, shall be comprised of:

- a. the program as a Tribal entity, inclusive of the Executive Director (and other staff), and
- b. the Licensing Board (comprised of the Commissioners).

Where unclear who has the specific duty or role, this Ordinance shall specify whether the “Commission” refers to the Licensing Board or to the Executive Director (or other staff). In general, the Licensing Board has broad oversight and is primarily responsible for all aspects of the licensing process, including issuing and revoking licenses as well as promulgation regulations and establishing a fee schedule. In general, the Executive Director is primarily responsible for the day-to-day operations of the Commission.

#### **2. Appointment of Members of the Oglala Hemp Regulatory Commission Licensing Board.**

The Oglala Sioux Tribal Council shall appoint three (3) Oglala Sioux Members to serve as members of the Oglala Hemp Regulatory Commission Licensing Board. Such members shall be referred to as “Commissioners.”

- a. At least two (2) members shall have experience in agriculture or a science-related or testing field.
- b. No Tribal Council Officer or Member shall serve on the Licensing Board in any capacity during their term of office.

#### **3. Qualifications.**

All Members of the Oglala Hemp Regulatory Commission Licensing Board must:

- a. Be at least 25 years of age on the date of their appointment, and an enrolled member of the Tribe.
- b. Possess a high school diploma or its equivalent.
- c. Not have been found guilty of or entered a plea of nolo contendere or guilty to: any felony related to a controlled substance under tribal, federal or state law within the previous ten (10) years.

- d. Not have been found guilty of or entered a plea of nolo contendere or guilty to any criminal offense under Federal, state or tribal law involving the possession or use of a weapon in a crime, felony fraud or exploitation, or bribery, within the previous ten (10) years, provided that the Tribal Council determines that the person is now a trustworthy character.
- e. Not have been convicted of a crime, the essential elements of which constitutes a felony, within the previous ten (10) years.
- f. Be free from any financial ties with any persons, companies or businesses involved in the hemp industry, or from circumstances that will create a conflict of interest or adversely affect their performance as a member of the Oglala Sioux Hemp Regulatory Commission Licensing Board.
- g. All Licensing Board appointees shall undergo thorough financial and criminal background checks to ensure and verify that they are in compliance with subsections c., d, e, and of this Section. All criminal background checks shall verify and ensure that they have no felony convictions under or related to the federal Controlled Substances Act (21 U.S.C. §§ 801 et. seq.) within the previous ten (10) years.
- h. These financial and criminal background checks shall be updated once every twelve (12) months from the date of appointment. A Commissioner's failure to report any circumstance which violate these minimum standards shall be grounds for immediate removal from the Commission.

4. **Term of Office.**

Because the stability of the Commission is of great importance, and because the Commission must develop and maintain a significant amount of knowledge of hemp laws, and hemp cultivation, sale, and use, Commissioners shall serve staggered four (4) year terms, except for the Initial Licensing Board. Upon the expiration of their term of office, a member shall serve until his/her successor is appointed by the Oglala Sioux Tribal Council with the advice of the remaining Commissioners. The Licensing Board shall select from among its members a chairperson who shall preside over the meeting of the Licensing Board.

- a. Initial Licensing Board. One Commissioner shall serve a two (2) year term, and two Commissioners shall serve three (3) year terms.
- b. Subsequent Licensing Boards. Each Commissioner after the initial Licensing Board shall serve for a four (4) term.
- c. No Commissioner shall serve more than three (3) consecutive terms.

5. **Removal of a Commissioner.**

- a. A Commission member may be removed for cause, upon a finding by a majority vote of the Oglala Sioux Tribal Council, that there is substantive proof of wrongdoing, or that the Commissioner no longer meets the minimum criteria established by this ordinance, including the requirement that Commissioners must be free from any actual conflict of interest. Substantive proof shall be defined as documentation

- or evidence which would be admissible in a court of law.
- b. Any member whose removal is sought shall be entitled to be notified in writing at least ten (10) business days before any vote is taken regarding that member's removal. Any person removed or threatened with the removal from the Commission may request a hearing and present evidence before the Tribal Council.
  - c. Provided however, that a majority vote of the sitting Licensing Board may recommend to the Tribal Council, the removal of a Commissioner for cause. A majority vote of the Commissioners may also immediately suspend a Commissioner from engaging in Commission activities, if it determines that allowing the continued participation of that Commissioner during the Tribal Council removal process, would undermine the integrity of the Commission. This suspension shall remain in place until lifted by a majority vote of the Tribal Council or until a final vote on a removal petition is held by the Tribal Council.
  - d. A Commissioner shall be automatically removed from the Commission without hearing or appeal upon proof that he or she has been convicted of a drug related crime while in office.

6. **Licensing Board Meetings.**

- a. The Licensing Board shall establish its own schedule of meetings and Board actions, but shall meet at least once every calendar month. A majority of Commissioners shall constitute a quorum and notices of all meeting shall, unless waived by a notice waiver vote of all Commissioners, be given to all Commissioners at least 48 hours in advance of a formal meeting.
- b. Meetings of the Licensing Board involving licensing shall be closed to all non-members of the Licensing Board, except for required Commission staff, legal counsel, and experts, unless the Licensing Board determines otherwise by majority vote.
- c. The Licensing Board shall keep a written record of all meetings and actions.
- d. The Licensing Board shall adopt regulations governing the conduct of meetings, a conflict of interest policy, and a code of ethics. Such regulations must be in conformity with and in addition to any existing Tribal laws.
- e. If the Licensing Board does not adopt rules of procedure, then the Robert's Rules of Order Newly Revised for board meetings shall apply.

7. **Duties of the Commission.**

The duties of the Commission shall at a minimum include:

- a. Familiarizing themselves with the hemp provisions of the Agriculture Improvement Act of 2018 (2018 Farm Act), P.L. 115-334, 132 Stat. 4908 (codified at 7 U.S.C. § 1639 et seq.), Subtitle G (Hemp Production), and any amendments thereto; and 7 C.F.R., Part 990, and this Ordinance.
- b. Seeking out and obtaining the latest training on the federal and tribal laws and scientific and commercial developments involving hemp cultivation and use, as well as the latest information on the accepted scientific methods utilized to test

- hemp and hemp related items.
- c. Developing a written system of standards for certifying hemp seeds and hemp plants, and a set of additional regulations and procedures for licensing persons who wish to participate in hemp cultivating, brokering, handling, processing, and transporting and shipping. Developing additional procedures for the destruction of hemp crops, and additional standards for the marketing of hemp within the territory of the Oglala Sioux Tribe. These additional standards must, at a minimum, be in full compliance with the provisions of this Ordinance.
  - d. Developing and implementing a system for approving hemp cultivation sites within the territory of the Tribe in compliance with any duly adopted tribal land use plans. This system shall be in full compliance with applicable Oglala Sioux Tribal and federal law.
  - e. Maintaining a formal record, including a legal description of each of the sites where hemp activity is allowed under a Commission approved license, along with a detailed description of the approved activity, and a record of all persons which have applied for and/or received any type of hemp license under this ordinance. These formal records shall be maintained in the Commission's files for not less than seven (7) years.
  - f. Developing and implementing procedures and minimum requirements for ensuring the proper inspection, testing and sampling of hemp plants, hemp propagule, and all hemp cultivated, stored, transported, processed, possessed or used within the territory of the Tribe. Said procedures shall make use of testing methods designed to determine if the item in question meets the definition of the product authorized by this ordinance, applicable law, and where applicable a licensing agreement approved by the Commission.
  - g. Establishing procedures providing for an appeal and retesting process to protect Licensees against inaccurate test results.
  - h. Developing and implementing minimum standards and procedures for background checking and where applicable licensing all labs, technicians and other scientific professionals performing the various hemp related tests required by the Commission, the producer, broker, handler or producer and this Ordinance. The records of these testing professionals shall be maintained in the Commission's records for not less than seven (7) years.
  - i. Developing and implementing procedures for background checking and licensing all applicant for the various hemp license authorized by this Ordinance and Commission regulations.
  - j. Developing and implementing a procedure for ensuring that all hemp related licenses are granted on an impartial basis in the best interest of the Oglala Sioux Tribe and in compliance with applicable tribal law.
  - k. Developing and implementing additional standards and procedures for refusing a hemp related license and revoking or suspending any hemp related license granted by the Commission.
  - l. Developing and implementing a working relationship with tribal and federal law enforcement and the tribal business license and TERO programs, which insures the enforcement of all applicable tribal business licensing and business operations laws and all tribal and federal narcotics laws, and 7 C.F.R. 990.6.

- m. Developing and implementing a working relationship with the U.S. Department of Agriculture, the U.S. Food and Drug Administration, the U.S. Department of Justice, the U.S. Department of the Interior and all other federal regulators and enforcement arms involved with the enforcement arms of federal and tribal narcotics laws.

8. **Powers of the Commission.**

The Oglala Hemp Regulatory Commission may exercise such powers and authorities as are necessary to perform its duties and discharge its responsibilities under this Ordinance. Those powers include, but are not limited to:

- a. Establishing additional rules, standards and regulations relating to the licensing and regulating of all hemp activities authorized by this Ordinance including, but not limited to: the development and distribution, with or without cost, of hemp seed and propagule; hemp cultivation, hemp growing, hemp storage and production sites, hemp testing, and the handling and transportation of hemp.
- b. Engaging in all forms of hemp related education and assisting producers in doing the same.
- c. Receiving and processing all license applications, and issuing or denying the licenses authorized by this Ordinance and Commission Regulations.
- d. Reviewing and approving all licensing agreements required by this Ordinance and assisting tribal members in putting those licensing agreements together.
- e. Conducting or causing to be conducted background investigations of all prospective licensees as well as background checks on the members of the Commission and Commission employees and contractors. No Commissioner shall be involved in licensing themselves.
- f. Denying, suspending, restricting or revoking any license granted by the Commission under this Ordinance.
- g. Establishing and collecting application, license, testing, and sampling fees and such other fees and costs required by the Commission regulations.
- h. Engaging the services of legal counsel. Inspecting and examining all premises where hemp is present within the territory of the Tribe and delegating this authority to appropriately trained Commission employees and contractors.
- i. Entering into agreements with third parties to assist the Commission in fulfilling its duties.
- j. Holding hearings and requiring licensees and license applicants to appear and testify under oath regarding matters related to the enforcement of this Ordinance, Commission regulations and licensing agreements.
- k. Establishing and imposing civil fines and penalties or such other sanctions as it deems appropriate and approving or disapproving the corrective action plans provided for in this Ordinance.
- l. Retaining staff and contracting with experts to fulfill its obligations under this ordinance.
- m. Referring matters to law enforcement.
- n. Delegating one or more of its authorities to its Commission staff provided that the

Licensing Board may not delegate its license revocation authority or its authority to hear appeals of civil fines and penalties.

- o. Establish a registry or listing of approved seeds.

9. **Decision Making by the Commission.**

In all cases where a decision is required of the Licensing Board, the Licensing Board shall make that decision only after reasonable deliberation on the merits of the issue and only by majority vote of at least a quorum of the Licensing Board. All votes of the Licensing Board shall be recorded, and a written record of the decision shall be maintained in the Commission's business records for not less than seven (7) years.

Where decision-making authority has been delegated to the Executive Director or is required by this Ordinance, the Executive Director shall provide a written report to the Licensing Board and shall keep a written record of the decision in the Commission's business records for not less than seven (7) years.

10. **Commission's Executive Director.**

The Commission shall have an executive director who shall oversee its day to day functions including the acceptance of license applications and license agreements and the scheduling of tests and inspections. This Executive Director shall be a person with a degree in agriculture, chemistry or biology, or a person who has not less than (5) five-years' experience in the Agricultural Industry or who can otherwise demonstrate the ability to perform the types of test reviews and analysis required by the position. The Executive Director shall be hired by the Tribal Council.

- a. The Executive Director shall be the direct supervisor of any other employees of the Commission.
- b. The Executive Director shall be responsible for developing a budget for the Commission.
- c. The President shall have signatory authority as supervisor, however, supervisory and disciplinary actions over the Executive Director must be actions of the Tribal Council as a whole.
- d. The Executive Director shall be a contract employee.
- e. The Executive Director shall ensure that all federally required hemp reports and information is provided to the USDA, Agriculture Marketing Service (AMS) and/or Farm Service Agency (FSA), and other concerned federal officials in an accurate and timely manner.

## **PROHIBITED ACTS**

### **Section 600. AMONG THE PROHIBITED ACTS INVOLVING HEMP.**

The following is a non-exclusive list of prohibited activities:

1. A person who does not hold a license from the Commission shall not, with or without charge, provide hemp seed or hemp propagule to another, or grow, cultivate, handle, 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 territory of the Oglala Sioux Tribe. Provided, however, a licensed producer may provide, without cost, hemp seed or hemp propagule to a member of their immediate family who has a license or permit to grow hemp.
2. No person or entity may receive, nor shall any tribal hemp license be granted to any person who proposes to, grow or store hemp:
  - a. In or within 240 feet of any structure, other than their own home or barn, that is used for residential purposes, indoors or outdoors, absent the prior written approval of the owner of the adjoining property and the Commission.
  - b. In any outdoor field or site that is located within 1,000 feet of a school building or sports field or a public recreational area.
  - c. On property other than trust land, allotted land, or fee land owned exclusively by the licensee, which is within the territory of the Oglala Sioux Tribe.
3. Except as otherwise provided in the Ordinance, no person, including a licensed producer shall transport live hemp plants, viable seeds, leaf materials or floral materials to unlicensed or unapproved locations including trade shows, county fairs, educational or other events or to any other address not listed on that specific hemp producer's current approved growing license agreement without the prior written approval of the Commission. This prohibition does not prohibit a licensed producer from shipping any of these items to a testing lab which meets the criteria established in this Ordinance.
4. A licensed producer shall not allow unsupervised access to hemp plots or allow public access to those plots whether supervised or not.
5. No person shall ship or transport, or allow to be shipped or transported, any hemp plants, cuttings for planting, or viable seeds from a person or entity who has been designated as a prohibited provider nor shall they engage in any of these activities with a variety of cannabis that is designated as a prohibited variety by the Commission or applicable law.
6. No person may ship or transport, or assist in, or allow to be shipped or transported, any hemp product with a delta-9-THC concentration in excess of three-tenths of one percent (0.3 %) on a dry weight basis.

## **TESTING AND SAMPLING**

### **Section 700. TESTING AND SAMPLING.**

#### **1. Lab Accreditation.**

Compliance and safety testing for Hemp and Hemp Products required by these rules shall be conducted by independent laboratories accredited to ISO/IEC 17025, the standard published by the International Organization for Standardization (the “ISO”) titled “General requirements for the competence of testing and calibration laboratories,” or an accreditation standard approved by the USDA and the Commission. All final test results must be certified by a DEA-registered laboratory before the hemp or hemp produces can enter the stream of commerce.

#### **2. Commission Approval of Proposed Lab.**

The Commission shall approve each proposed laboratory. Only the laboratory(s) approved in advance by the Commission and meeting USDA lab requirements, and requirements of this Ordinance, may perform the tests on a Licensed Producer’s hemp for cultivation purposes.

#### **3. Sampling and Testing Prior to Harvest.**

- a. A Hemp Producer must arrange for and ensure the sampling and testing of each Harvest or partial harvest prior to harvest for the purpose of ensuring that the Lot does not exceed the maximum permissible THC concentration levels on a dry weight basis. Notice of such testing results or Certificate of Analysis shall be forwarded to the Commission. Only the laboratory(s) approved in advance by the Commission and meeting the requirements of this Ordinance may perform the tests on a Licensed Producers hemp for cultivation purposes.
- b. A Hemp Producer shall not remove a Harvest from a Grow Site that has not been sampled and tested for compliance in accordance with this Section.
- c. Within 15 days prior to the anticipated harvest of cannabis plants, the Executive Director shall cause samples to be collected from the flower material from such cannabis plants for testing of total THC to be in compliance with the IFR.

#### **4. Annual Inspections and Random Sampling by Commission.**

The Commission shall conduct annual inspections and random sampling and testing for inspection and compliance purposes. The Commission shall utilize an approved laboratory and shall notify the Hemp Producer of the results. The costs for such testing shall be at the Commission’s expense. The Commission shall develop further procedures and training requirements for Commission staff and Executive Director to conduct annual inspections and random sampling and testing to verify that hemp is not produced in violation of tribal and federal regulations. The procedures must enforce the terms of violations as required by Sub G (Hemp Production), Section 297B (e) of the 2018 Farm Act and 7 C.F.R. 990.6.

5. **All Samples Shall be in Accordance with Procedures.**

Except for samples collected by the Commission for compliance, inspection, and auditing purposes, all samples collected by the Hemp Producer, laboratory employees, or third-party contractors shall be in accordance with procedures established in consultation with the lab which will be performing the tests. A copy of those procedures shall be provided to the Licensed Producer when the pre harvest sampling is performed.

6. **Certificate of Analysis Requirements.**

For each sample tested pursuant to this Section, the Hemp Producer shall obtain and arrange for copies of the results to be forwarded to the Commission from a laboratory a certificate of analysis that includes, at a minimum, the following information:

- a. General information identifying that the Hemp that is the subject of the certificate of analysis is the product of a sample tested by the independent testing laboratory;
- b. The date the Hemp was sampled, the date testing was performed, and methodology used to analyze the sample.
- c. The method used for sampling from the flower material of the cannabis plant must be sufficient at a confidence level of 95 percent that no more than one percent (1%) of the plants in the lot would exceed the acceptable hemp THC level. The method used for sampling must ensure that a representative sample is collected that represents a homogeneous composition of the lot.
- d. The THC concentration contained in the test sample; and
- e. A statement indicating whether the sample contained a THC concentration of not more than 0.3 percent on a dry weight basis.

7. **Required Number and Size of Samples.**

The required number and size of samples shall be determined in accordance with Commission's established procedures for statistical representation developed in consultation with the lab performing the test. The number and size of the required sample shall be provided to the Licensed Producer when the pre-harvest sampling is approved by the Commission.

8. **No Limitation on Voluntary Samples and Testing.**

Nothing in this Section shall prevent a Hemp Producer from voluntarily collecting samples and testing Hemp for quality assurance and research and development purposes.

9. **Retesting and Resampling Permitted.**

A Hemp Producer whose hemp tests above the maximum THC concentration may apply to the Commission for retesting and/or resampling of any non-compliant Lot. This retesting shall be allowed absent good cause and shall be at the expense of the producer.

10. **Additional Requirements.**

- a. The method used for sampling must ensure that a representative sample is collected that represents a homogeneous composition of the lot.
- b. During a scheduled sample collection, the producer or an authorized representative of the producer shall be present at the growing site.
- c. Representatives of the sampling agency shall be provided with complete and unrestricted access during business hours to all hemp and other cannabis plants, 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 all locations listed in the producer license.
- d. A producer shall not harvest the cannabis crop prior to samples being taken.
- e. Any test of a representative sample resulting in higher than the acceptable hemp THC level shall be conclusive evidence that the lot represented by the sample is not in compliance with this part. Lots tested and not certified by the DEA-registered laboratory at or below the acceptable hemp THC level may not be further handled, processed or enter the stream of commerce and the producer shall ensure the lot is disposed of in accordance with 7 C.F.R. § 990.27.
- f. Samples of hemp plant material from one lot shall not be commingled with hemp plant material from other lots.

11. **Analytical Testing Minimum Standards.**

Analytical testing for purposes of detecting the concentration levels of THC shall meet the following standards:

- a. Laboratory quality assurance must ensure the validity and reliability of test results;
- b. Analytical method selection, validation, and verification must ensure that the testing method used is appropriate (fit for purpose), and that the laboratory can successfully perform the testing;
- c. The demonstration of testing validity must ensure consistent, accurate analytical performance;
- d. Method performance specifications must ensure analytical tests are sufficiently sensitive for the purposes of the detectability requirements of this Ordinance;
- e. An effective disposal procedure for hemp plants that are produced that do not meet the requirements of this part. The procedure must be in accordance with DEA reverse distributor regulations found at 21 CFR 1317.15.
- f. Measurement of uncertainty (MU) must be estimated and reported with test results. Laboratories shall use appropriate, validated methods and procedures for all testing activities and evaluate measurement of uncertainty.

12. **Notice to USDA of Cannabis that is Not Hemp.**

A Commission shall promptly notify the USDA by certified mail or electronically of any occurrence of cannabis plants or plant material that do not meet the definition of hemp in this part and attach the records demonstrating the appropriate disposal of all of those plants and materials in the lot from which the representative samples were taken.

**Section 750. METHODOLOGY AND STANDARDS OF PERFORMANCE FOR TESTING AND DETECTING DELTA-9 THC CONCENTRATION LEVELS.**

1. The Commission shall use a validated methodology that uses post decarboxylation or other similarly reliable methods for testing samples to accurately identify and validate whether the samples contains a delta-9 tetrahydrocannabinol content concentration level that exceeds the acceptable hemp THC level. The methodology used must include a validated testing methodology and shall consider the potential conversion of delta-9 tetrahydrocannabinolic acid (THC-A) in hemp into THC and the test result measures total available THC derived from the sum of the THC and THC-A content. Testing methodologies meeting the requirements of this Section 750 include, but are not limited to, gas or liquid chromatography with detection. The total THC concentration level shall be determined and reported on a dry weight basis.
2. Analytical testing for purposes of detecting the concentration levels of delta-9 tetrahydrocannabinol (THC) in the flower material of the cannabis plant shall meet the following standards:
  - a. Laboratory quality assurance must ensure the validity and reliability of test results;
  - b. Analytical method selection, validation, and verification must ensure that the testing method used is appropriate (fit for purpose) and that the laboratory can successfully perform the testing;
  - c. The demonstration of testing validity must ensure consistent, accurate analytical performance; and
  - d. Method performance specifications must ensure analytical tests are sufficiently sensitive for the purposes of the detectability requirements of this Section.
3. At a minimum, analytical testing of samples for delta-9 tetrahydrocannabinol concentration levels must use post-decarboxylation or other similarly reliable methods approved by the Commission. The testing methodology must consider the potential conversion of delta-9 tetrahydrocannabinolic acid (THCA) in hemp into delta-9 tetrahydrocannabinol (THC) and the test result reflect the total available THC derived from the sum of the THC and THC-A content. Testing methodologies meeting the requirements of this Section include, but are not limited to, gas or liquid chromatography with detection.
  - a. The total delta-9 tetrahydrocannabinol concentration level shall be determined and reported on a dry weight basis. Additionally, measurement of uncertainty (MU) must be estimated and reported with test results. Laboratories shall use

appropriate, validated methods and procedures for all testing activities and evaluate measurement of uncertainty.

- b. Any sample test result exceeding the acceptable hemp THC level shall be conclusive evidence that the lot represented by the sample is not in compliance with this Section.

## **LICENSING**

### **Section 800. SEED PROVIDERS LICENSE AND SEED ACQUISITION.**

#### **1. Seed Providers License Required; Exception.**

All providers of hemp seed and hemp propagule, with or without cost, delivered into the territory of the Oglala Sioux Tribe shall apply for and receive a Seed Providers License issued by the Commission. Provided, however, a licensed producer may provide, without cost, hemp seed or hemp propagule to a member of their immediate family who has a license or permit to grow hemp.

#### **2. Minimum Requirements for Applicant.**

All applicants for a Seed Providers License shall submit, at a minimum the following:

- a. If the applicant is an individual: his or her full name, residential address, telephone number, and email address, if an email address is available.
- b. If the applicant is a Tribe or a tribally owned entity or a District or a District-owned entity, the application shall provide the full name and contact information for the registered agent or representative charged with being the point of contact for the license along with the business name and principal business location address (if applicable).
- c. If the applicant represents a business entity the full name of the business, the principal business location address, the names and addresses of all persons holding a financial interest or decision making authority within the entity, if the business is a corporation, the name and address of its registered agent, the full name, address and birth date of the individual who will have signing authority on behalf of the entity, his or her title, and email address if an email address is available. In all instances, the application must include the State, foreign nation, or tribe of incorporation, the full name and title of the key participants, an email address, if available, and EIN number.
- d. A statement of all states, foreign nations and tribes where the applicant is licensed to sell hemp seeds or where the seed it is selling has been certified or registered in another State, foreign nation, or tribe, even if none, and consent to be included in any tribal seed registry.
- e. A statement of any hemp-related fines, notices of violation, citations or license revocation proceeding that the applicant has faced in each of those States, foreign nations, or tribes, along with a statement of any seed related civil or criminal cases that the applicant has been the subject of
- f. A description of the seeds the applicant is proposing to sell and a written agreement to notify the Commission of any new varieties that it is proposing to sell within the territory of the Tribe.
- g. Proof that the Seed Providers possesses all additional Oglala Sioux tribal licenses required by tribal law. Its failure to do so may result in the denial or revocation of their Seed Providers License.

- h. All applicants for a Seed Provider licensed must sign a sworn statement that he or she agrees voluntarily to the territory of the Oglala Sioux Tribe, the Commission, and the Oglala Sioux Tribal Court on all matters related to the license that they are applying for and all other hemp related activities taking place within the territory of the Oglala Sioux Tribe.
- i. Any Seed Provider licensed by the Commission must first sign a sworn statement that the applicant agrees to submit all reports and documents related to the license and the license application.
- j. Proof that the seeds that it is proposing to provide have been demonstrated to grow plants which meet the minimum standards detailed in this Ordinance.
- k. That the proposed licensee has an adequate plan for the transportation and distribution of the seed or propagule within the territory of the Tribe, which ensures that it will be provided solely to Producers licensed pursuant to this Ordinance.
- l. That the seed or propagule that the applicant is proposing to sell is not of unknown origin or of a wild or landrace strain or variety.
- m. A statement that none of applicant's principals, or any other persons, have:
  - i. Collectively, in excess of a 20% financial interest in the applicant; and
  - ii. Do not have any criminal conviction for a narcotics related felony under any federal, state or tribal law within the previous ten (10) years.

3. **List of Prohibited Varieties of Hemp.**

The Commission shall establish a list of prohibited varieties of hemp which may not be grown under an Oglala Sioux Tribe Hemp Producers License Agreement. Applicants may submit new proposed varieties to the Commission along with such scientific information about each variety as they believe demonstrates that it is a compliant seed and shall submit such information when the Commission may request.

4. **Sale or Cultivation Not Permitted When Not in Compliance with Standards.**

The Commission shall not allow the sale or cultivation of any hemp variety, seed or propagule which has been shown to be out of compliance with the standards imposed by this Ordinance and Commission regulations.

**Section 900. PRODUCERS LICENSE.**

1. **Growing Restrictions.**

Any tribal member that wishes to grow hemp at any location within the territory of the Oglala Sioux Tribe, and who meets the licensing criteria established by this Ordinance and Commission regulations, shall submit to the Commission a completed Producer License Application, in the form, by the date and containing the information, established by the Commission and meeting the minimum standards established below:

- a. The Oglala Sioux Tribe, or an entity created or wholly owned by the Oglala Sioux

Tribe, or any District, or an entity created or wholly-owned by any District, must apply to the Commission for a producer's license before engaging in the cultivation of hemp. The Tribe's producer's application and growing activities must conform to the standards contained in this Ordinance.

- i. The application shall be in the name of the entity.
  - ii. The application shall include the full name and contact information for the Tribal or District representative charged with being the point of contact for the license.
  - iii. The governing body of that entity must be listed on the application and the application must be updated within thirty (30) days of a change in membership.
- b. No non-Oglala Sioux Tribal member may hold an interest in a private Oglala Sioux Tribal Producers License. Entities wholly owned by two or more Oglala Sioux Tribal Members may apply for a Tribal Producers License if each owner of an interest in the entity meets the minimum criteria established by this Ordinance.
  - c. No person who is under the age of eighteen (18) years of age may hold an interest in a private producer's license. Provided, however, that a tribal member who is a parent of a minor child or the legal guardian of an individual may apply for a license to cultivate hemp on land owned by their child or ward provided that the child or ward is a member of the Oglala Sioux Tribe.
  - d. The license application proposes to grow hemp within the territory of the Tribe, on trust land, allotted land, or fee land if such fee land is owned exclusively by the applicant. In the case of fractionated allotted land where the applicant owns an interest, the applicant must have secured the written approval to grow hemp on the property in the same manner for the owner's unilateral use of the property.
  - e. The license application does not propose to engage in hemp activities in any of the areas prohibited by this Ordinance or Commission regulations.
  - f. No person may apply to engage in hemp related activity if the proposed location would violate the land use plan of the Oglala Sioux Tribe.
  - g. Each applicant and each holder of an interest in the applicant shall agree to submit to a comprehensive criminal background check.
  - h. No applicant may be granted a producer's license if he or she, or any person holding a financial interest in the applicant, fails to meet the minimum licensing standards established by this ordinance.

2. **When to Apply.**

Completed Producer License Application forms must be postmarked or received by the Commission at the location and by the deadline established by the Commission for such applications. Applications must be submitted on an annual basis.

3. **Fees.**

Each applicant shall pay a producer application fee in the amount established by the

Licensing Board. There shall be no refunds on application fees, regardless of whether the producer produces a crop or not.

4. **Minimum Contents of the Producer's Application.**

The Commission shall prepare and make available to applicants a Producers License Application. That Application shall, at a minimum, require all Producer License Applicants to submit, the following:

- a. If the applicant is an individual, the full name, residential address, telephone number, and email address, if an email address is available.
- b. If the applicant is a Tribe or a tribally owned entity or a District or a District-owned entity, the application shall provide the full name and contact information for the registered agent or representative charged with being the point of contact for the license along with the business name and principal business location address (if applicable). In all instances, the application must include the State, foreign nation, or tribe of incorporation, the full name and title of the key participants, an email address, if available, and EIN number.
- c. If the applicant represents a business entity the full name of the business, the principal business location address, the names and addresses of all persons holding a financial interest or decision making authority within the entity, if the business is a corporation, the name and address of its registered agent, the full name, address and birth date of the individual who will have signing authority on behalf of the entity, his or her title, and email address if an email address is available.
- d. A hemp cultivation plan, including the proposed site, the amount of acreage or greenhouse or indoor square footage to be planted, the approximate planning and cultivation times, and a description of the specific plants to be planted.
- e. A statement of ownership or other proof of right to use of the land, and the right of the applicant to grant the Commission access to the site on which hemp will be grown. If the land is allotted, a written statement of permission for the applicant to grow hemp on the land, and a statement granting Commission access to the land, from any other allottees.
- f. Planned source of seeds or propagules.
- g. GPS location or Street address; or tribal/BIA recognized designation of each field, greenhouse, building, or site where hemp will be grown, handled, or stored. The Commission shall assist individual producers in putting this information together.
- h. Maps depicting each site where hemp will be grown, handled, or stored, with appropriate designations for entrances, cross roads, field boundaries. This does not have to be a formal map, it can be hand drawn, but it does have to be in sufficient detail to easily allow the Commission, law enforcement, the BIA or a third party to understand exactly where the proposed site is located.
- i. A sworn statement from the applicant that he or she agrees voluntarily to the territory of the Oglala Sioux Tribe, the Commission and the Oglala Sioux Tribal Court on all matters related to the license that they are applying for and all other hemp related activities taking place within the territory of the Oglala Sioux Tribe.
- j. A sworn statement that the applicant agrees to submit all reports and documents to

- the Commission related to the license and the license application.
- k. Any Producer License Application that is missing any of this required information shall be subject to denial, but the applicant may, at the discretion of the Commission be allowed to resubmit.

5. **Criminal Background Check.**

Each license applicant shall undergo and pay for an annual criminal background check arranged by the Commission. Such background check shall be no more than 90 days old on the date of the application. No person who has been found guilty of or entered a plea of nolo contendere or guilty to: any felony related to a controlled substance under federal, state, or tribal law within the previous ten (10) years shall be eligible for a hemp producers license or any Tribal court conviction of any drug-related offense related to production, distribution, or manufacturing of a controlled substance within the previous ten (10) years.

6. **Limitation on Number of Producers Licenses Issued.**

At the beginning of each year, prior to reviewing and issuing any license, the Licensing Board may establish the number of licenses that it will issue that year.

7. **Review of a Producer's License Application.**

- a. The Commission shall establish procedures for evaluating a producer's application applying among other things, the minimum criteria established in this Ordinance, the tribal hemp and land use plans, and keeping in mind the Commission's practical ability to properly regulate the activity on the proposed site.
- b. If an applicant holds, or has held, a hemp or cannabis license in any State, foreign nation, or tribe, the Commission shall obtain a report detailing any violations of that current or prior license.
- c. If an applicant has held any type of license from the Oglala Sioux Tribe, the applicant shall not be behind on any tribal license renewals, tribal taxes or fees or be found to have been adjudicated to be in violation of that prior license now or in the last five years.
- d. The applicant shall not have any unpaid fees or fines from the Commission.
- e. The applicant shall sign a sworn statement agreeing not to grant an interest in the license to any additional person without the prior written approval of the Commission.

8. **False Statement.**

Any applicant who materially falsifies any information contained in his/her application shall be ineligible to participate as a producer under this ordinance.

9. **Notice of Conditional Approval or Denial of a Producer's Application.**

The Commission shall formally notify applicants by letter as to whether their application

has been approved, denied or conditionally approved. If an application is denied, the Commission shall include the reasons for denial in its notice. No license shall be deemed to be in effect until it has been signed by the applicant and the Licensing Board Chairman or his or her designee and until the applicant has attended, in person, a Commission orientation meeting.

10. **Administrative Appeal from a Denial of a Producers Application.**

The Commission shall comply with the appeals procedure in this Ordinance, which provides applicants who assert that they were denied due process in the denial of a license application, denial of a license renewal, a termination of a license, the suspension of a license, or any other adverse action by the Commission, the right to appeal. A copy of this appeals procedure shall be provided to each applicant upon request.

11. **Producers License Conditional Approvals and Denials.**

- a. The Commission may grant conditional approval of a Producers License pending the review and approval of the Producer's Licensing Agreement and final approval if the Licensing Agreement meets the requirements of this Ordinance and Commission regulations. It may also deny the license for any reason.
- b. All Tribal Producers Licenses shall authorize specific activities, at specific locations, by specific persons or entities. The Commission may approve an applicant to grow an acreage or square footage indoors or outdoors that is equal to or greater or less than that proposed in the application.
- c. The Commission shall formally notify applicants by letter as to whether their application has been approved, denied or conditionally approved. If an application is denied the Commission shall include the reasons for that decision in its notice. No license shall be deemed to be in effect until both the license and the applicant's Producers License Agreement has been signed by the applicant and the Commission Chairman or his or her designee and until the applicant has attended, in person, a Commission orientation meeting.
- d. In the past, including those times when the applicant was not in possession of a hemp related license, the applicant shall have demonstrated a willingness to comply with the Commission's rules, instructions from the Commission staff, the Tribal Government and tribal and federal law enforcement.
- e. If the applicant has held a tribal hemp license in the past, the applicant shall not be delinquent in making any required reports or payments to the Commission or have shown a pattern of unjustified delinquencies in this area.
- f. The applicant shall not have and shall not make any false statements or representations to a representative of the Commission or to a law enforcement agency in relation to their hemp related activities.
- g. A statement from the applicant that he or she will not buy, sell, possess, or transfer seeds or propagules to or from any person within the territory of the Tribe without first verifying that the person is licensed by the Commission.
- h. A written agreement by the applicant that they shall obtain written approval from the Commission before altering the variety of hemp grown under their license.

- i. An applicant shall provide the name of his or her seed or propagule source on their application and/or before acquiring seed or propagule from a non-disclosed person or company.

12. **Producer Licensing Agreements.**

- a. The producer licensing agreement shall be prepared by the Producers Licensing Applicant in consultation with the Commission and with the help of Commission staff and shall establish the terms and conditions for the cultivation of hemp by the licensee.
- b. The terms and conditions established in the Producers Licensing Agreement shall include, at a minimum, the following requirements for licensed producers- a number of which may be contained on a pre-printed form, but all of which shall be reviewed orally with the applicant and initialed by the applicant at their Producers Licensing Agreement Meeting with Commission staff.
  - i. A clear written statement of the activities allowed, the location or locations at which those activities are allowed.
  - ii. Written acknowledge that the licensed producer shall comply with instructions from representatives of the Commission and law enforcement agencies.
  - iii. The applicant's agreement to pay the required licensing, inspection and testing fees established by the Commission.
  - iv. The applicant's consent for representatives of the Commission to enter into or onto all of the property listed in the Producers Agreement to inspect all part of the premises where hemp or other cannabis plants or materials are located or licensed to be located. And, the applicant's acknowledgement that these inspections may be with or without cause, and with or without advance notice. The licensed producer shall acknowledge in writing that he or she shall have no reasonable expectation of privacy with respect to the premises where hemp or other cannabis seeds, plants or materials are located and that this prior approval shall exist, whether the Licensee is or is not present.
  - v. The applicant's prior written consent to the forfeiture and destruction of hemp and hemp related items, without compensation, if:
    - 1. Following testing procedures as set forth in this Ordinance, the material is found to have a measured delta-9-THC content in excess of zero and three- tenths (0.3) percent on a dry weight basis;
    - 2. Plants are located in an area that is not licensed by the Commission; and
    - 3. Plants are not accounted for in required reporting to the Commission.
  - vi. The applicant's written agreement to apply for registration of all additional growing, handling, and storage locations and receive the Commission prior

- written approval for those locations and activities prior to having hemp on those premises.
- vii. The applicant's prior written agreement that the applicant must submit a Site Modification Request Form, the appropriate fees based on the requested changes, and obtain prior written approval from the Commission before implementing any change to the licensed sites stated in their Producer Licensing Agreement, and that growing site changes shall be subject to acceptance or denial by the Commission.
  - viii. The applicant's written agreement that their hemp shall not be grown, handled, or stored in any location other than the location(s) listed in the Producer Licensing Agreement.
  - ix. The applicant's written agreement that that anyone applying pesticides to hemp must only do so in accordance with applicable tribal and federal law.
  - x. The applicant's written agreement acknowledging in writing that that Licensed Producer shall comply with restrictions established by the Commission limiting the movement of hemp plants and plant parts.
  - xi. The application's written agreement that the risk of financial or other loss shall be borne solely by the licensed producer.
  - xii. The application's written agreement that any time hemp is in transit, a copy of the Producer Licensing Agreement must be available for inspection upon the request of a representative of the Commission or a state or federal law enforcement agency.
  - xiii. The applicant's written agreement that, upon request from a representative of the Commission or a law enforcement agency, he, as a licensed producer shall immediately produce a copy of his or her Producer Licensing Agreement for inspection.
  - xiv. The applicant's written agreement to submit such Planting Reports, Harvest/Destruction Reports, and Production Reports, and such other reports and documents as the Commission shall require, on or before the deadlines established by the Commission and in this Ordinance.
  - xv. The applicant's written agreement to scout and monitor unregistered adjoining fields for volunteer hemp or cannabis plants and to destroy those volunteer plants during the term of the license and for three (3) years past the last date of the planting approved by the Commission.
  - xvi. The applicant's written agreement not to rent his or her hemp site, or otherwise allow the use of the hemp site by any person other than the applicant, without the prior written approval of the Commission, and in most cases the issuance of a new license to that tenant or user.
  - xvii. The applicant's written agreement that the land used for the cultivation or storage of hemp shall not be owned by or leased from any person whose hemp license was terminated or denied by the Commission.
  - xviii. The applicant's written agreement to notify the Commission of any hemp related interaction with law enforcement immediately by phone and follow-up in writing within three (3) calendar days of the occurrence; and
  - xix. The applicant's written agreement to notify the Commission of any theft of cannabis materials, whether growing or not.

- xx. The applicant's written agreement he or she will not buy, sell, possess, or transfer seeds or propagules to or from any person within the territory of the Tribe without first verifying that the person is licensed by the Commission.
- c. Failure to agree or comply with terms and conditions established in the producer licensing agreement or this Ordinance shall constitute grounds for denying final approval of an Oglala Sioux Producer's License.
  - d. Failure to agree and sign the producer licensing agreement shall terminate any conditional approval and a licensing agreement shall not be executed.
- 13. **Final Approval of a Producer's License Application.**

Once the Licensing Agreement is completed and reviewed by Commission staff the entire application shall be submitted to the Commission for final approval, denial or approval with conditions or a Commission request for additional information before rendering a decision.
- 14. **Land Use Restrictions for Licensed Producers, the violation of which may lead to the immediate and permanent revocation of a Producers License:**
  - a. A licensed producer shall not plant or grow any cannabis that is not hemp.
  - b. A licensed producer shall not plant or grow hemp or other cannabis on any site not listed in the producer licensing agreement.
  - c. A licensed producer shall not grow, process, or store hemp within 240 feet of any structure, other than their own home, that is used for residential purposes indoors or outdoors absent the written approval of the owner of the adjoining property and the Commission.
  - d. A licensed producer shall not grow, process or store hemp in any outdoor field or site that is located within 1,000 feet of a school building or sports field or a public recreational area.
  - e. Licensed producers shall be required to post signage at the plot location. The signage shall include the following information:
    - i. The statement, "OST- Licensed Hemp Grow Site";
    - ii. License holder's name;
    - iii. License holder's license number; and
    - iv. The Commission's telephone number.
- 15. **Increasing or Decreasing a Site.**

The Commission may approve an applicant to grow an acreage or square footage that is equal to, greater than, or less than the acreage or square footage stated in the application.
- 16. **License Producers' Planting Reports for Outdoor Plantings.**
  - a. A licensed producer shall submit to the Commission a complete and current Field

- Planting Report, within fifteen (15) days after every planting, including replanting, of seeds or propagules in an outdoor location.
- b. Each Field Planting Report shall identify the:
    - i. The Correct variety name as designated upon the Producers Licensing Agreement;
    - ii. The Field location ID as listed in the producer licensing agreement;
    - iii. The approximate number of seeds or propagule planted and the planting date and projected harvest date; and
    - iv. The primary intended use of the harvest for each planting.
  - c. 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.
  - d. If a licensed producer's planting was destroyed for any reason, the producer shall submit written notice of that event to the Commission and follow its directions.
  - e. A licensed producer shall provide, as a minimum, the following information:
    - i. Street address and, to the extent practicable, geospatial location for each lot or greenhouse where hemp will be produced. If an applicant operates in more than one location, that information shall be provided for all production sites.
    - ii. If an applicant has production sites licensed under a USDA-approved State or Tribal plan, those sites will be covered under the respective plan and will not need to be included under the producer's application to become licensed under the USDA plan.
    - iii. Acreage dedicated to the production of hemp, or greenhouse or indoor square footage dedicated to the production of hemp.
    - iv. License or authorization identifier.
  - f. A licensed producer shall submit to the Commission a report on the total crop acreage of hemp planted, harvested and disposed, which report shall be provided to AMS by the Commission within fifteen (15) days after harvest.

17. **Licensed Producers' Planting Reports for Indoor Plantings.**

- a. A licensed producer shall submit to the Commission a complete and current Greenhouse/Indoor Planting Report within fifteen (15) days after establishing plants at an indoor location.
- b. Each Greenhouse/Indoor Planting Report shall identify the:
  - i. The correct variety of hemp being grown as designated on the Producers Licensing Agreement.
  - ii. The greenhouse or indoor growing Location ID as listed in the producer licensing agreement; and
  - iii. The Primary intended use for the harvest of each planting.

- c. In addition to its annual Greenhouse/Indoor Planting Report, a licensed producer with an approved greenhouse or indoor growing site shall submit quarterly reports for each Location ID to the Commission due no later than March 31, June 30, September 30, and December 31.

18. **Inspections.**

- a. The Commission shall have authority to conduct random inspections of Hemp Producers and all Grow Site to verify compliance with all requirements of the license issued and the Producers Licensing Agreement. These Inspection may include sampling by the Commission for testing to determine that the hemp being grown is at or below the maximum THC level and that the other requirements of the Producers License are being met. These tests shall be performed in the same manner as required for annual testing in this Ordinance at the Commission's expense.
- b. All samples collected by the Commission shall become the property of the Commission and no compensation shall be owed by the Commission for such samples.
- c. The Commission shall furnish copies of any testing results to the Licensed Producer and shall retain the testing results and any inspection reports for a minimum of three (3) years.

19. **Responsibility of a licensed producer prior to harvest**

- a. Within 15 days prior to the anticipated harvest of cannabis plants, each licensed producer shall notify and authorize the Executive Director to collect samples from Producer's growing site(s) of hemp flower material for delta-9 tetrahydrocannabinol concentration level testing. Notice of such testing results or Certificate of Analysis shall be forwarded to the Commission.
- b. The method used for sampling from the flower material of the cannabis plant must be sufficient at a confidence level of 95 percent that no more than one percent (1%) of the plants in the lot would exceed the acceptable hemp THC level. The method used for sampling must ensure that a representative sample is collected that represents a homogeneous composition of the lot.
- c. During a scheduled sample collection, the producer, or an authorized representative of the producer, shall be present at the growing site.
- d. Licensed producers shall provide and allow the Commission and/or Executive Director with complete and unrestricted access during business hours to all hemp and other cannabis plants, 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 all locations listed in the producer license.
- e. A producer shall not harvest the cannabis crop prior to samples being taken.

20. **Duty to Licensed Producer to Harvest.**

- a. A Licensed Producer shall harvest the crop not more than fifteen (15) days after the required sample/sample collection is performed and the results are received by the Commission unless a delay is approved in writing by the Commission.
- b. If the harvest is not performed within fifteen (15) days after the required sample/sample collection, the Commission shall require additional sample/sample collection of the crop at the Producer's expense.
- c. Floral materials for Phyto cannabinoid extraction shall not be moved outside the grown location, nor commingled with other variety of hemp, nor extracted, until the Commission has released the crop.
- d. Any Producer who harvests hemp outside of these restrictions may have their license revoked.
- e. All test samples and/or test records shall be preserved by the Commission in its records, in accordance with scientific standards, for not less than seven (7) years.

21. **Duty to Destroy Non-Compliant Hemp and Destruction Procedures.**

If a Licensed Producer's Hemp tests higher than a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis, the Licensed Producer may submit a request for a retesting to the Commission. If that retesting is denied or if the hemp shows a failing result on a second test, the hemp must be disposed of by the Hemp Producer at their own expense.

- a. The following disposal procedures shall apply:
  - i. The Commission and Executive Director (as representatives of the sampling agency) shall be provided with complete and unrestricted access during business hours to all hemp and other cannabis plants, 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 all locations listed in the producer license.
  - ii. Hemp stalks (denuded) may be harvested, processed and used for fiber and/or any other lawful purpose;
  - iii. Hemp seed may be harvested, processed, and rendered non-viable for food products, provided it is sourced from Hemp grown with seed certified pursuant to the Commission's Seed Certification Program, or that has otherwise received certification by other seed agencies recognized by the Commission; and
  - iv. If non-compliant hemp plants (and plant material) are not disposed of pursuant to (ii) or (iii) above, they must be destroyed in a manner approved in advance by a written order of the Licensing Board identifying with specificity the lots where representative samples were taken and the plants to be destroyed. Methods of destruction or on-site utilization may include, but are not limited to, incineration, composting, tilling into the soil, or grazing by livestock. The destruction procedure approved by the

Commission may vary based upon weather conditions, ground conditions and the chance of fire.

- b. Hemp Producers shall have fourteen (14) calendar days from the date of notification of failed test results to contact the Commission in writing and apply for retesting or to propose a method for destruction or on-site utilization.
- c. With the exception of Hemp seeds rendered non-viable pursuant to this Section, all Hemp subject to destruction or on-site utilization pursuant to this Section shall not be added to or Processed into any product Consumable by humans.
- d. The Hemp Producer shall provide any and all evidence requested by the Commission to verify the destruction of the hemp.

22. **Producer's License Revocation.**

- a. **Immediate License Revocation-** The Licensing Board shall revoke the license of any licensed producer without hearing if the Licensee is found to have:
  - i. made false statements to the commission to secure his or her license,
  - ii. is found to intentionally be growing cannabis with a measured delta-9-THC-concentration at or above 0.3 percent on a dry weight basis,
  - iii. has failed to comply with an order from the Commission related to the cultivation or transportation or destruction of hemp or hemp seeds or propagule,
  - iv. has failed to allow unbridled access to a licensed grow site to the Commission,-its designed representatives or law enforcement.
- b. **Compensation-** A person cultivating hemp in violation of tribal law shall not be eligible for compensation for the loss of that hemp or for any damage to their grow site caused by the Commission or its representatives in the performance of their duty.
- c. **Re-application** - Any person who has had their Oglala Sioux Hemp Producers License revoked shall be ineligible to re-apply for a license before the period of disqualification is over; and such re-application will be denied by the Licensing Board during the period of disqualification.
- d. **Commission Action upon License Revocation-** Upon revocation of a producer's license, the Licensing Board shall immediately inventory the crop and advise law enforcement of the suspension of the producer's license.
- e. When the Licensing Board acts to suspend a Producer's License, the Producer shall not harvest, process or remove cannabis from the premises where hemp or other cannabis was located at the time of the suspension.

23. **Licensing Fees.**

The Commission shall establish and publish a fee schedule on an annual basis for licensed producers.

24. **Licensed Producers Site Modifications.**

- a. A licensed producer who elects to grow hemp in a new growing location, or store or handle hemp at a site other than the sites specified their Producers Licensing Agreement, shall submit a Site Modification Request Form to the Commission, pay any required site modification application fee established by the Commission and obtain approval prior to planting or storing at the proposed location.
- b. Any request for a new growing location shall comply with the land use restrictions established in this Ordinance, the Commission, or Oglala Sioux Tribal Law.
- c. The Commission may establish and enforce a site modification surcharge fee for each new growing location, be it an individual field or greenhouse or indoor structure, where hemp will be planted. The Commission shall not grant a site modification for any location or to any person that would not have qualified for a producer's license at that site had that site been a part of the original Producer's application.
- d. The Commission shall not withhold approval of site modifications for changes to storage only locations so long as the new location can be properly regulated by the Commission.

**Section 1000. RESTRICTIONS ON SALE, TRANSFER, AND TRANSPORTATION OF HEMP.**

1. **Documentation Required.**

The Licensee or commercial shipper of a Hemp Crop must ensure that the following documentation accompanies the Hemp Crop at all times during transport:

- a. a copy of the Hemp Producer license that corresponds to the Grow Site from which the hemp originated;
- b. a copy of the pre-harvest test results that correspond to the Lot in transit; and
- c. a copy of a transport manifest and bill of lading that includes all information required to be documented by the Commission, which shall at a minimum contain:
  - i. The name of the producer,
  - ii. The producers license number,
  - iii. The location the hemp is coming from and the location and name of the party to whom it is being shipped,
  - iv. The amount of hemp being shipped in that lot, and
  - v. Any other documentation that may be required by the Commission or the USDA.

2. **No Sale or Transfer of Living Plants, Leaf Material, or Floral Material to Persons or Entities without a License.**

A licensed producer shall not sell or transfer, or permit the sale or transfer, of living plants, leaf material, or floral material to any person or entity in the territory of the Oglala Sioux

Tribe who does not hold a license issued by the Commission.

3. **Sale or Transfer only if Delta-9 THC is not more than 0.3 Percent.**

The Commission shall permit the sale or transfer of stripped stalks, fiber, dried roots, nonviable seeds, seed oils, floral and plant extracts (excluding THC in excess of zero and three-tenths (0.3) percent), and other marketable hemp products to members of the general public, both within and outside the territory of the Oglala Sioux Tribe if the marketable hemp product's delta-9-THC level is not more than zero and three-tenths (0.3) percent.

4. **Retention of Testing Data or Results for 3 Years.**

A licensed producer selling or transferring, or permitting the sale or transfer, of floral or plant extracts (including CBD), shall retain testing data or results for at least three (3) years demonstrating that the extract's delta-9-THC level is not more than zero and three-tenths (0.3) percent.

5. **Compliance with Food Drug and Cosmetic Act and Other Applicable Laws.**

Licensed brokers and the producers of hemp producers are each unilaterally responsible for compliance with the federal Food Drug and Cosmetic Act, 21 U.S.C. Chapter 9, and all other applicable laws relating to product development, product manufacturing, consumer safety, and public health.

**Section 1100. BROKER, PROCESSOR, OR HANDLER LICENSE.**

1. **Application requirement for Broker, Handler, or Processor License.**

Any person who wishes to engage in the brokering, processing, handling, brokering, or marketing of hemp that does not fall within the definition of a "publicly marketable hemp product" at any location within the territory of the Tribe shall apply to the Commission for a tribal Broker, Handler or Processor's License.

2. **Brokering, Handling, or Processing without a License.**

- a. Brokering, Handling or Processing of hemp for commercial purposes without such a license shall constitute a civil violation subject to a civil penalty as the Tribal Code may provide for.
- b. Any person who does not hold a license from the Commission shall not (1) grow, cultivate, handle, or process hemp or other cannabis; or (2) Broker or market hemp or other cannabis that does not fall within the definition of a "publicly marketable hemp product" grown on or from any location within the territory of the tribe or (3) Process hemp with the territory of the Tribe. This subsection does not apply to employees of license holders.

3. **Procedures to be established by Commission.**

The Commission shall, establish procedures and standards for awarding a Hemp Broker, Handler, or Producer's License. At a minimum, such standards shall require the applicant to submit the following:

- a. Proof that the applicant is at least 18 years of age.
- b. Full name, residential address, telephone number, and email address, if an email address is available.
- c. If the applicant is a Tribe or a tribally owned entity or a District or a District-owned entity, the application shall provide the full name and contact information for the registered agent or representative charged with being the point of contact for the license along with the business name and principal business location address (if applicable).
- d. If the applicant represents a business entity, the full name of the business, the principal business location address, the names and addresses of all persons holding a financial interest or decision making authority within the entity, if the business is a corporation, the name and address of its registered agent, the full name, address and birth date of the individual who will have signing authority on behalf of the entity, his or her title, and email address if an email address is available.
- e. A detailed statement of all past and current hemp broker, handler, or producer's license held by the applicant,
- f. A detailed statement of any hemp related fines, notices of violation, citations or license revocation proceeding that the applicant has faced in any State, foreign nation tribe, along with a statement of any seed related civil or criminal cases that the applicant has been the subject of.
- g. A brokerage, handling or production plan, including a description and map of the proposed site on which the activity will take place and the variety and approximate volume of hemp that will be involved. A description of all aspects of the handling or brokerage or production firm will engage in within the territory of the Tribe.
- h. A statement of whether the proposed handler, broker of producer proposes to import any hemp from outside the territory of the Oglala Sioux Tribe and if so a statement of where the proposed hemp is coming from and under what authority.
- i. A sworn statement from the applicant that he or she or the Company agrees voluntarily to the territory of the Oglala Sioux Tribe, the Commission and the Oglala Sioux Tribal Court on all matters related to the license that they are applying for and all other hemp related activities taking place within the territory of the Oglala Sioux Tribe.
- j. A sworn statement that the applicant and all of its identified principals agree to submit to an annual tribal background check and pay the Commission fee associated with that background check.
- k. A sworn statement that the applicant shall submit all reports and documents to the Commission related to the license and the license application.
- l. An Agreement that the application will provide unbridled access to their premises with or without their presence

4. **Missing information.**

An Application that is missing any of this required information shall be subject to denial, but may, at the discretion of the Commission be allowed to resubmit.

5. **Background Checks for Broker, Handler, and Processor License Applicants.**

- a. Each applicant for a broker, handler, and processor's license applicant shall undergo and pay for an annual criminal background check arranged by the Commission. Such background check shall be no more than 90 days old on the date of the application. No person who has have been found guilty of or entered a plea of nolo contendere or guilty to: any felony related to a controlled substance under tribal, federal, or state law within the previous ten (10) years shall be eligible for a broker handler or processor's license. Because not all tribal drug laws are not classified as felonies or misdemeanors, this provision is intended to prohibit any tribal conviction, the elements of which would constitute a felony under either state or federal law.
- b. Each applicant for a hemp broker, handler or processor's license shall agree to the release of any and all information related to their past or present hemp related licenses in any State, foreign nation, or tribe. The Commission shall arrange to contact those other States, foreign nations, or tribes to ensure that the information the applicant is submitting is correct and that there is no reason to deny the application.

6. **Review of a Hemp Broker, Handler, or Processor License Application.**

- a. No person or entity is entitled to a hemp brokers, handlers, or producers license. Such a license is a privilege and not a right. Failure to agree or comply with terms and conditions established in the licensing agreement or this Ordinance shall constitute grounds for denying final approval.
- b. The Commission shall develop special license applications for brokers, handlers, and processors and establish procedures for evaluating their applications applying among other things, the minimum criteria established in this Ordinance, the activities that the applicant proposes to engage in and the Commission's practical ability to properly regulate the activity.
  - i. If an applicant holds, or has held, a hemp or cannabis license of any type in any State, foreign nation, or tribe, the Commission shall obtain a report detailing any violations of that current or prior license.
  - ii. If an applicant has held any type of license from the Oglala Sioux Tribe, the applicant shall not be behind on any tribal license renewals, tribal taxes of fees or be found to be adjudicated to be in violation of that prior license.
  - iii. The applicant shall not have any unpaid fees or fines from the Tribe or the Commission.
  - iv. The applicant shall not have intentionally submitted any false or misleading information or made any false statements in conjunction with this or any

other application from the Commission.

- v. Any Application that is missing required information shall be grounds for license denial.
- c. The Commission shall notify applicants by letter or email whether the application has been denied or conditionally approved. An applicant shall have the right to request a hearing to appeal the denial. Such hearings shall be conducted under procedures set forth in this Ordinance.

7. **Land Use Restrictions for Licensed Brokers, Processors, or Handlers.**

A licensed broker, processor or handler shall not process or store leaf or floral material from hemp in any location where hemp would not be allowed to be grown under this Ordinance.

8. **Broker, Processor, or Handler Licensing Agreements.**

- a. A broker, handler, or processor license shall not be deemed approved until the applicant and the Commission have executed a broker, handler, or processor's licensing agreement following the in-person attendance at the Commission's mandatory orientation session.
- b. The broker, processor, or handler licensing agreement shall establish the terms and conditions governing the applicant license.
- c. The terms and conditions established in the broker, handler, or processors licensing agreement shall include, at a minimum, the following requirements:
  - i. Acknowledge that licensed brokers, processors, or handlers shall comply with instructions from representatives of Commission and law enforcement agencies.
  - ii. Agreement to pay all background check, inspection, testing and licensing
  - iii. fees imposed by the Commission.
  - iv. Agreement that the licensee shall have no reasonable expectation of privacy with respect to premises where their hemp or other cannabis seeds, plants, or materials are located and any premises listed in the broker, handler, or processor's licensing agreement. A licensee, whether present or not, shall permit a representative of the Commission to enter into premises where hemp or other cannabis seeds, plants, or materials are located and any premises listed in the licensing agreement, with or without cause, and with or without advance notice. During such inspections, the Commission shall have the authority to collect and retain samples of hemp or other cannabis, and products derived from all hemp or cannabis in the possession of a licensee and all such samples collected by the Commission shall become the property of the Commission and shall be nonreturnable. Compensation shall not be owed by the Commission. A licensee undergoing such inspections or collections shall not be eligible for compensation for the loss of that hemp or for any damage to their grow site cause by the Commission

- or its representatives in the performance of their duty.
- v. Subject to testing procedures set forth in Section 700, consent to forfeiture and destruction, without compensation, of material found to have a measured delta-9-THC content in excess of zero and three- tenths (0.3) percent on a dry weight basis or material located in an area that is not licensed by the Commission or Material not properly accounted for in required reporting to the Commission.
- vi. Agreement that no hemp shall be processed, handled, or stored in any location other than the location listed in the licensing agreement.
- vii. Written acknowledgement that the licensee shall comply with restrictions established by the Commission and applicable tribal and federal law limiting the movement of hemp plants and plant parts.
- viii. Agreement that the risk of financial or other loss shall be borne solely by the licensee.
- ix. Agreement that any time the hemp is in transit, the licensee shall insure compliance with the hemp transportation requirements of this Ordinance and all Commission regulations. In addition to those requirements a broker, handler, or processor of hemp within the **territory** of the Tribe shall also insure that the transport is accompanied by a copy of the broker, handler or processor's licensing agreement and that the transporter shall make that information available upon the request of a representative of the Commission or a law enforcement agency.
- x. Agreement to display a copy of the license at the licensee's on-Reservation place of business.
- xi. Agreement to submit reports required by the Commission on or before the deadlines established by the Commission.
- xii. Agreement to notify the Commission of any hemp or drug related interaction with law enforcement immediately by phone and to follow-up in writing within three (3) calendar days of the occurrence.
- xiii. Agreement to notify the department of any theft of cannabis materials.
- xiv. Agreement by the applicant that failure to agree or comply with terms and conditions established in the broker, handler or processor's licensing agreement shall constitute grounds for the suspension or termination of the license.
- xv. A person or entity who has had their license revoked is not eligible to reapply for any license from the Commission for a period of five (5) years from the date of revocation.
- xvi. Failure to agree and sign the licensing agreement shall terminate any conditional approval and no license shall be deemed awarded.

9. **Restrictions on Sale or Transfer of Hemp by a Licensed Broker, Handler, or Processor**

- a. A licensed broker, handler, or processor shall not sell, or transfer, or permit the sale or transfer, of living plants, viable seeds, leaf material, or floral material to any person in the territory of the Oglala Sioux Tribe who does not hold a license issued

- by the Commission.
- b. A licensed broker, handler, or processor shall not sell or transfer, or permit the sale or transfer, of living plants, viable seeds, leaf material, or floral material to any person outside the territory of the Oglala Sioux Tribe who is not authorized by applicable law to possess those items. The licensed broker, handler, or processor shall be solely responsible for insuring that such sale or transfer is lawful in other State, foreign nation, or tribe under applicable law.
  - c. The Commission shall permit the sale or transfer of stripped stalks, fiber, dried roots, nonviable seeds, seed oils, floral and plant extracts (excluding THC in excess of zero and three-tenths (0.3) percent) so long as such sales are in compliance with the IFR and changing government guidance,
  - d. and other marketable hemp products to members of the general public, both within and outside the territory of the Oglala Sioux Tribe if the product's delta-9-THC level is not more than zero and three-tenths (0.3) percent and is otherwise in compliance with the IFR and changing government guidance.
  - e. A licensed broker, handler or processor selling or transferring, or permitting the sale or transfer of floral or plant extracts (including CBD), shall conduct and retain testing data or results for at least three (3) years demonstrating that the product's delta-9-THC level is not more than zero and three-tenths (0.3) percent.
  - f. The Commission shall permit a licensed broker, handler or processor to transfer up to one (1) pound of hemp per transfer to testing laboratories, both within and outside the territory of the Tribe, for the purpose of measuring THC, CBD or other Phyto cannabinoid profile levels. It shall be the sole responsibility of the licensed processor or handler to ensure compliance with applicable laws relating to that transfer.
  - g. A licensed broker, handler or processor shall comply with the federal Food Drug and Cosmetic Act, 21 U.S.C. Chapter 9, and all other applicable tribal, local, state, and federal laws and regulations relating to product development, product manufacturing, consumer safety, and public health.
  - h. A licensed broker, handler, or processor shall not knowingly permit hemp to be sold to or used by any person involved in the manufacture of an item named on the prohibited products list of the United States or the Oglala Sioux Tribe.

## **Section 1200. RESEARCH LICENSES.**

### **1. Post-Secondary Institution.**

- a. An accredited post-secondary institution located on the Reservation may grow or cultivate hemp if the hemp is grown or cultivated for purposes of research conducted under an agricultural pilot program or other agricultural or academic research. Such institution must obtain a research license from the Commission.
- b. Sites must be certified by and registered with the Commission.

### **2. Not-for-profit entities.**

- a. A not-for-profit entity located on the Reservation that is chartered and owned by

the Tribe or any District may grow or cultivate hemp if the hemp is grown or cultivated for purposes of research conducted under an agricultural pilot program or other agricultural or academic research. Such entity must obtain a research license from the Commission.

- b. Sites must be certified by and registered with the Commission.

3. **Research Applications.**

Research license applications shall adhere to the same requirements as other Producers Licenses except that the name shall be in the name of the post-secondary institution or non-profit, and the contact person shall be the principal investigator or researcher in charge of the agricultural pilot program or agricultural or academic research.

4. **Rules and Regulations.**

The Commission shall adopt and promulgate rules and regulations governing this Section.

### **Section 1300. SMALL PRODUCERS LICENSE.**

1. **Small Producers Permit.**

Tribal members who meet the minimum standards for Hemp Producers under this Ordinance may request a permit to grow up to twenty-five (25) hemp plants for personal use on their own land pursuant to this Section. Such land must be within the territory of the Tribe, on trust land, allotted land, or fee land if such fee land is owned exclusively by the Small Producer. In the case of fractionated allotted land where the Small Producer owns an interest, the Small Producer must have secured the written approval to grow hemp on the property in the same manner for the owner's unilateral use of the property.

2. **Requirements.**

- a. All Tribal members wishing to be Small Producers must meet the same minimum requirements for Producer's Licenses.
- b. The Commission shall develop rules and procedures for Small Producers that meet the minimum requirements required by federal and Tribal law.

3. **Registry.**

The Commission shall develop a Registry of Small Producers.

4. **Prohibited Acts.**

Small Producers are prohibited from engaging in any acts related to hemp that are prohibited under this Ordinance.

## **VIOLATIONS**

### **Section 1400. IMMEDIATE LICENSE REVOCATION BY THE COMMISSION.**

1. The Commission shall immediately revoke a license, without an opportunity for a hearing, if the licensed person pleads guilty to, or is convicted of, any felony related to a controlled substance or any drug-related offense related to production, distribution, or manufacturing of a controlled substance.
2. The Commission shall also revoke a license, without an opportunity for a hearing, if the licensee or his or her agent admits to having:
  - a. Made any false statement to the Commission or its representative;
  - b. Failed to comply with any instruction or order from the Commission or of a representative of the Tribal or Federal law enforcement which relates in any way to their license;
  - c. Been found to be in intentional possession of cannabis with a measured delta-9-THC concentration at or above 0.3 percent on a dry weight basis; or
  - d. A person whose hemp broker, handler, or processor licensing 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 Commission issued its notice of temporary suspension, except as authorized in writing by a representative of the Commission.
3. As soon as possible after the notification of temporary suspension, or termination of a hemp license a representative of the Commission shall inspect the licensed premises and perform an inventory of all cannabis, hemp, and hemp products that are in the licensee's possession.
4. Upon the suspension of a license issued by the Commission, the Commission shall schedule a license revocation hearing for a date as soon as practicable after the notification of temporary suspension, but in any event not later than sixty (60) days following the notification of temporary suspension.

### **Section 1500. SPECIAL LICENSE VIOLATIONS FOR GROWING CANNABIS IN EXCESS OF 0.3 PERCENT.**

1. **Negligent Violations.**
  - a. If the Commission finds that a hemp producer, broker, or handler licensed by the Commission has negligently violated the terms of their license by producing or possessing Cannabis sativa with a delta-9 tetrahydrocannabinol concentration of more than 0.3 percent on a dry weight basis, the licensee shall be afforded the right to submit a corrective action plan, which the Commission shall have the sole authority to accept or reject.
  - b. Negligent violations shall be subject to enforcement in accordance with 7 C.F.R. § 990.6, and include, but shall not be limited to the following violations:

- i. Failure to provide a legal description of land on which the producer produces hemp;
- ii. Failure to obtain a license or other required authorization from the Commission; or
- iii. Production of cannabis with a delta-9 tetrahydrocannabinol concentration exceeding the acceptable hemp THC level. Hemp producers do not commit a negligent violation under this paragraph (b)(3) if they make reasonable efforts to grow hemp and the cannabis (marijuana) does not have a delta-9 tetrahydrocannabinol concentration of more than 0.5 percent on a dry weight basis.

2. **Contents of a Corrective Action Plan.**

- a. The corrective action plan for correction of negligent violations shall, at a minimum, include the following terms:
  - i. A reasonable date by which the producer shall correct the negligent violation.
  - ii. A requirement that the producer shall periodically report to the Commission on its compliance with this Section for a period of not less than the next two (2) years from the date of the negligent violation.
  - iii. A producer that negligently violates this Subsection 1 above shall not as a result of that violation be subject to any criminal enforcement action by the Federal or Tribal Government.
  - iv. The Commission shall conduct an inspection to determine if the corrective action plan has been implemented as submitted.

3. **Result of Negligent Violation.**

- a. Except as provided in Subsection 4 below, a hemp producer that negligently violates the prohibition against the cultivation or possession of hemp, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of more than 0.3 percent on a dry weight basis shall not be subject to any criminal or civil enforcement action, including license revocation, by the Commission or the Federal Government, so long as they propose and implement the corrective action plan approved by the Commission and as otherwise described in this Section.

4. **Repeat Violations.**

A producer that negligently violates these regulations three (3) times in a 5-year period shall be ineligible to produce hemp for a period of five (5) years beginning on the date of the third violation.

5. **Culpable Violations.**

- a. If the Commission finds that a hemp producer or License holder has violated the terms of this Ordinance or their license with a culpable mental state greater than negligence the Commission shall immediately report the hemp producer to the following federal and tribal law enforcement authorities:
  - i. The U.S. Attorney General;
  - ii. The Oglala Sioux Tribe Attorney General; and
  - iii. The Oglala Sioux Tribe Chief of Police.
- b. Non-culpable violations, i.e., negligent violations and corrective action for negligent violations, shall not be considered or apply to culpable violations under this Subsection 5.

6. **Felonies.**

- a. A person with a Federal or State felony conviction relating to a controlled substance shall be subject to the 10-year ineligibility restriction in Section 297B, (e) (3) (B) (i) and (ii) of the 2018 Farm Act, and shall not be eligible to participate in the production of hemp under any regulations or guidelines issued under Section 297C of the 2018 Farm Act during the 10-year period following the date of the conviction.
- b. Any producer growing hemp lawfully with a license, registration, or authorization under a pilot program authorized by Section 7606 of the Agricultural Act of 2014 (7 U.S.C. § 5940) before October 31, 2019, the date of enactment of the 2018 Farm Act by Congress, shall be exempted from subsection 6(a) above.
- c. For producers that are entities, the Commission shall determine which principals, employees and/or agents of the entity shall be subject to the 10-year ineligibility restriction on felons in subsection 6(a) above.
- d. Any person who materially falsifies any information contained in an application submitted to the Commission shall be ineligible to participate in the production of hemp under this Ordinance.

7. **Adverse action appeals process.**

- a. Adverse decisions made by the Commission may be appealed under the following guidelines:
  - i. Applicants who believe they are adversely affected by the denial of a license application, denial of a license renewal, a termination of a license, the suspension of a license, or any other adverse action by the Commission, may appeal such adverse decision to the Administrative Law Judge of the Oglala Sioux Tribe.
  - ii. If the Administrative Law Judge sustains an applicant's appeal of a licensing denial, the Commission shall issue a production license to the applicant.

- iii. If the Administrative Law Judge denies an appeal, the applicant's license application will be denied.
- iv. Any decision of the Administrative Law Judge that sustains or denies the relief claimed by an applicant shall be final and binding on the applicant and the Commission. No further appeals of an Administrative Law Judge's decision shall be taken to the Oglala Sioux Tribal Council or the AMS Administrator under 7 C.F.R. 990.41 or 990.42.
- v. The laws of the Oglala Sioux Tribe shall govern all administrative appeals taken under this subsection.

## **INFORMATION REPORTING**

### **Section 1600. SUBMISSION OF INFORMATION TO THE USDA.**

#### **1. Practice and Procedures for Submission of Required Information.**

All information described in this Section shall be submitted to the Secretary not more than 30 days after the date in which the information is received. All such information must be submitted to USDA in a format that is compatible with USDA's information sharing system.

##### **a. Agriculture Improvement Act of 2018 reporting requirements.**

- i. Contact information for each hemp producer;
- ii. Legal description of the land on which hemp is grow by each hemp producer including the extent practicable, its geospatial location; and
- iii. Status of each producer license (with license number) authorized by the Commission, and any changes in the status of each license.
- iv. The Commission shall make the information collected under this Section 1600 accessible in real time to federal and/or tribal law enforcement.

##### **b. Hemp Producer Monthly Report.**

- i. For each new producer who is an individual and is licensed, the report shall include full name of the individual, license number or authorization identifier, business street or post office address, telephone number, and email address (if available).
- ii. For each new producer that is an entity, the report shall include full name of the entity and name of the State, foreign nation or tribe in which the entity is incorporated (if applicable), the principal business street or post office address, license number or authorization identifier, and the full name, title, and email address (if available) of each business partner and/or employee for whom the entity is required to submit a criminal history record report.
- iii. 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.
- iv. The status of each producer's license or authorization.
- v. The period covered by the report.
- vi. If applicable, indication that there were no changes during the current reporting cycle.

##### **c. Hemp Producers Disposal Report.**

If a producer has produced cannabis exceeding the acceptable hemp THC level, *the cannabis must be disposed of in accordance with the Controlled Substances Act and DEA regulations found at 21 CFR 1317.15*. USDA shall be notified 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 reporting period, and date disposal was completed. The report shall contain the information:

- i. Name and address of the producer.
- ii. Producer license or authorization identifier.
- iii. Location information, such as lot number, location type, and geospatial or other location descriptor for the production area subject to disposal.
- iv. Information on the agent handling the disposal.
- v. Disposal completion date.
- vi. Total acreage.

**d. Hemp Producers Annual report.**

An annual report form shall be submitted to USDA **by December 15 of each calendar year** and contain the information:

- i. Total planted acreage.
- ii. Total harvested acreage.
- iii. Total acreage disposed.

**e. Hemp Producers Test Results Monthly Report.**

Each producer must ensure that the DEA-registered laboratory that conducts the test of the sample(s) from its lots reports shall provide the results of all samples tested to USDA. The test results report shall contain the following information for each sample tested:

- i. Producer's license or authorization identifier.
- ii. Name of producer.
- iii. Business address of producer.
- iv. Lot identification number for the sample.
- v. Name and DEA registration number of **laboratories**.
- vi. Date of test and report.
- vii. Identification of a retest.
- viii. Test result.

**Section 1700. DIRECTIVE TO TRIBAL PROGRAMS TO ASSIST THE COMMISSION.**

All Tribal Programs are directed to assist the Commission with the implementation of this ordinance when requested by the Commission.

**Section 1800. CERTIFICATION ON RESOURCES AND PERSONNEL.**

The Oglala Sioux Tribe hereby certifies that it has the resources and personnel to carry out the practices and procedures described in Section 297B, Subsections (a) (2) (A) (i), (ii), (iii), (iv), (v) and (vi) of the 2018 Farm Act, 132 Stat. 4909-4910.