

**POKAGON BAND OF POTAWATOMI INDIANS**  
**CANNABIS REGULATORY ACT**

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## CHAPTER 1

### General

#### Section 1.01 Short Title.

This Act shall be known and may be cited as the “Pokagon Band Cannabis Regulatory Act”.

#### Section 1.02 Authority.

The Tribal Council enacts this Act pursuant to the legislative powers of the Tribal Council as enumerated in Article IX, subsections 2(a) and (k) of the Constitution and the duties of the Tribal Council stated in Article IX, subsections 1(a), (c), and (d) of the Constitution.

#### Section 1.03 Findings.

(a) The Band is a sovereign, federally recognized Indian tribe, as reaffirmed by the Pokagon Restoration Act and is organized under the Constitution.

(b) In accordance with the Pokagon Restoration Act, and pursuant to Article IX of the Constitution, the Tribal Council is the governing body of the Band.

(c) Under Article IX, Section 2 of the Constitution, the Tribal Council is vested with the sovereign powers of the Band not inconsistent with the Constitution, including to make laws subject to the limitations of the Constitution.

(d) In 2008, State voters enacted the Michigan Medical Marihuana Act, which legalized Cannabis for medical uses.

(e) In 2016, the State Legislature enacted the Michigan Medical Marihuana Facilities Licensing Act, which set forth a regulated, state-licensed system allowing for the production, processing, and retail sale of medical Cannabis and related products within the State.

(f) In 2018, the citizens of the State enacted the Michigan Regulation and Taxation of Marihuana Act, which legalized the possession, use and cultivation of Cannabis products by adults twenty-one (21) years of age or older in the State, authorized commercial sales of Cannabis through state-licensed retailers, enacted a tax on Cannabis sales, and set forth a process for a regulatory agency to establish rules to administer all aspects of such Act.

(g) In connection with Michigan’s legalization of Cannabis in the State, the authorization of the Cannabis Related Business Activities within the Reservation is a matter over which the Band has jurisdiction.

(h) In 2020, the Tribal Council approved certain amendments to the Code of Offenses to decriminalize certain Cannabis related activities within the Reservation, including through Subsection 13.D.4. of the Code of Offenses, which states:

It shall not be unlawful, an Offense, or a Civil Offense, for any Person to possess, use, sell, manufacture, distribute, or intend to distribute, marihuana within the

territorial jurisdictional area of the . . . Band . . . that is within the exterior boundaries of the State of Michigan, but only: (a) if the Person has been expressly authorized to engage in such activity by Tribal Council resolution; and (b) to the extent authorized and set forth in the Tribal Council resolution.

(i) Consistent with Subsection 13.D.4. of the Code of Offenses, through this Act, as approved by Tribal Council resolution, the Tribal Council seeks to expressly authorize the Cannabis Related Business Activities within the Reservation and the use and consumption of Cannabis and Cannabis Products within Designated Consumption Areas, subject to the provisions of this Act.

(j) The robust regulation of Cannabis Related Business Activities within the Reservation will protect the health, safety and welfare of the Band and others, promote self-government and economic self-sufficiency, provide jobs for Band Citizens, and provide revenues to enable the Band to fulfill its governmental responsibilities, including to Band Citizens.

#### **Section 1.04 Purpose.**

(a) The Tribal Council enacts this Act and establishes the Commission to authorize and regulate Cannabis Related Business Activities within the Reservation by Cannabis Facilities and Cannabis Suppliers.

(b) In doing so, the Tribal Council intends:

(1) that this Act, and any Regulations, shall protect the public health, safety, and welfare in a manner substantively similar to State Law regarding Cannabis Related Business Activities; and

(2) that the regulatory and enforcement systems established by this Act, and any Regulations, shall align with the Guidance Priorities to ensure that no Cannabis Related Business Activities are permitted within the Reservation that could substantially depart from the Guidance Priorities.

#### **Section 1.05 Construction.**

(a) This Act, to the extent reasonable, shall be read and interpreted in a manner consistent with the Constitution, but in the event of any inconsistency, the Constitution shall control.

(b) To the extent this Act conflicts with any other Band law, including the Code of Offenses, this Act shall govern.

(c) Any Regulations, to the extent reasonable, shall be read and interpreted in a manner consistent with this Act, but in the event of any inconsistency, this Act shall control.

(d) This Act shall be liberally construed to support the findings of the Tribal Council and accomplish the purposes of this Act.

(e) All references in this Act to any subsection, Section or Chapter shall refer to a subsection, Section or Chapter of this Act, except as otherwise stated in this Act.

### **Section 1.06 Severability.**

If a court of competent jurisdiction holds that any provision or application of this Act is invalid, such judgment shall not affect, impair, or invalidate the remainder of this Act, which shall continue in full force and effect.

### **Section 1.07 Definitions.**

As used in this Act, the below terms, and any derivative of any such terms, shall have the following meanings unless the context clearly requires otherwise:

- (a) “Act” means this Pokagon Band Cannabis Regulatory Act.
- (b) “Applicant” means any Person who has applied for, or requested renewal of, any License.
- (c) “Application” means the form through which an Applicant requests the issuance or renewal of any License.
- (d) “Authorized Visitor” means a person who is twenty-one (21) years of age or older, including individuals providing trade or professional services who are not normally engaged in the operation of a Cannabis Facility or involved in Cannabis Related Business Activities, that:
  - (1) is not an individual that is required to have Cannabis Employee credentials under this Act; and
  - (2) while present in any Cannabis Facility, is reasonably monitored, logged in as a visitor and escorted through any secure areas of a Cannabis Facility by a Cannabis Employee.
- (e) “Band” means the Pokagon Band of Potawatomi Indians, a sovereign, federally recognized Indian Band.
- (f) “Band Citizen” means a duly enrolled member of the Band.
- (g) “Band Owned” means that the entire ownership interest is held by the Band, any wholly owned instrumentality of the Band established under Band law, or any entity that is wholly owned by or through the Band or any instrumentality of the Band established under Band law.
- (h) “Cannabis” means any of the following:
  - (1) a plant or part of the Cannabis plant, whether growing or not;
  - (2) the seeds of the Cannabis plant;
  - (3) the resin extracted from any part of the Cannabis plant;

(4) a compound, manufacture, salt, derivative, mixture, extract, acid, isomer, salt of an isomer, or preparation of any of the above described in this subsection 1.07(g)(1)-(3);

(5) a topical formulation, tincture, beverage, edible substance, or similar product containing Cannabis and other ingredients and that is intended for human consumption;

(6) a product with a THC concentration of more than 0.3% on a dry-weight or per volume basis in the form in which it is intended for sale to a consumer;

Except for the resin extracted from any of the following, Cannabis shall not include any of the following:

(1) the mature stalks of the Cannabis plant;

(2) fiber produced from the mature stalks of the Cannabis plant;

(3) oil or cake made from the seeds of the Cannabis plant;

(4) a compound, manufacture, salt, derivative, mixture or preparation of the mature stalks of the Cannabis plant;

(5) industrial hemp grown;

(6) an ingredient combined with Cannabis to prepare topical or oral administrations, food, drink, or other products; or

(7) a drug for which an application filed in accordance with 21 USC 355 is approved by the Food and Drug Administration.

(i) “Cannabis Accessory” means any equipment, product, material, or combination of equipment, products, or materials, that is specifically designed for use in Cannabis Related Business Activities, or for ingesting, inhaling, or otherwise introducing Cannabis into the human body.

(j) “Cannabis Employee” means, except as otherwise provided in this Act, a person who is twenty-one (21) years of age or older performing work or service for compensation for a Cannabis Facility and includes salaried employees, hourly employees, contract employees, trainees, independent contractors, or any other person given any type of employee credentials or authorized access to the secured area of a Cannabis Facility. The term “Cannabis Employee” does not include any Authorized Visitor. The inclusion of any person in the definition of “Cannabis Employee” who otherwise would not be classified as an employee under applicable law relating to employee classification shall not render such person an employee for any other purpose or grant such person any right, benefit, or opportunity possessed by any employee.

(k) “Cannabis Employee Identification Card” means the identification card issued to each Cannabis Employee by the Commission with the unique number the Commission assigns to each Cannabis Employee.

(l) “Cannabis Employee Identification Number” means the unique number the Commission assigns to each Cannabis Employee.

(m) “Cannabis Facility” means any physical facility located on the Reservation that engages in any Cannabis Related Business Activities within the Reservation but excluding any physical facility at which no Cannabis or Cannabis Product is located.

(n) “Cannabis Facility License” means the License required to operate a Cannabis Facility within the Reservation, as described in Chapter 9.

(o) “Cannabis Goods or Services” means any Cannabis, Cannabis Product, Cannabis Accessories, or Cannabis Related Business Activities.

(p) “Cannabis Product” means a topical formulation, tincture, beverage, edible substance, or similar product containing Cannabis and other ingredients and that is intended for human consumption, and the dried leaves, flowers, plant resin, or extract of the Cannabis plant, but not the seeds, stalks, and roots of the plant.

(q) “Cannabis Related Business Activities” means the planting, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, packaging, storing, transporting, exchanging, distributing, or selling of any Cannabis, including any Cannabis Product, or any Cannabis Accessories.

(r) “Cannabis Supplier” means any Person that engages in any Cannabis Related Business Activities within the Reservation with any business relationship with a Cannabis Facility, including supplying, transporting, or testing any Cannabis, Cannabis Product, or Cannabis Accessory. “Cannabis Supplier” does not include the Band or any Band Owned entity, or any Cannabis Facility.

(s) “Cannabis Supplier License” means the License required to operate as a Cannabis Supplier within the Reservation, as described in Chapter 10.

(t) “Cannabis Transporter Vehicle” means any vehicle used by a Licensee to transport Cannabis or Cannabis Products.

(u) “Commission” means the Cannabis Regulatory Commission established under Chapter 2 of this Act.

(v) “Code of Offenses” means the Band Code of Offenses.

(w) “Compact” means any compact between the Band and another government or government subdivision or agency, including the State, concerning Cannabis.

(x) “Constitution” means the Band Constitution.

(y) “Control Person” means any person who has the power to direct or cause direction of the management and policies of the business operations of a Cannabis Supplier as verified by the Cannabis Supplier’s ownership and organization structure described in the documents establishing the existence of the Cannabis Supplier and the designation of persons authorized to act on behalf of the Cannabis Supplier.

(1) A person shall be presumed to have control when such person owns shares of any corporation that is not a publicly traded corporation and such person owns, controls, or holds the power to vote ten percent (10%) or more of the voting securities of the corporation.

(2) Control Persons include members of the board of directors, chief executive officer, chief operating officer, and any person with the responsibility and authority to manage the contract on behalf of the Cannabis Supplier with respect to the Cannabis Goods or Services being provided to a Cannabis Facility.

(z) “Designated Consumption Area” means the area within the grounds of a retail Cannabis Facility that the Cannabis Facility has designated, and the Commission has licensed, for the consumption of Cannabis or Cannabis Products by adults who are twenty-one (21) years of age and older.

(aa) “Fiscal Year” means the Band government fiscal year.

(bb) “General Counsel” means the Band Office of General Counsel.

(cc) “Guidance Priorities” means the priorities regarding federal Cannabis enforcement set forth in the U.S. Department of Justice memorandum dated August 29, 2013 from Deputy Attorney General James Cole titled “Guidance Regarding Marijuana Enforcement” and the U.S. Department of Justice memorandum dated October 28, 2014 from Director Monty Wilkinson titled “Policy Statement Regarding Marijuana Issues in Indiana Country” (notwithstanding the rescission of those memoranda by U.S. Department of Justice memorandum dated January 4, 2018 from Attorney General Jefferson Sessions titled “Marijuana Enforcement”):

(1) preventing the distribution of Cannabis to minors;

(2) preventing revenue from the sale of Cannabis from going to criminal enterprises, gangs, and cartels;

(3) preventing the diversion of Cannabis from states where it is legal under state law in some form to other states;

(4) preventing state-authorized Cannabis activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;

(5) preventing violence and the use of firearms in the cultivation and distribution of Cannabis;

(6) preventing drugged driving and the exacerbation of other adverse public health consequences associated with Cannabis use;

(7) preventing the growing of Cannabis on public lands and the attendant public safety and environmental dangers posed by Cannabis production on public lands; and

(8) preventing Cannabis possession or use on federal property.

(dd) “Include”, whether or not capitalized, shall be deemed to be followed by “without limitation”.

(ee) “License” means a limited grant of authority by the Commission under this Act to a specific Person to engage in certain Cannabis Related Business Activities that cannot be performed or engaged in without a License.

(ff) “Licensee” means any Person who has been issued a valid and current License under this Act.

(gg) “Person” means any business, proprietorship, association, partnership, syndicate, corporation, firm, joint venture, trust or other form of business association or entity, labor organization, state, local government, government instrumentality or entity, as well as a natural person, while “person”, without an initial capital “P”, refers exclusively to a natural person.

(hh) “PDA” means the Pokagon Development Authority.

(ii) “Regulation” means any regulation promulgated by the Commission under this Act.

(jj) “Reservation” means, pursuant to the Pokagon Restoration Act or other applicable federal law, all lands within the State:

(1) All lands within the State, the title to which is held in trust by the United States for the benefit of the Band; and

(2) All lands proclaimed by the Secretary of the Interior to be part of the Band’s reservation.

“Reservation” includes any rights-of-way running through the Reservation.

(kk) “State” means the State of Michigan.

(ll) “State Law” means all statutes and regulations of the State, including any regulations promulgated by the State Regulatory Agency.

(mm) “State Regulatory Agency” means the Michigan Marihuana Regulatory Agency.

(nn) “State License” means a license issued by the State Regulatory Agency that allows a person to operate a “marihuana establishment” as defined under State law.

(oo) “Temporary License” means a limited grant of authority by the Commission under this Act on an interim basis pending a decision regarding whether or not to grant a License to a specific Person to engage in certain Cannabis Related Business Activities that cannot be performed or engaged in without a License granted by the Commission under Chapter 9 or 10.

(pp) “Tribal Council” means the governing body of the Band established under Article IX of the Constitution.

(qq) “Tribal Court” means the trial level court and the appellate level court of the Band.

(rr) “Tribal Police” means the Band Tribal Police.

## **CHAPTER 2**

### **Commission**

#### **Section 2.01 Establishment.**

The Tribal Council establishes the Commission as an independent governmental subdivision of the Band.

#### **Section 2.02 Governmental Attributes.**

(a) As an independent governmental subdivision of the Band, the Commission shall possess all the rights, privileges, and immunities of the Band, including the sovereign immunity of the Band from suit absent express consent from the Tribal Council.

(b) The exercise of any power or authority under this Act shall constitute an exercise of a government function of the Band.

(c) Each Commissioner is an officer of the Band government and shall be immune from suit when acting in their official capacity to the fullest extent permitted by law.

(d) The Commission, and not any Commissioner, shall be the real party in interest for any action arising pursuant to this Act.

#### **Section 2.03 Indemnification.**

(a) The Tribal Council may, at its discretion, indemnify, in whole or in part, current and former Commissioners and Commission employees from any damages, liabilities, fines, penalties, and reasonable attorneys’ fees arising from:

(1) in the case of a Commissioner, the Commissioner acting in good faith and in manner the Commissioner reasonably believed to be in the Commissioner’s official capacity; and

(2) in the case of a Commission employee, the Commission employee acting in good faith and in a manner the Commission employee reasonably believed to be within the scope of the Commission employee’s employment.

(b) Upon becoming aware of any criminal investigation or charge or any civil lawsuit to which subsection 2.03(a) may apply, the Commissioner or Commission employee shall immediately notify the Commission of such investigation, charge or civil lawsuit and may submit a request a written request for indemnification to the Commission. The Commission

shall forward any request for indemnification to the General Counsel. The decision of the Tribal Council to approve or deny a request shall be final and not subject to review.

#### **Section 2.04 Delegation of Regulatory Authority.**

By its enactment of this Act, the Tribal Council delegates to the Commission sole authority and responsibility to regulate all Cannabis Related Business Activities within the Reservation, as expressly provided by this Act. The Commission shall ensure that all Cannabis Related Business Activity conducted within the Reservation is conducted in conformance with this Act, the Regulations, and any Compact.

#### **Section 2.05 Independence of Commission.**

(a) In all matters subject to its regulatory authority, the Commission shall be and act independently and autonomously from the Tribal Council.

(b) No review by the Tribal Council of any actions of the Commission shall be required or permitted, except as may be otherwise explicitly provided in this Act.

(c) Notwithstanding the foregoing, the Commission shall be subject to all Band law, including the Code of Ethics and the Open Meetings Act, along with generally-applicable Band administrative policies and procedures that are not in conflict with this Act, except to the extent that an exception for the Commission is expressly provided.

(d) The Commission's fiscal year shall be the fiscal year of the Band.

#### **Section 2.06 Funding.**

(a) Commission funding shall be in an amount adequate for the Commission to properly fulfill its regulatory responsibilities under this Act.

(b) The amount of the Commission funding shall be established annually for the subsequent Fiscal Year through a detailed annual budget to be prepared by the Commission, which shall reflect the reasonable costs of Cannabis regulation pursuant to this Act, any Regulations, and any Compact.

(c) The Commission budget shall consider any unexpended funds retained by the Commission at the end of the prior Fiscal Year, excluding funds that are obligated for costs or expenses incurred during the prior Fiscal Year.

(d) The Tribal Council shall not reduce the Commission's annual budget during any Fiscal Year but may approve requests by the Commission to supplement the budget when necessary.

(e) The Commission shall present its annual budget for review and approval in accordance with the Band's budget process.

(f) The Commission shall have the authority to expend funds within the approved budget without further authorization from the Tribal Council, subject to generally applicable Band accounting and procurement policies.

(g) The funding for all costs and expenses of the Commission shall be exclusively from the Commission's approved budget.

### **Section 2.07 Composition.**

The Commission shall be governed by three (3) Commissioners appointed by the Tribal Council, at least one (1) of whom shall be a Band Citizen. When making the initial appointments to the Commission, the Tribal Council shall select a Chairperson, a Vice-Chairperson, and a Secretary.

### **Section 2.08 Qualifications.**

(a) No person shall be a Commissioner if that person is:

(1) Under the age of twenty-one (21);

(2) A member or officer of the Tribal Council;

(3) A judge or employee of the Tribal Court;

(4) A convicted felon;

(5) An employee or an independent contractor of a Cannabis Facility or Cannabis Supplier, or otherwise has any direct or indirect financial interest in any Cannabis Facility or Cannabis Supplier;

(6) Employed or otherwise serves in a position with responsibilities that create a conflict of interest or the appearance of a conflict of interest with the duties and responsibilities of the Commission, as determined by the Tribal Council; or

(7) Unable to establish and maintain eligibility to serve as a Commissioner under the requirements set forth in this Chapter.

(b) In addition to the above qualifications, the experience and training of a Commissioner must be of sufficient scope, depth, and relevancy to enable the person to fulfill all duties as shown through at least five (5) years' relevant experience at a professional or management level in one or more of the following areas: regulatory compliance or regulatory affairs, law enforcement, criminal or civil investigation, criminal justice, public safety, law or legal services, judicial services or alternative dispute resolution services, business management or business finance, public administration or public accounting, medicine or public health, pharmacology, laboratory testing, commercial horticulture, or agriculture. A bachelor's degree from an accredited institution in a relevant area of study is required.

(c) Before any person may take office as a Commissioner, the Tribal Council shall cause a comprehensive background investigation to be conducted by the Tribal Police on such person

and shall only appoint a person to the Commission after it determines that all qualifications set forth in this Section have been met.

(1) All persons, before being appointed to serve on the Commission, shall consent to, and fully cooperate with, a comprehensive background investigation.

(2) Persons selected for appointment to the Commission shall complete an application on a form prescribed by the Tribal Police.

(3) The investigator shall create an investigative report for the Tribal Council, which shall include factual findings regarding each qualification standard for which there is clear and convincing evidence to support a finding and regarding qualification standards for which such finding cannot be made, and a statement of all relevant facts and information regarding such qualification standard. The Tribal Police shall keep the identity of each person interviewed in the investigation confidential, except to the extent disclosure is permitted under applicable Band law.

(4) The Tribal Police shall create a separate file for each person that was subjected to a background investigation, which shall include all forms, documents, reports, and other information related to the investigation that is in the possession of the Tribal Police. The Tribal Police shall retain such files for no less than three (3) years from the date each such person ceased to hold the position of Commissioner.

(5) Upon completion of the background investigation, the Tribal Council shall review the report and findings of the investigation in a closed session. The Tribal Council shall make a preliminary determination in open session, as provided in this Section, to either approve or deny the appointment, but the background investigation report and all information contained therein shall remain confidential and shall not be included in the public record of the Tribal Council session unless the person requests that a hearing to contest the preliminary determination be conducted before the Tribal Council in open session pursuant to this Section.

(6) The Tribal Council shall provide written notice to any person that has been preliminarily determined to not meet the qualifications for appointment to the Commission. The notice shall fully describe the basis upon which the preliminary determination was made and shall inform such person of the right to request a hearing before the Tribal Council to contest with new evidence and testimony the Tribal Council's preliminary determination. The hearing under this subsection shall be conducted by and before the Tribal Council in closed session unless the candidate for appointment elects in writing to have the hearing open to the public.

(7) Following review of the investigative report and findings, and any hearing that may be conducted pursuant to this Section, the Tribal Council shall make a final determination as to whether the person meets the qualifications for appointment to the Commission. Based on such decision, the Tribal Council shall either appoint such person to the Commission or decline to make the appointment. The final determination of the Tribal Council shall be final and not subject to review, including by the Tribal Court.

### **Section 2.09 Initial Terms of Office.**

(a) Commissioners shall serve staggered three (3) year terms. To achieve such staggered terms, the initial Commissioner designated by the Tribal Council to serve as:

- (1) Chairperson shall serve an initial term of approximately three (3) years;
- (2) Vice-Chairperson shall serve an initial term of approximately two (2) years; and
- (3) Secretary shall serve an initial term of approximately one (1) year.

(b) All subsequent appointments shall be for three (3) year terms, and each such appointment shall commence on the same calendar date in the year of the appointment, notwithstanding any hold-over pursuant to Section 2.10. Commissioners may serve successive terms of office without limitation.

### **Section 2.10 Hold-Over.**

A Commissioner may, at the discretion of the Tribal Council, continue to serve as Commissioner, with full authority, after the completion of the Commissioner's term until such time as a replacement is appointed and sworn into office.

### **Section 2.11 Resignation.**

A Commissioner may resign from the Commission by submitting, in writing, a signed and dated letter of resignation to the Secretary or Chairperson and the Tribal Council Secretary or Tribal Council Chairperson. The resignation shall be effective as of the date tendered unless the Commissioner and the Tribal Council agree to a different effective date. The Chairperson shall forward a copy of the resignation letter to the Tribal Council Secretary.

### **Section 2.12 Removal.**

(a) The Commission may, by majority vote, request that the Tribal Council initiate the procedure to remove a Commissioner, and the Tribal Council may, on its own initiative, initiate such procedure for any Commissioner by an affirmative vote of at least eight (8) members of the Tribal Council for any of the following reasons:

- (1) Nonfeasance, including the persistent failure to perform the duties of the office, including failure to attend a significant number of meetings;
- (2) Misfeasance, including any substantial or repeated failure to exercise authority or discharge responsibilities in conformity with this Act, any Regulation, or any Compact;
- (3) Malfeasance, including:
  - (i) a conviction or a plea of guilty or no contest regarding any felony criminal offense or any other criminal offense involving dishonesty or moral turpitude;
  - (ii) a major violation of the Code of Ethics;

(iii) a knowing violation of this Act, any Regulation, any other applicable Band law that assigns duties or responsibilities specifically to the Commission, or any Compact; or

(iv) misconduct in office or personal misconduct that is inconsistent with service on the Commission or threatens the integrity or public image of the Commission.

(v) Any failure to maintain the necessary qualifications for office prescribed in this Act;

(vi) Any physical or mental disability that prevents the performance of duties.

(b) If the Tribal Council has reason to believe that cause for removal of a Commissioner exists, the Tribal Council shall direct that an investigation be conducted by independent legal counsel approved by the Tribal Council.

(c) If the Tribal Council determines that the investigation substantiates the existence of cause for removal, the Tribal Council shall schedule a hearing for the removal of such Commissioner and notify the Commissioner of the time and place for a hearing before the Tribal Council, which notice shall describe the purpose for the hearing and shall fully identify all claims and allegations to be addressed at the hearing.

(d) Any investigation and hearing under this Section shall be conducted by and before the Tribal Council.

(e) The Tribal Council shall provide the Commissioner with copies of, or access to, all documents, data, and physical evidence regarding the claims and allegations to be addressed at the hearing, which material shall be provided to the Commissioner in adequate time prior to the hearing to allow the Commissioner to fully prepare a defense.

(f) The decision of the Tribal Council at the conclusion of the hearing shall be final and not subject to review, including by the Tribal Court.

### **Section 2.13 Vacancies.**

(a) Vacancies on the Commission shall be filled by Tribal Council appointment for the balance of the unexpired term.

(b) The Tribal Council shall provide notice of the vacancy to Citizens and an opportunity to respond prior to filling the vacancy.

(c) The Tribal Council shall make a final determination regarding the eligibility of each prospective candidate to the Commission in accordance with the qualifications and procedures described in this Chapter.

(d) The Tribal Council shall endeavor to fill any vacancy on the Commission within sixty (60) days of the vacancy, or as soon thereafter as possible, in a manner consistent with Band law.

### **Section 2.14 Ethics Requirements.**

Commissioners shall comply with all requirements of the Code of Ethics and shall be subject to the authority of the Ethics Board established by the Code of Ethics.

### **Section 2.15 Compensation.**

(a) Commissioners shall be compensated at rates that fall within a grid to be established by the Tribal Council.

(b) The Tribal Council may, in its discretion, require the Salary Commission to evaluate the Commission positions and recommend a compensation grid to the Tribal Council.

(c) The Tribal Council shall review the rates of compensation for Commissioners on an annual basis upon written request by the Commission and shall adjust such rates as the Tribal Council determines to be appropriate to address increases in the cost of living, wage deflation, or other economic or labor issues relevant to service on the Commission.

(d) The Tribal Council shall not reduce the rate of compensation for any Commissioner during a Commissioner's term of office.

(e) Commissioners shall be entitled to reimbursement for actual expenses incurred on Commission business, including necessary travel expenses, subject to any written guidelines and requirements the Tribal Council may establish.

### **Section 2.16 Powers and Duties.**

(a) General. The Commission shall ensure that all Cannabis Facilities and Cannabis Suppliers within the Reservation are operated in compliance with this Act, any Regulations, and any Compact. In exercising its regulatory authority, the Commission shall avoid unnecessary interference with the right of any Cannabis Facility to exercise its judgment in the management of its operations.

(b) Licensing. The Commission shall have the duty and power to conduct investigations and determine the eligibility of Applicants for any License, to limit, revoke, terminate, condition, suspend, or restrict any License, and to reprimand, warn, or fine a Licensee when the same will further the purposes and requirements of this Act.

(c) Regulations. The Commission shall have the duty and power to develop, propose, and promulgate Regulations regarding all Cannabis Related Business Activities in accordance with Chapter 3.

(d) Other Powers. In addition to and in conjunction with the enumerated regulatory powers set forth above in this Act, the Commission shall also have the power to:

(1) suspend or revoke a License in accordance with Chapter 12.

(2) initiate administrative proceedings before the Commission or civil actions in courts of competent jurisdiction, at the Commission's discretion, to enforce any provision of this Act, any Regulation, and any Compact;

(3) compromise, negotiate, or settle any dispute to which the Commission is a party relating to the Commission's authorized activities;

(4) enter through its investigators, agents and the Tribal Police, at any time, a Cannabis Facility or other place of Cannabis Related Business Activity in order to gain access to, inspect, examine, copy, and audit all records, equipment, supplies or other items concerning any Cannabis Related Business Activities within the Reservation;

(5) investigate, review, decide, adjudicate, enforce, and undertake such other regulatory activities regarding any matters subject to the Commission's jurisdiction as necessary for the Commission to carry out its express duties and responsibilities under this Act;

(6) conduct such hearings as the Commission may deem appropriate in carrying out its duties and responsibilities under the Act in accordance with Chapter 13 and any Regulations.

(7) provide information obtained through audits or other investigations that indicates a violation of any applicable law, including this Act and any Regulations, to the appropriate law enforcement officials and to cooperate with such agencies in the investigation and prosecution of charges brought as a result of such violations;

(8) utilize the services of public and private entities in accordance with applicable law, including courts of competent jurisdiction, the Tribal Police and other law enforcement agencies, and the Band Prosecutor in exercising its powers and carrying out its responsibilities and duties;

(9) utilize the services of the General Counsel to assist the Commission with its legal affairs, but if the General Counsel, at its discretion, is unable to directly assist, the General Counsel shall make other legal counsel engaged by the Band available to the Commission; and

(10) coordinate with the Tribal Council regarding matters of compliance, including any Compact.

(e) Monitoring. The Commission shall have the power and duty to monitor all Cannabis Facilities and Cannabis Suppliers within the Reservation for compliance with this Act, any Regulations, or any Compact, subject to any limits on the Commission's power under this Act or other Band law.

(f) Investigations. The Commission shall have the power to require the Executive Director to undertake such investigations and inspections as the Commission deems appropriate, review the results of such related investigations, and initiate enforcement actions as it deems necessary in accordance with this Act and any Regulations.

(g) Access. The Commission, through the Executive Director and other authorized Commission personnel, shall have access to all areas of a Cannabis Facility during the hours of operation or any Cannabis Transporter Vehicle within the Reservation, and to all records, files, information, and data of any related operation, wherever located, and may interview any employee, agent, or representative of any related operation with respect to matters relating to the

operation of any Cannabis Facility. Advance notice to the Cannabis Facility or Cannabis Supplier, or any employee, agent, or representative of the Cannabis Facility or Cannabis Supplier shall not be required for the Commission to exercise the authority described in this subsection.

(h) Enforcement. When information received by the Commission through inspections, audits or investigations indicates a violation of this Act, any Regulations, any Compact, any License, or any other applicable law, the Commission may, as warranted under the circumstances:

- (1) refer the matter to appropriate law enforcement officials or other appropriate governmental agencies;
- (2) pursue further investigation of the matter;
- (3) initiate administrative enforcement proceedings or a civil action in the Tribal Court to fine the Licensee for the violation, or to suspend, restrict, or revoke any License, or issue a letter of reprimand or a warning in accordance with the procedures in this Act or any Regulations; or
- (4) consult with representatives of the Licensee to correct the violation, or resolve the matter, without formal proceedings.

(i) Due Process. Any enforcement action taken by the Commission shall:

- (1) be fair and reasonable under the circumstances;
- (2) be proportionate to the violation;
- (3) be designed to promote the goals of correction and improvement, unless the nature or severity of the violation is such that the goals of correction and improvement would be unrealistic;
- (4) not exceed its duties or powers under this Act or any Regulations;
- (5) be conducted in accordance with the Hearing Procedures described in Chapter 13 and is subject to appeal pursuant to Chapter 14.

(j) Audit. The Commission shall ensure that an independent audit of the operations of each Cannabis Facility is conducted annually and that the resulting audit report is submitted to the Commission not later than thirty (30) days from the completion of the audit. All contracts with Cannabis Suppliers in an amount in excess of \$25,000.00 annually, and any other matter appropriate to include in an independent financial audit that the Commission deems necessary or appropriate under any Regulations, shall be specifically included within the scope of such audit.

## **Section 2.17 Meetings.**

(a) Regular Meetings. The Commission shall conduct a Regular meeting once a month at the Commission's main office or at any other designated meeting place. The Commission shall provide by resolution the time and place for Regular meetings. A meeting agenda shall be

distributed to all Commission members at least forty-eight (48) hours in advance of the Regular meeting, which shall be subject to change by a majority vote of the Commission at such meeting.

(b) Special Meetings. The Chairperson shall call special meetings when necessary to carry out the official duties and responsibilities of the Commission. Notice of each Special meeting may be given to each Commissioner by hand delivery, telephone, mail, via electronic delivery to the Commissioner's Band e-mail account, as applicable, or such other method as the Commission may establish. Notice of the Special meeting and a proposed agenda shall be delivered to Commissioners at least forty-eight (48) hours in advance of such meeting and shall include the date, time, and place of the meeting. The agenda for the Special meeting shall be limited to the business proposed in the meeting notice, but additional business may be added to the agenda for a Special Meeting on the day of the meeting upon an affirmative vote of at least two-thirds (2/3) of the Commissioners in attendance at the meeting. However, adding an item to such agenda on the day of a Special Meeting undermines the purpose and intent of public notice and is disfavored.

(c) Emergency Meetings. The Chairperson may call an emergency meeting with less than twenty-four (24) hours' notice, but only if the business proposed to be taken up at the Emergency Meeting cannot reasonably wait for a Special or Regular meeting. The Chairperson shall make every reasonable effort to provide all Commissioners with as much prior notice of the meeting as possible under the circumstances. The agenda for the Emergency meeting shall be limited to the emergency business proposed in the meeting notice, but additional emergency business may be added to the agenda for an Emergency Meeting on the day of the meeting upon an affirmative vote of at least two-thirds (2/3) of the Commissioners in attendance at the meeting. However, adding an item to such agenda on the day of an Emergency Meeting undermines the purpose and intent of public notice and is disfavored.

(d) Waiver of Notice. The requirements for notice to the Commissioners regarding any Special or Regular meeting may be waived if all Commissioners are present at such meeting and consent to the calling of the meeting.

(e) Meeting Procedures. All meetings of the Commission shall be open to Band Citizens, but the Commission may close any portion of any meeting to Band Citizens as permitted under the Band's Open Meetings Act. The Commission shall prescribe rules of procedure regarding the conduct of its meetings, but such rules may not conflict with this Act, the Open Meetings Act, or other applicable Band law. Any question regarding meeting procedure that is not addressed by this Act, the Open Meeting Act, other applicable Band law, or by rules of procedure established by the Commission, may be resolved by consulting Roberts Rules of Order.

### **Section 2.18 Quorum.**

A quorum of the Commission shall consist of two (2) Commissioners. All decisions shall be made by a majority vote of a quorum of the Commission, unless indicated otherwise in this Act, or other Band law.

### **Section 2.19 Officers.**

(a) As stated in Section 2.07, the Tribal Council shall select a Chairperson, a Vice-Chairperson, and a Secretary when making the initial appointments to the Commission under this Act. Thereafter, the Commission shall select from among its members, a Chairperson, a Vice-Chairperson, and a Secretary.

(b) The term of office for officer positions shall be one (1) year, and Commissioners may serve more than one term in that capacity.

(c) The Vice-Chairperson shall assume the duties of the Chairperson in the Chairperson's absence.

### **Section 2.20 Offices.**

(a) The Commission shall maintain a permanent administrative office, which shall serve as the Commission's main business office and shall be the site at which the Commission's physical records and documents are maintained and stored on a permanent basis.

(b) No person except a Commissioner or other authorized employee or agent of the Commission may possess a key to or may enter any Commission office without the permission of the Commission, provided that this limitation shall not prohibit the Tribal Police from exercising authority granted under applicable law.

(c) No person may access non-public Commission records except a Commissioner and persons expressly authorized in writing by the Commission, including an attorney for the Commission, provided that this limitation shall not prohibit the Tribal Police from exercising authority granted under applicable law.

### **Section 2.21 Record-Keeping.**

The Commission shall maintain complete records regarding the following:

(a) Applications, financial statements, fingerprints, contracts, suspension and cancellation notices and correspondences of or with all Applicants;

(b) Licenses;

(c) meeting minutes from all Commission meetings;

(d) transcripts or minutes from all hearings conducted by the Commission;

(e) Compact compliance;

(f) reports relating to disputes, complaints, or other issues that affect the integrity of a Cannabis Facility or Cannabis Supplier;

(g) Commission budget and expenditures;

(h) communications and correspondence with the Tribal Council, Band agencies, and officials, and state and federal agencies and officials; and

(i) any other records or documents which are reasonably necessary for the Commission to fulfill its duties and responsibilities under this Act or that the Commission deems necessary or appropriate.

### **Section 2.22 Reports.**

(a) The Commission shall make quarterly reports to the Tribal Council within thirty (30) days after the end of each quarter, which shall contain the following information:

- (1) number and types of Licenses and Cannabis Employee Identification Cards issued during the previous quarter;
- (2) number and types of License denied, suspended, restricted, or revoked during the previous quarter and commentary helpful to explain such actions where appropriate;
- (3) report of any events of non-compliance or violations of this Act, any Regulations, or any Compact, but such reports shall not include confidential information concerning any pending regulatory or criminal investigation;
- (4) a report of Commission expenditures for the prior quarter;
- (5) a summary of any Commission travel and training;
- (6) all other information that the Commission deems relevant in order to keep the Tribal Council adequately informed on all current Cannabis regulatory matters.

(b) Nothing in this Section shall be construed to authorize the Commission or Commission staff to provide the Tribal Council with any confidential information pertaining to a pending regulatory or criminal investigation.

## **CHAPTER 3**

### **Regulations**

#### **Section 3.01 Intent.**

Under Section 1.04, in enacting this Act, the Tribal Council intends:

(a) that this Act, and any Regulations, shall protect the public health, safety, and welfare in a manner substantively similar to State Law regarding Cannabis Related Business Activities; and

(b) that the regulatory and enforcement systems established by this Act and any Regulations, shall align with the Guidance Priorities to ensure that no Cannabis Related Business Activities are permitted within the Reservation that could substantially depart from the Guidance Priorities.

#### **Section 3.02 Duty and Authority.**

The Commission shall have the duty and power to develop, propose, and promulgate Regulations relating to Cannabis Related Business Activities as required by applicable law, including this

Act, or deemed prudent by the Commission, but such Regulations shall be consistent with the intent of Tribal Council stated in Section 3.01.

### **Section 3.03 Regulations.**

(a) The Commission shall give public notice of its intent to adopt any Regulation by:

(1) publishing a copy of the notice on the Band's website and, at the Commission's discretion, also posting it at one or more locations on Band land where public notices are usually posted; and

(2) delivering a copy of the notice by U.S. mail or other appropriate means to the Tribal Council Secretary, the General Counsel, and every Cannabis Facility and Cannabis Supplier holding a current and valid license.

(b) The notice shall include a copy of the proposed Regulation, which shall identify each specific amendment to any existing Regulation, a description of the nature and effect of the proposed Regulation, and a statement that comments on the proposed Regulation may be submitted no later than thirty (30) days from the date of the notice.

(c) The Commission shall review all comments received during the comment period and, based on such comments, may make such changes to the proposed Regulation as the Commission deems necessary or appropriate.

(d) The Commission shall establish a record describing its efforts to fully consider and address all comments received during the comment period regarding the proposed Regulation that are relevant and raise a valid issue regarding the impact, efficiency, or suitability of such Regulation in fulfilling its intended purpose.

(e) If the Commission determines to proceed with approval of a final Regulation, such approval shall be made by resolution that sets the effective date of the Regulation. The Commission shall give public notice of its adoption of the final Regulation in accordance with the same requirements for its notice of intent to adopt the Regulation, which shall include a summary of the final Regulation and the changes it made to the proposed Regulation. To the extent practicable, the notice of adoption of final Regulations shall include written responses to all substantive comments, but the Commission may offer a single response to substantially similar comments.

### **Section 3.04 Expedited Regulations.**

(a) If the Commission concludes, after investigation, that there is a direct and immediate threat to the health, welfare, or safety of the Band, Band Citizens or other Persons, the Commission may expedite the promulgation of Regulations relating to Cannabis Related Business Activities pursuant to this Section 3.04.

(b) The Commission shall provide the Tribal Council Secretary, the General Counsel, and every Cannabis Facility and Cannabis Supplier with prior written notice of its intent to

promulgate Regulations on an expedited basis prior to promulgating the expedited Regulations or as soon as practicable thereafter.

(c) Expedited Regulations shall become effective upon adoption by resolution by the Commission. The resolution adopting the expedited Regulations shall specify the time-period that the expedited Regulations shall remain in effect, which shall not exceed ninety (90) days.

(d) The Commission shall give public notice of its adoption of the expedited Regulations by:

(1) publishing a copy of the notice on the Band's website and, at the Commission's discretion, by also posting it at one or more locations on Band land where public notices are usually posted; and

(2) delivering a copy of the notice by U.S. mail or other appropriate means to the Tribal Council Secretary, the General Counsel, and every Cannabis Facility and Cannabis Supplier holding a current and valid license.

(e) The Commission shall review expedited Regulations within thirty (30) days of the date of its adoption and may only promulgate expedited Regulations as final, permanent Regulations in accordance with the requirements of Section 3.03.

### **Section 3.05 Limitations.**

(a) Nothing in this Act or any Regulation shall grant, expand, or confirm in any way whatsoever any State jurisdiction. Any State Law that is made applicable within the Reservation under this Act or any Regulations shall apply solely as a matter of Band law.

(b) Nothing in this Act or any Regulations shall serve as a concession or admission of any nature whatsoever regarding the jurisdiction of the State and any burden arising from compliance with any State Law that is made applicable within the Reservation under this Act or any Regulations, which shall apply solely as a matter of Band law and not of State law.

(c) Nothing in this Act shall limit any rights, powers, duties, or privileges granted under the Constitution or applicable law, including to the Band, the PDA, or the Commission.

(d) To the extent that any State Law that is made applicable within the Reservation under this Act or any Regulations grants the State, including the State Regulatory Agency, any jurisdiction or authority to enforce State law, including to inspect, audit, record, stop, seize, encumber, assess, prosecute, fine, or otherwise, nothing in this Act nor any Regulation shall authorize the State to exercise any such jurisdiction or authority within the Reservation.

## **CHAPTER 4**

### **Commission Organization**

#### **Section 4.01 Divisions.**

(a) The Commission shall be organized into the Divisions identified in this Section, which shall be under the management and supervision of the Executive Director.

(1) Licensing and Investigation Division. The Licensing and Investigation Division shall perform the following Commission duties and responsibilities:

(i) receiving and processing all Applications;

(ii) conducting background investigation regarding all Applicants and all other investigations on behalf of the Commission that are required or permitted under this Act; and

(iii) such other responsibilities as the Commission may assign to it.

(2) Audit, Compliance, and Enforcement Division. The Compliance and Enforcement Division shall perform the following Commission duties and responsibilities:

(i) auditing compliance with this Act, any Regulations, and any Compact, including requirements to conduct annual independent financial audits and adherence to standards regarding financial oversight and accounting of revenues from any Cannabis Facility;

(ii) monitoring and evaluating compliance with this Act, any Regulations, and any Compact, including all audit and financial oversight requirements regarding Cannabis Facility revenues;

(iii) pursuing enforcement activities for the failure of any Cannabis Facility or Cannabis Supplier to comply with this Act, any Regulations, or any Compact; and

(iv) such other responsibilities as the Commission may assign.

(b) The Commission may establish additional divisions and may further organize itself into any functional department, section, or office that it deems necessary for the effective and efficient operation of the Commission.

#### **Section 4.02 Executive Director.**

As stated in Chapter 5, the Commission shall be organized under an Executive Director, who shall, subject to Commission supervision, oversee, manage, and supervise the day-to-day operations of the Commission and its Divisions.

#### **Section 4.03 Deputy Director.**

The Commission may, at its discretion, create and fill a Deputy Director position for one or more of the Divisions.

## **CHAPTER 5**

### **Executive Director**

#### **Section 5.01 Appointment.**

(a) The Tribal Council shall appoint the first Executive Director appointed under this Act. Appointments to fill any vacancy in the position of Executive Director shall be made by nomination of the Commission, subject to the consent of the Tribal Council. The Executive Director shall be under the exclusive supervision and authority of the Commission.

(b) To be appointed Executive Director, a person must:

(1) possess experience and training of sufficient scope, depth, and relevancy to enable the person to direct the work of the Commission, as shown through at least five (5) years' relevant experience at a professional or management level in one or more of the following areas: regulatory compliance or regulatory affairs, law enforcement, criminal or civil investigation, criminal justice, public safety, law or legal services, judicial services or alternative dispute resolution services, business management or business finance, public administration or public accounting, medicine, public health, pharmacology, laboratory testing, commercial horticulture, or agriculture. A bachelor's degree from an accredited institution in a relevant area of study is required.

(2) establish and maintain eligibility to serve as Executive Director under the qualifications that apply to Commissioners;

(3) not have served as a Commissioner for two (2) years prior to the date of appointment as Executive Director; and

(4) be able to devote full time and attention to the duties of the Executive Director and the business of the Commission.

(c) The Executive Director shall be eligible for an annual salary and fringe benefits as determined by the Commission, the cost of which shall be included in the Commission's annual budget submitted for Tribal Council approval.

### **Section 5.02 Removal and Vacancy.**

(a) The Commission may, by majority vote, request that the Tribal Council initiate a procedure for the removal of the Executive Director for any of the reasons stated in this Act for removal of a Commissioner, but if the reason for seeking the Executive Director's removal involves the failure to remain eligible under any qualification that applies to the Commissioners, or for any other reason that threatens the integrity or public image of the Commission, as determined by the Commission, the Commission may suspend the Executive Director, with pay, pending the outcome of the removal proceeding.

(b) In the event of any vacancy in the Executive Director position, the Commission shall endeavor to promptly nominate, subject to the consent of the Tribal Council, another qualified person to fill the vacancy. The Commission may, subject to the consent of the Tribal Council, assign the duties of the Executive Director to a one or more Commissioners or Commission employees on an interim basis until the Tribal Council fills the vacancy in the position of Executive Director.

### **Section 5.03 Powers and Duties.**

The Executive Director shall have the power and duty, subject to Commission supervision, to carry out on behalf of the Commission the administrative and executive requirements of the Commission under this Act. Without limitation, the Executive Director:

(a) shall provide administrative support to the Commission, including managing and supervising all Commission staff, consultants, and contractors;

(b) shall develop the Commission's annual budget for the Commission's review and approval and oversee the Commission's compliance with the Commission budget;

(c) shall, in compliance with Band law and applicable policies and other applicable law and in coordination with the Band's Department of Human Resources, be responsible for human resource and personnel matters, including the recruitment, hiring, supervision, and discipline of Commission employees, whose positions shall be established by written position descriptions, which shall be subject to the approval of the Commission, but employees who are suspended without pay or terminated shall be afforded the right to appeal the decision to the Commission, subject to such standards and procedures as the Commission may establish;

(d) may negotiate and enter into contracts for the acquisition of goods and services required by the Commission and may otherwise expend Commission funds as needed for the operation of the Commission, subject to such limitations and requirements as the Commission may establish, but unless the Commission establishes a different limitation, the Executive Director may not enter into contracts exceeding \$50,000 in the aggregate without the prior approval of the Commission and such contract expenditure must be within the Commission budget.

(e) shall be responsible for the day-to-day operations of the Commission, including maintaining oversight of the Divisions, all other divisions, departments, sections, or offices of the Commission, and all Commission employees.

(f) shall, in overseeing Commission operations, ensure that the following activities are performed fully, effectively, and professionally in accordance with applicable law:

(1) investigating all licensing and compliance matters within the scope of authority of the Commission, including background investigations necessary to determine the suitability of any Applicant for a License, and ensuring that such investigations are conducted efficiently and professionally;

(2) assisting the Commission as needed with the preparation of records and evidence and coordinating with the Commission's legal counsel in the presentation of the Commission's position in a case in all challenges to Commission decisions asserted in accordance with the standards and procedures provided in this Act and any Regulations.

(3) monitoring and auditing all Cannabis Facilities and Cannabis Suppliers to determine compliance with this Act, any Regulations, or any Compact and upon obtaining credible information regarding a violation, or at random or periodic intervals, with or without prior notification to the Cannabis Facility or Cannabis Supplier, causing a timely investigation to be conducted with regard to such report;

(4) addressing and, as needed, investigating all disputes between customers and Cannabis Facilities pursuant to the standards and procedures set forth in this Act and any Regulations; and

(5) assisting the Commission as needed in enforcing Commission orders and decisions and in pursuing other enforcement actions;

(g) may grant Temporary Licenses and other Licenses on behalf of the Commission as permitted by and in accordance with this Act and any Regulations;

(h) shall assist the Commission in developing and maintaining a suitable records management and retention system and ensure that all confidential and sensitive records and information are maintained and protected from unauthorized release; and

(i) shall perform such other duties as the Commission deems reasonably necessary.

#### **Section 5.04 Background Investigations.**

(a) Except as otherwise stated below, before any person may take office as Executive Director or commence work as a Commission employee, the Commission shall cause a background investigation to be conducted in accordance with such background investigation processes and licensing standards as the Commission may establish, subject to the requirements of this Act.

(b) All background investigations conducted under this Section are intended to ensure that the Commission and Commission employees maintains the highest level of integrity.

(c) The Tribal Police shall create an investigative report for the Commission that describes the investigative process and applicable standards and includes factual findings regarding each standard to the extent that that there is clear and convincing evidence to support a finding.

(d) The Tribal Police shall create a separate file for each person who was subjected to a background investigation, which shall include all forms, documents, reports, and other information related to the investigation that is in the possession of the Tribal Police. The Tribal Police shall retain such files for no less than three (3) years from the date the subject of the investigation ceases to be employed by the Commission.

(e) Following review of the investigative report and findings, the Commission shall, in closed session, make a final determination as to whether the subject of the investigation meets the applicable standards.

(f) Regarding the first appointment to the position of Executive Director, the Commission shall report its final determination to the Tribal Council and based on the Commission's determination, the Tribal Council shall either appoint such person as Executive Director or decline to make the appointment.

(g) All such persons shall consent to, and fully cooperate with the background investigation as provided hereunder and as required by the Commission.

(h) The Commission may, in its discretion and subject to such requirements as the Commission may deem warranted, permit a prospective Commission employee, but not the Executive Director, to commence work prior to the completion of a background investigation.

## **CHAPTER 6**

### **Authorization; Public Policy; and Ownership**

#### **Section 6.01 Authorization.**

Consistent with Subsection 13.D.4. of the Code of Offenses, through this Act the Tribal Council expressly authorizes:

(a) Cannabis Facilities and Cannabis Suppliers that are issued a License by the Commission under this Act to engage in:

(1) Cannabis Related Business Activities within the Reservation, subject to the provisions of their respective License, this Act, the Regulations, and any Compact; and (2) any other activities expressly authorized under this Act, the Regulations, and their respective License.

(b) persons who are twenty-one (21) years of age or older to use or consume Cannabis and Cannabis Products within Designated Consumption Areas, subject to applicable law, including this Act, the Regulations, and any Compact, and all requirements of the Cannabis Facility.

#### **Section 6.02 Public Policy.**

(a) It is the public policy of the Band that contracts related to the operation of Cannabis Facilities and Cannabis Suppliers shall be enforceable.

(b) Nothing in this Section shall diminish or impair any claim or defense related to any contract, except the right to assert that a contract related to the operation of Cannabis Facility or Cannabis Supplier is void or otherwise unenforceable as a matter of public policy of the Band.

#### **Section 6.03 Band Owned.**

(a) Every Cannabis Facility shall be Band Owned.

(b) Cannabis Suppliers are not required to be Band Owned to operate within the Reservation, but all Cannabis Suppliers must have a License, as required under Chapter 8 and Chapter 10.

## **CHAPTER 7**

### **Cannabis Tracking**

#### **Section 7.01 Cannabis Tracking System.**

(a) The Commission shall establish a system for Cannabis and Cannabis Product tracking, inventory, and verification, which shall allow for interface with third-party inventory and tracking systems to provide for access by the Commission and Licensees.

(b) At a minimum, the system must be capable of storing and providing access to information that, in conjunction with one (1) or more third-party inventory control and tracking systems, allows all of the following:

- (1) Verification that a Cannabis Employee Identification Card is current and valid and has not been suspended, revoked, or denied;
- (2) Retention of a record of the date, time, quantity, and price of each sale or transfer of Cannabis or a Cannabis Product to a person that is at least twenty-one (21) years of age;
- (3) Effective monitoring of Cannabis seed-to-sale transfers; and
- (4) Receipt and integration of information from third-party inventory control and tracking systems.

### **Section 7.02 Regulations Governing the Cannabis Tracking System.**

The Commission shall promulgate Regulations to govern the process for incorporating information concerning renewal, revocation, suspension, changes, and other information applicable to Licenses and Cannabis Employee Identification Cards issued to Cannabis Employees that must be included and maintained in the monitoring system.

## **CHAPTER 8**

### **Licensing**

#### **Section 8.01 Licensing.**

(a) All Persons who are required to obtain and maintain a valid License from the Commission under this Act, the Regulations, or any Compact shall at all times remain responsible to obtain and maintain all required Licenses.

(b) The Commission shall ensure that all Persons who are required to obtain and maintain a valid License from the Commission comply with such requirement.

#### **Section 8.02 Types of Licenses.**

(a) The Commission shall issue the following types of Licenses under this Act:

- (1) Cannabis Facility License in accordance with this Chapter and Chapter 9; and
- (2) Cannabis Supplier License in accordance with this Chapter and Chapter 10.

(b) The Commission may issue the following types of Licenses under this Act:

- (1) Temporary License in accordance with Chapters 9 and 10;

(2) Other Licenses for Persons who are engaged in Cannabis Related Business Activities within the Reservation who are not expressly required to hold a License under this Act, as may be set forth in the Regulations.

(c) The Commission may divide any License into a subset of multiple Licenses, but any such division shall not alter any requirements applicable to such License under this Act.

### **Section 8.03 Term of Licenses.**

(a) The terms of the Licenses issued by the Commission shall be as follows:

(1) Cannabis Facility Licenses – three (3) years;

(2) Cannabis Supplier License – one (1) year;

(3) Temporary License – as specified in the Temporary License; and

(4) Other License – as specified in the Other License.

(b) Except as otherwise stated above, the term of every License shall commence on the date such License becomes effective and shall expire at the conclusion of the specified License term on the anniversary of the effective date of the License, unless the Commission provides an earlier expiration date for a specific License.

### **Section 8.04 Conditions and Limits.**

(a) Every License issued by the Commission is conditioned upon the Licensee remaining eligible to hold such License under the requirements of this Act and the Regulations.

(b) The Commission reserves the right to impose additional conditions or limitations on any License, and may require the Applicant to comply with the same in connection with holding the License, but such conditions or limitations must be:

(1) related to the type of License sought; and

(2) narrowly tailored to address any specific regulatory concerns associated with the Applicant, as revealed by the background investigation, including the particular job responsibilities or contractual obligations to be performed by the Applicant.

### **Section 8.05 License Fees.**

(a) The Commission shall establish a schedule of fees for each type of License issued under this Act.

(b) The amount of such fees shall be reasonably related to the recovery of the costs of administering the Commission's licensing responsibilities under this Act and shall not be used as a means of generating revenue.

(c) The Applicant shall pay any fees required by the Commission to process the Application.

## **Section 8.06 No Property Interest.**

(a) Neither the filing of an Application nor the Commission's decision on any License shall create a property interest or due process rights in favor of the Applicant except as otherwise expressly stated in this Act or other Band law.

(b) The granting of a License by the Commission does not constitute a commitment on behalf of the Commission or any other party to contract with, hire or continue to employ or contract with the Licensee.

## **Section 8.07 Duties and Rights.**

(a) Standard and Burden. Every Applicant and Licensee shall have the burden of proving by clear and convincing evidence that all standards and other requirements applicable to such License have been or continue to be met. A License shall not be granted to an Applicant, and a License may be suspended or revoked in accordance with Chapter 12, for any Person that fails to meet the evidentiary standards and all applicable licensing standards and requirements.

(b) Duty to Disclose. Every Applicant and Licensee shall have the continuing responsibility and duty to promptly furnish all information, documentation, assurances, consents, waivers, fingerprint impressions, photographs, or other materials required or requested by the Commission and to cooperate with the Commission in the performance of its responsibilities and duties. Any failure to furnish the same after receipt of a request on behalf of the Commission shall constitute grounds for delaying consideration or denial of the Application.

(c) Duty to Update. Every Applicant and Licensee shall have a continuing duty to promptly notify the Commission of any occurrence or event which constitutes a material change (e.g., arrest, filing of criminal charges, address change, etc.) in any information provided in the Application. Any failure to promptly report such information or refusal to comply with a request on behalf of the Commission for information, evidence, or testimony may be considered grounds for the suspension, restriction, or revocation of a License.

(d) Power to Seize. The Commission may seize, revoke, restrict, condition, or suspend any License in accordance with the procedures prescribed in this Act and any Regulations.

(e) Risks and Waiver. Every Applicant shall be deemed to have:

(1) accepted and solely assumed all risks of harm arising from any public disclosure of any information related to the licensing process;

(2) released, waived, and covenanted not to sue the Commission and the Band (and their respective officials and employees), as well as any Person that furnishes information in good faith to the Commission in any matter relating to the licensing process, from all claims, damages, and expenses arising from any public disclosure of any information related to the licensing process; and

(3) agreed to indemnify, defend, and hold harmless the Band and Commission (and their respective current and former officials and employees), as well as any Person that furnished

information in good faith to the Commission in any matter relating to the licensing process, from all third-party claims arising in connection with any public disclosure of any information related to the licensing process.

(f) Consent to Examination. Every Applicant and Licensee shall:

(1) consent in writing to the examination of all bank accounts, other accounts, and other records, whether held in the possession or under the control of the Applicant or Licensee or a third party; and

(2) authorize and direct all third parties in possession or with control of such accounts or records to allow such examination thereof by the Commission as the Commission deems necessary.

(g) Consent to Jurisdiction. Every Applicant and Control Person, as applicable, shall be deemed through their submission of an Application or other Commission licensing form or their voluntary participation in a Commission licensing or investigatory process to have consented to the personal jurisdiction of the Band, the Commission, and the Tribal Court and to have waived all available defenses against such jurisdiction. Nothing in this Act shall limit the jurisdiction of the Band, Commission or Tribal Court under any circumstances, except as otherwise expressly stated in this Act.

(h) Non-Transferable. All Licenses shall be non-transferable. No Licensee shall transfer any rights or duties related to the License, either directly or indirectly, without the express approval of the Commission.

### **Section 8.08 Withdrawal of Application.**

Once filed, an Application may not be withdrawn by an Applicant without the express permission of the Commission. An Applicant may request permission to withdraw an Application by submitting a written request to the Commission. The Commission may grant or deny such a request in its sole discretion.

## **CHAPTER 9**

### **Cannabis Facility License**

#### **Section 9.01 Prohibition.**

(a) No Person shall operate a Cannabis Facility within the Reservation without possessing a valid Cannabis Facility License or Temporary License.

(b) No person shall use or consume, and no Cannabis Facility shall permit any person, including Cannabis Employees and Authorized Visitors, to use or consume, any Cannabis or Cannabis Product within the grounds of any Cannabis Facility, except in a Designated Consumption Area in accordance with applicable law, including this Act, the Regulations and any Compact, and all requirements of the Cannabis Facility.

#### **Section 9.02 Application.**

(a) To obtain a Cannabis Facility License, the Band Owned entity shall cause to be completed and submitted to the Commission an Application on a form provided by the Commission, which shall include:

- (1) a description of the Cannabis Facility, including any Designated Consumption Area;
- (2) a business plan;
- (3) the proposed location of the Cannabis Facility; and
- (4) the ownership of the Cannabis Facility.

(b) The following shall be submitted with the Application:

- (1) Any plans required by the Regulations; and
- (2) a Schedule of Permits and Approvals, including documents verifying the status all permits and approvals required under the Band's Health and Safety Act.

(c) The Band Owned entity shall also cause to be submitted to the Commission any additional information the Commission deems relevant.

### **Section 9.03 Standards.**

To be eligible for a Cannabis Facility License, a Band Owned Entity must submit documentation sufficient to permit the Commission to determine that the following standards are met:

- (a) the Cannabis Facility is or will be located on the Reservation;
- (b) the Cannabis Facility is Band Owned, notwithstanding the grant to other Persons of any security interests in tangible personal property of the Cannabis Facility;
- (c) the Cannabis Facility will comply with the Band's Health and Safety Act;
- (d) all required plans comply with this Act and any Regulations;
- (e) the Cannabis Facility meets all other applicable requirements under Band law, the Regulations, and any Compact; and
- (f) the Cannabis Facility has paid all applicable License fees and costs.

### **Section 9.04 Application Procedures.**

(a) Upon receipt of a completed Application and all required documentation for a Cannabis Facility License, the Commission shall:

- (1) review the Application and all required documentation to ensure that all required standards are met;

(2)review the premises of the Cannabis Facility to ensure that it will comply with Band law, the Regulations, and any Compact; and

(3)take any additional steps necessary to ensure the integrity of the operations of the Cannabis Facility.

(b) The Commission shall make its best effort to approve an Application within thirty (30) days following the receipt of a complete Application.

(c) The Commission shall approve the Application unless the Commission determines that the Cannabis Facility fails to meet the applicable standards under Band law, the Regulations, or any Compact or that, based on reasonable grounds, the Cannabis Facility will be operated in violation of Band law, the Regulations, or any Compact.

(d) The Commission may, in its discretion, hold an open hearing to consider the Application in accordance with the procedures described in Chapter 13, but the Commission may close the hearing or portions of the hearing to the extent permitted under the Open Meetings Act.

(e) If the Commission denies an Application, the Commission shall promptly notify the Applicant of the specific reasons for such denial, provide a description of any corrective actions that the Commission determines will cure the deficiencies in the Application, and inform the Applicant of its right to appeal the determination in accordance with Chapter 14.

#### **Section 9.05 Posting of License.**

A Cannabis Facility shall always post every Cannabis Facility License in a conspicuous location on the premises of each Cannabis Facility.

#### **Section 9.06 License Renewal.**

(a) A Cannabis Facility shall submit a written renewal Application to the Commission on the form provided by the Commission at least forty-five (45) days prior to the date any Cannabis Facility License will expire.

(b) The Commission shall approve Applications to renew a Cannabis Facility License within thirty (30) days following the Commission's receipt of a complete Application unless the Commission determines that the Cannabis Facility does not meet the applicable licensing standards under this Act, the Regulations, or any Compact or that, based on reasonable grounds, the Cannabis Facility will be operated in violation of the same.

(c) The Commission may, in its discretion, hold an open hearing to consider the Application in accordance with the procedures described in Chapter 13, but the Commission may close the hearing or portions of the hearing to the extent authorized under the Open Meetings Act.

(d) The Commission may grant a Temporary License if:

(1)the Commission has not approved the Cannabis Facility License;

(2)the Licensee timely sought renewal of the Cannabis Facility License; and

(3)Licensee paid all required fees and costs.

(e) The Commission shall not issue a Temporary License if it determines that the Cannabis Facility is not in full compliance with Section 9.03.

(f) If the Commission denies an Application to renew a License, the Commission shall, within seven (7) calendar days, notify the Applicant of the specific reasons for such denial, provide a description of any corrective actions that the Commission determines will cure the deficiencies in the Application and inform the Applicant of its right to appeal the determination in accordance with Chapter 14.

## **CHAPTER 10**

### **Cannabis Supplier License**

#### **Section 10.01 Prohibition.**

(a) No Person shall operate as a Cannabis Supplier within the Reservation unless the Person possesses a valid Cannabis Supplier License or Temporary License from the Commission.

(b) A Cannabis Supplier shall not provide any Cannabis Goods or Services within the Reservation to any Person without a License and may only provide Cannabis Goods or Services to a licensed Cannabis Facility.

#### **Section 10.02 Application.**

(a) To obtain a Cannabis Supplier License, a Person shall complete and submit to the Commission an Application on a form provided by the Commission, which shall include:

(1) the name of the business, any other names the Applicant has done business under, business address (including main office address if different), telephone number, and federal tax ID number (or SSN if a sole proprietorship or single member LLC);

(2) the name and address of the Cannabis Facility to which the Applicant seeks to supply Cannabis Goods or Services;

(3) an identification of the specific Cannabis Goods or Services the Applicant is proposing to supply to the Cannabis Facility;

(4) an identification of all Cannabis Goods or Services available from the Applicant;

(5) any trade name(s) used in connection with Cannabis Goods or Services, names of any wholly-owned subsidiaries or other businesses owned by the Applicant;

(6) copies of documents establishing the existence of the Applicant as a business entity, such as articles of incorporation, as applicable;

- (7) copies of documents establishing the ownership and control of the Applicant's business affairs sufficient to permit identification of any and all Control Persons of the Applicant;
- (8) copies of documents designating the person(s) authorized to act on behalf of the Applicant;
- (9) copies of bylaws or other documents that provide the day-to-day operating rules for the Applicant;
- (10) a description of any existing and previous business relationships involving Indian tribes, particularly those including ownership interests in those businesses;
- (11) a description of any existing and previous business relationships involving the Cannabis industry in general, particularly including ownership interests in those businesses;
- (12) the name and address of any licensing or regulatory agency with which the Applicant or Control Persons have filed an Application for a License or permit relating to Cannabis, whether such Application was withdrawn prior to a licensing decision being made, whether any such License or permit was granted, and whether any such License or permit has ever been suspended, revoked or subject to any other sanction;
- (13) a description of any misdemeanor conviction or ongoing prosecution for any fraud, theft, dishonesty, or moral turpitude involving Applicant or a Control Person within five (5) years of the Application date, along with the name and address of the court involved, and the dates of the prosecution and disposition;
- (14) a description of felony conviction or ongoing prosecution involving the Applicant or a Control Person within ten (10) years of the Application date, along with the name and address of the court involved, the charge, and the dates of the charge and disposition; and
- (15) a list of civil lawsuits to which the Applicant or a Control Person has been a defendant within the previous 10 years, including the name and address of the court involved, the date and disposition; and

(b) The Applicant shall also submit to the Commission any additional information the Commission deems relevant.

(c) Along with any other disclosures required under applicable law, the Application form shall require the Applicant and every Control person to sign an acknowledgment that shall be substantially as follows:

I acknowledge and agree as follows:

- The Cannabis Related Business Activities authorized under any License are unlawful under federal law, including the Uniform Controlled Substances Act, 21 U.S.C. 801 et seq., and I:

*(1) solely accept and assume all risks of any nature whatsoever related to federal criminal prosecution arising from engaging in any Cannabis Related Business Activities authorized under any License (“Risks”);*

*(2) release, waive, and covenant not to sue the Band, the PDA, any subsidiary of the PDA, the Commission, and their respective current and former officials and employees (“Released Parties”) from all claims, damages, penalties, fines, and expenses of any nature whatsoever arising in connection with the Risks; and*

*(3) agree to indemnify, defend, and hold harmless the Release Parties from all third-party claims arising in connection with the Risks.*

- I authorize the Commission to investigate my background, including criminal and civil records, credit and financial history, business relationships and activities, records of all previous license Applications, and tax records.
- I consent to the personal jurisdiction of the Band, the Commission, and the Tribal Court and waive all available defenses against such jurisdiction, and nothing in the Act shall limit the jurisdiction of the Band, Commission or Tribal Court under any circumstances.
- The inclusion of any false or misleading information in this Application may be grounds for denial or revocation of any License and may subject me to civil or criminal prosecution.

### **Section 10.03 Background Investigation.**

(a) The Applicant shall complete and submit to the Commission any Background Investigation form and all other information required by Regulation or reasonably requested by the Commission.

(b) The Commission shall conduct or cause to be conducted a background investigation of the Applicant and each Control Person the purpose of which includes to determine whether each such Persons meets all licensing standards.

(c) The investigator shall create an investigative report that describes the investigative process, information gained, conclusions reached, including for each licensing standard, and the basis for those conclusions, including potential problem areas and any disqualifying information.

(d) The Commission shall protect any confidential information generated by the investigation or submitted by the Applicant from any authorized disclosure and shall keep confidential the identity of each person interviewed in the investigation, except as otherwise permitted under applicable federal or Band law, or any Compact.

### **Section 10.04 Licensing Standards.**

A Person shall not be eligible to receive a Cannabis Supplier License if any of the following exist:

(a) any Control Person, who is a natural person is a Tribal Council member, Tribal Judge, or Tribal Police officer or is under the age of twenty-one (21);

(b) the Applicant, or any Control Person, who is a natural person, was convicted of or entered a plea of guilty or no contest to any misdemeanor involving any fraud, theft, dishonesty, or moral turpitude preceding within five (5) years of the Application date, but excluding any conviction or plea involving Cannabis;

(c) the Applicant, or any Control Person, who is a natural person, has been convicted of or entered a plea of guilty or no contest to a felony within ten (10) years of the Application date, but excluding any crime determined by the Commission to relate to the furtherance of the Band's tribal sovereignty rights or any conviction or plea involving Cannabis;

(d) the Applicant, or any Control Person, employs a person who is directly involved with the management or operations of any Cannabis Facility;

(e) the Applicant submitted an Application that contains materially false or misleading information;

(f) the Applicant refused to respond to any request for information that is material to the Commission's suitability determination;

(g) the Applicant is or was associated with, or has participated or been involved with, any organized crime; or

(h) the Applicant, or any Control Person, is determined by the Commission to be a Person whose prior activities, reputation, habits, and associations, including any conflicts of interest, pose a threat to the public interest or to the effective regulation or control of Cannabis or create or enhance the dangers of practices that are illegal under this Act, the Regulations, or other Band law, or are otherwise unsuitable or improper in the conduct of Cannabis Related Business Activities.

#### **Section 10.05 License Determination.**

(a) Within fifteen (15) days following the completion of the background investigations, the Commission shall meet, review the Application and the investigative report, and shall make a preliminary determination of whether the Applicant qualifies for a Cannabis Supplier License under this Chapter.

(b) If the Commission determines that the Applicant qualifies for the issuance of a Cannabis Supplier License, the Commission shall approve the Application and issue a Cannabis Supplier License.

(c) If the Commission determines that the Applicant qualifies for the issuance of a Cannabis Supplier License, but with conditions, the Commission shall approve the Application and issue the Cannabis Supplier License subject to any reasonable conditions required by the Commission.

(d) If the Commission determines that an Applicant does not qualify for a Cannabis Supplier License, the Commission shall notify the Applicant of such determination, including the specific

reasons for the determination and of the right to a hearing under Chapter 13 before the Commission issues a final decision on the Application.

(e) Upon the Applicant's written request in accordance with Chapter 13, the Commission shall schedule a hearing to be conducted in accordance with Chapter 13.

(f) If, following such hearing, the Commission determines that the Applicant qualifies for a Cannabis Supplier License, with or without conditions, the Commission shall approve the Application and issue the License.

(g) If, following such hearing, the Commission determines that the Applicant does not qualify for a Cannabis Supplier License, the Commission shall deny the Application, and within seven (7) calendar days, shall notify the Applicant of the denial, the specific reasons for the denial, and of the Applicant's right to appeal the denial under Chapter 14.

### **Section 10.06 Copy of License.**

Any Cannabis Supplier, including any personnel or agents, shall always possess a legible copy of the Cannabis Supplier License while engaging in any Cannabis Related Business Activities within the Reservation and shall produce the same upon the request of any Commissioner or Commission employee or any Tribal Police officer or other law enforcement officer.

### **Section 10.07 License Renewal.**

(a) A Licensee shall submit a written renewal Application to the Commission on the form provided by the Commission at least sixty (60) days prior to the date any Cannabis Supplier License will expire, which Application may require the Licensee to revise and supplement the information provided to the Commission with the Licensee's initial Application for a Cannabis Supplier License.

(b) The Commission shall approve Applications to renew a Cannabis Supplier License within thirty (30) days following the Commission's receipt of a complete Application unless the Commission determines that the Licensee fails to meet the applicable licensing standards under this Chapter.

(c) The Commission may, in its discretion, hold an open hearing to consider the Application in accordance with the procedures described in Chapter 13, but the Commission may close the hearing or portions of the hearing to the extent authorized under the Open Meetings Act.

(d) The Commission may grant a Temporary License if:

- (1) the Commission has not approved the Cannabis Supplier License;
- (2) the Licensee timely sought renewal of the Cannabis Supplier License; and
- (3) the Licensee paid all required fees and costs.

(e) The Commission shall not issue a Temporary License if it determines that the Applicant does meet all requirements of Section 10.04.

(f) If the Commission denies an Application to renew a Cannabis Supplier License, the Commission shall, within seven (7) calendar days, notify the Applicant of the specific reasons for such denial, and inform the Applicant of the Applicant's right to appeal the denial under Chapter 14.

### **Section 10.08 Reciprocity.**

(a) The Commission may recognize and accept the licensing determinations of the State Regulatory Agency or the cannabis regulatory agency of another state regarding any Applicant under this Chapter, but only if the Commission determines that such other jurisdiction applies licensing standards that are as stringent and a background investigation process that is as rigorous as this Act requires.

(b) If the Commission determines that it will accept the licensing determinations of the State Regulatory Agency or the cannabis regulatory agency of another state, the Commission shall gather such information from the Applicant, all Control Persons, and the other jurisdiction as the Commission deems necessary to confirm facts and develop a record regarding the Applicant and all Control Persons and to support its determination, including a copy of the Applicant's license from the other jurisdiction.

(c) The Commission may waive the background investigation process and such other requirements of this Chapter as it determines are unnecessary when granting reciprocity to the licensing determinations of another jurisdiction.

## **CHAPTER 11**

### **Cannabis Employees, Authorized Visitors, and Consumption**

#### **Section 11.01 Requirements for Cannabis Employees.**

(a) A Licensee under a Cannabis Facility License shall conduct a criminal history background check on any prospective Cannabis Employee before hiring that person. The Licensee shall keep records of the results of the criminal history background checks for the duration of the Cannabis Employee's employment with the Licensee. The Licensee shall record confirmation of criminal history background checks and make the confirmation available for inspection upon request by the Commission.

(b) The Licensee shall comply with all of the following:

(1) Have a policy in place that requires Cannabis Employees to report any new or pending criminal charges or convictions. If a Cannabis Employee is charged with or convicted of any felony, including any controlled substance-related felony, the Licensee shall immediately report the charge or conviction to the Commission. If a Cannabis Employee is convicted of an offense involving distribution of a controlled substance to a minor, the Licensee shall

immediately report the conviction to the Commission. The Commission shall maintain a list of excluded Cannabis Employees.

(2) Submit a Cannabis Employee's information to the Commission on such forms or through such systems as the Commission may prescribe within seven (7) business days of the Cannabis Employee's hiring.

(3) Update the Commission on such forms or through such systems as the Commission may prescribe within seven (7) business days of any change in status of each Cannabis Employee's information.

(4) Remove a Cannabis Employee's access and permissions to the Cannabis Facility and all of the Licensee's Cannabis Related Business Activities within seven (7) business days after the Cannabis Employee's employment with the Licensee is terminated.

(5) Train Cannabis Employees and have an employee training manual that includes employee safety procedures, employee guidelines, security protocol, and educational training, including on Cannabis and Cannabis Product information, dosage and purchasing limits if applicable, and educational materials. Copies of these training materials items must be maintained and made available to the Commission upon request.

(6) If applicable, include in the employee training manual a responsible operations plan, which must include a detailed explanation of how Cannabis Employees will monitor and prevent over-intoxication, underage access to the Cannabis Facility, the illegal sale or distribution of Cannabis or Cannabis Products within the Cannabis Facility, and any other potential criminal activity on the premises, as applicable. Copies of these materials must be maintained and made available to the Commission upon request.

(7) Establish point of sale or transfer procedures for Cannabis Employees performing any transfers or sales to Cannabis customers, which must include training in dosage, Cannabis and Cannabis Product information, health or educational materials, point of sale training, purchasing limits, cannabidiol (CBD) and tetrahydrocannabinol (THC) information, serving size, and consumption information, including any warnings. Copies of these materials must be maintained and made available to the Commission upon request.

(8) Screen prospective Cannabis Employees against a list of excluded Cannabis Employees based on a report or investigation maintained by the Commission in accordance with subsection 11.01(a).

(9) Ensure that Cannabis Employees handle Cannabis and Cannabis Products in compliance with current best practices in manufacturing, packing, or holding human food, in accordance with the Band's Health and Safety Act and other applicable legal requirements and industry standards.

(10) Not allow a person under twenty-one (21) years of age to volunteer or work for the Licensee.

(11) Not employ any person who has been convicted of an offense involving distribution of a controlled substance to a minor.

(c) Licensee records regarding its Cannabis Employees are subject to inspection or examination by the Commission to determine compliance with this Act and the Regulations.

(d) The Commission shall within fourteen (14) days of the receipt of a Licensee's submission of a Cannabis Employee's information in accordance with this Section issue to the Licensee a Cannabis Employee Identification Card for the Cannabis Employee, which shall include the Cannabis Employee Identification Number.

(e) No decision of the Commission relating to any Cannabis Employee Identification Card shall create a property interest or due process rights in favor of any Person except as otherwise expressly stated in this Act or other Band law, and the issuance of a Cannabis Employee Identification Card shall not constitute a commitment on behalf of the Commission or any other party to contract with, hire or continue to employ or contract with any person.

#### **Section 11.02 Requirements for Authorized Visitors.**

(a) Nothing in this Chapter prohibits a Licensee from allowing Authorized Visitors into the Cannabis Facility if the visitors are reasonably monitored, logged in as a visitor, and escorted through any secured areas.

(b) Visitors that are not Cannabis Employees shall not enter areas of Cannabis Facilities where hazardous materials are used, handled, or stored except Authorized Visitors providing trade or professional services related to the use, handling, storage, or disposal of such hazardous materials.

(c) If an individual is present in the secured area of any Cannabis Facility who is not a Cannabis Employee of the Licensee or an Authorized Visitor, or if such individual is in violation of this Act or any Regulations, the Commission may take any action permitted under this Act or the Regulations.

#### **Section 11.03 Food and Beverage Consumption.**

(a) Consumption of food and beverages by Cannabis Employees or Authorized Visitors is prohibited where Cannabis or Cannabis Products are stored, processed, or packaged or where hazardous materials are used, handled, or stored.

(b) The Cannabis Facility with a Designated Consumption Area may allow the consumption of food and beverages in the Designated Consumption Area.

#### **Section 11.04 Designated Consumption Areas.**

In addition to any requirements of the Regulations and any Compact, a Designated Consumption Area shall:

(a) if located within the interior of a Cannabis Facility, be located within a room with floor to ceiling walls and a door that separates the room from any area where Cannabis or Cannabis Product is stored, processed, or packaged; or

(b) if located outside the interior of the Cannabis Facility, be on the grounds of the Cannabis Facility in an enclosed area equipped with locks or other functioning security devices that restrict access to the Designated Consumption Area.

## **CHAPTER 12**

### **License Suspension, Limitation, and Revocation**

#### **Section 12.01 Cannabis Facility License.**

(a) The Commission may summarily suspend or impose conditions or limitations on a Cannabis Facility License for not more than thirty (30) days pending a hearing under this Chapter, if the Commission receives reliable information that the Cannabis Facility poses an immediate threat the health, safety, or welfare of the Band, Band Citizens, or any other person.

(b) The Commission may suspend or impose conditions or limitations on (or revoke, as applicable) a Cannabis Facility License in accordance with this Chapter for such period that the Commission determines in accordance with this Chapter, if the Commission determines that the Licensee failed or refused to comply with any condition of the License, any obligation under the Act, any Regulations, or any Compact, or any lawful order of the Commission or Tribal Court.

(c) The above authority includes the authority to impose conditions or limitations on a Licensee relating to a Designated Cannabis Area, including requiring a Cannabis Facility to close a Designated Cannabis Area, in accordance with this Chapter.

#### **Section 12.02 Cannabis Supplier License.**

(a) The Commission may summarily suspend or impose conditions or limitations on a Cannabis Supplier License for not more than thirty (30) days pending a hearing under this Chapter, if the Commission receives reliable information that the Licensee, or any Control Person, who is a natural person:

(1) was charged with any offense that may disqualify the Licensee from holding such License; or

(2) has engaged in conduct that poses an immediate threat to the integrity of any Cannabis Related Business Activities or to the health, safety, or welfare of the Band, Band Citizens, or any other person.

(b) The Commission may suspend or impose conditions or limitations on (or revoke, as applicable) a Cannabis Supplier License in accordance with this Chapter for such period that the Commission determines in accordance with this Chapter, if the Commission determines that the Licensee:

(1) violated any standard under Section 9.04; or

(2) failed or refused to comply with any condition of the License, any obligation under the Act, the Regulations, or any Compact, or any lawful order of the Commission or Tribal Court.

### **Section 12.03 Investigation.**

Upon receipt by the Commission of information that may provide the basis for a License to be suspended, subject to conditions or limitations, or revoked as described above in this Chapter, the Commission shall promptly investigate to substantiate the allegations and obtain any other relevant information that may prove or disprove grounds for suspension, the imposition of conditions or limitations, or revocation.

### **Section 12.04 Notice of Intent.**

(a) If upon completion of the investigation, the Commission determines that grounds exist to suspend or impose conditions or limitations on (or revoke, as applicable) the License under the standards stated above in this Chapter but that grounds for summary suspension do not exist, the Commission shall issue a Notice of Intent to Suspend, Condition, Limit, or Revoke License, as applicable, which shall be served on the Licensee and the general manager or other employee in charge of the Cannabis Facility.

(b) If upon completion of the investigation the Commission determines that grounds exist for summary suspension of the License, or the imposition of conditions or limitations on the License, under the standards stated above in this Chapter, the Commission shall issue a Notice of Summary Suspension, Condition, or Limitation of License Pending Hearing, which shall be served upon the Licensee and upon the general manager or other employee in charge of the Cannabis Facility.

(c) Any notice under this Section shall:

(1) inform the Licensee of the right to a hearing upon request;

(2) state in detail the grounds upon which it is issued;

(3) identify any witnesses the Commission intends to call, except witnesses whose identity the Commission determines should not be disclosed in advance of the hearing in order to protect such witnesses and ensure their full cooperation;

(4) summarize the facts and evidence that the Commission intends to present to demonstrate that adequate cause exists to support the action against the License; and

(5) inform the Licensee of the right to present evidence to rebut the grounds specified in the notice, including testimony from fact witnesses, or to present evidence of mitigating circumstances demonstrating that the action against the License is not warranted.

### **Section 12.05 Time to Request Hearing.**

(a) The Licensee shall, except for good cause shown, file a request for a hearing within five (5) business days from the date the Licensee receives a notice under Section 12.04.

(b) The Commission shall make every reasonable effort to set the date for a hearing before the Commission within fourteen (14) days, but in no event later than thirty (30) days, after the date the Licensee files a written request for a hearing, as applicable.

(c) The Commission may, on its own, schedule a hearing, notwithstanding the lack of written request for a hearing from the Licensee.

(d) The hearing shall be conducted in accordance with the procedures described in this Chapter.

### **Section 12.06 Conversion to Revocation Hearing.**

(a) If the results of the investigation conducted under this Chapter indicate that there are sufficient grounds to revoke the Licensee, the Commission may, in its discretion, convert the hearing on the suspension, condition, or limitation of the License to a hearing to show cause why the License should not be revoked.

(b) If the Commission converts a suspension, condition, or limitation hearing to a revocation hearing and has already issued the notice required under this Chapter, it shall provide the Licensee with a new notice and a new opportunity to request a hearing under this Chapter, which also restarts the time to schedule the hearing.

### **Section 12.07 Decision Following Hearing.**

(a) The Commission shall decide at the conclusion of a hearing under this Chapter whether to continue the suspension, condition, or limitation or to revoke the License, as applicable, and shall issue findings of fact and conclusions of law to support any such decision.

(b) If the Commission determines that neither lifting the suspension, condition, or limitation nor initiating a revocation proceeding would serve the purposes and requirements of this Act, the Commission may suspend, condition, or limit the License for any additional period of time it determines is needed under the circumstances to allow for further investigation or other appropriate purpose under this Act, but no suspension, condition, or limitation shall exceed a period of ninety (90) days without affording the Licensee the right to a hearing to reconsider the action.

(c) The Commission may revoke a License if the Commission determines that the Licensee:

(1) fails to meet the applicable eligibility standards for the License; or

(2) failed or refused to comply with any condition of the License, any obligation under the Act, the Regulations, or any Compact, or any lawful order of the Commission or Tribal Court.

**CHAPTER 13**  
**Hearing Procedures**

**Section 13.01 Scope.**

(a) Except as otherwise stated in this Act, hearings conducted by the Commission under this Act shall be governed by this Chapter and the Regulations.

(b) The Commission shall promulgate Regulations establishing standards and procedures for conducting hearings consistent with this Act.

(c) The Commission may, in its discretion, initiate enforcement actions in the Tribal Court, which shall not be subject to the procedural requirements of this Act.

**Section 13.02 Hearings.**

(a) Except as otherwise stated in this Act, the Commission shall afford an Applicant an opportunity for a hearing prior to any final action by the Commission on an Application, other than an unconditional grant of a License. For purposes of this requirement, a Temporary License shall not be a conditional grant of a License.

(b) Except as otherwise stated in this Act, the Commission shall afford a Licensee the opportunity for a hearing prior to taking formal action to suspend, condition, limit, or revoke a License, not renew a License, or to impose any penalties that the Commission is authorized to impose pursuant to this Act. Nothing in this Section shall limit the Commission's authority to summarily suspend, condition, limit, or revoke a License without a hearing where authorized under this Act.

(c) Except as otherwise stated in this Act, the Commission shall afford other Persons subject to the Commission's regulatory authority under this Act the opportunity for a hearing prior to issuing a decision, including enforcement actions, as described in subsection 13.01(c), or as otherwise expressly authorized under this Act.

**Section 13.03 Subpoenas.**

(a) The Commission shall have the power and discretion to issue subpoenas to compel the production of documents or other tangible things and to compel the appearance of witnesses to give testimony relating to any Commission investigation or proceeding.

(b) Any Person who objects to a subpoena must serve on the Commission a written objection not later than the time specified for compliance. The written objection shall specify the reasons, which shall be limited to:

(1) fails to allow a reasonable time to comply;

(2) the Person is not subject to the jurisdiction of the Commission, but any deemed consent to such jurisdiction under this Act or written consent shall be conclusive and enforced by the Tribal Court.

(3) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(4) subjects the Person to undue burden.

(c) The Commission may, upon notice to the commanded person, move the Tribal Court for an order compelling production or inspection.

(d) The commanded Person may, upon notice to the Commission, move the Tribal Court for an order to quash or modify a subpoena upon a finding that any of the reasons specified in subsection 13.03(b) apply.

(e) The Tribal Court may impose conditions on the subpoena to protect the commanded Person, including to prevent the disclosure of trade secrets and other confidential information.

(f) Without limiting any other remedies available to the Commission, the Commission may impose reasonable penalties and take such other appropriate actions as the Commission deems warranted under the circumstances to address noncompliance with a subpoena where the commanded Person fails to file a written objection, to prosecute a written objection when filed, or to comply with a Tribal Court order.

(g) Nothing in this Section shall limit any authority of the Tribal Court, including relating to contempt.

#### **Section 13.04 Hearing Requirements.**

(a) The Chairperson shall preside over all hearings conducted before the full Commission, shall administer oaths, and shall call the proceedings to order, control the presentation of evidence, the appearance of witnesses, and the order of the proceedings.

(b) The Commission may designate one or more of the Commission members, or may contract with other qualified persons, to serve as hearing officers for any hearings the Commission determines can be properly handled by a single hearing officer.

(c) Hearing officers shall have authority to render decisions and issue findings of fact and conclusions of law, subject to the requirement that their decisions shall only become final upon adoption by the Commission and such other requirements the Commission may establish by Regulation.

(d) The Commission may require any Person, including, but not limited to, any Applicant, Licensee, or any agent, employee, or representative of such Person, to appear and testify before it for any matter within its jurisdiction at such time and place as it may designate.

(e) All testimony before the Commission or any hearing officer:

(1) shall be under oath;

(2) may include any matters that the Commission or hearing officer deems relevant;

(3) shall be recorded by a duly certified court reporter; and

(4) may be used as evidence in any proceeding or matter before the Commission or any hearing officer.

(f) All hearings shall be open to Band Citizens, except as otherwise permitted under the Open Meetings Act.

### **Section 13.05 Commission Decisions.**

(a) All decisions to be made by the Commission under this Act or any Regulations, when necessary to support the decision, shall include findings of fact and conclusions of law.

(b) The Commission may, at its discretion, include with its decision a statement that the Commission's decision is a "final decision subject to appeal".

(c) All Commission decisions shall be made on the record in an open meeting, except as otherwise permitted under the Open Meetings Act.

(d) All Commission decisions shall be made by majority vote, except when this Act expressly authorizes the Commission to delegate authority for a decision to a single Commissioner, the Executive Director, or other Commission personnel.

## **CHAPTER 14**

### **Appeals**

#### **Section 14.01 Limited Waiver.**

The Tribe expressly waives the Commission's sovereign immunity from suit for any action brought against the Commission in the Tribal Court, but only to the extent that such action is expressly authorized by this Act.

#### **Section 14.02 Appeal.**

(a) Any Person who has received a final adverse decision from the Commission shall have the right to appeal such adverse decision to the Tribal Court. For purposes of this Section, a decision shall not be considered "final" unless the Commission certifies the decision in writing as final and subject to appeal.

(b) An appeal authorized by this Section must be filed with the Tribal Court within thirty (30) calendar days from the date that the Person entitled to bring the appeal receives notice of the final decision from the Commission.

(c) If the Tribal Court concludes that the necessary facts for the Commission's decision were not supported by reasonable evidence, or that the Commission applied the applicable law incorrectly, it shall so declare and return the matter to the Commission for further consideration consistent with such Tribal Court decision.

(d) The Tribal Court shall limit its review to the administrative record, but the Tribal Court may consider extrinsic evidence to assist it in determining the adequacy of the Commission's analysis and decision concerning technical or complex issues.

(e) The Tribal Court shall give deference to the reasonable interpretation and application of this Act, the Regulations, and any Compact by the Commission.

(f) Except as otherwise expressly authorized under other Band law, the relief against the Commission in any such action shall be limited to declaratory and injunctive relief and shall not include any money damages.

(g) The Tribal Court may order the Commission to pay court costs, or reasonable attorney's fees, or both, to the party bringing an action authorized under this Act, but only if the Tribal Court determines that the Commission acted with willful disregard of a party's rights under the Constitution or Band law, including this Act.

## **CHAPTER 15**

### **Violations and Penalties**

#### **Section 15.01 Violations.**

(a) No Person, within the jurisdiction of the Band, shall violate or fail to comply with any provision of this Act or any Regulations.

(b) In accordance with Subsection 1(C) of the Code of Offenses, any violation of any provision of this Act or any Regulations shall constitute an "Offense" under the Code of Offenses.

#### **Section 15.02 Penalties.**

(a) A person who, within the jurisdiction of the Band, violates this Act or any Regulations for which violation a penalty is not otherwise provided for under Band law, including the Code of Offenses or this Act, shall be liable for a maximum civil fine of \$5,000.00, but in determining the amount of any civil fine, the Tribal Court, subject to a maximum civil fine of \$5,000.00, shall be guided by the applicable minimum and maximum fines imposed under State Law multiplied by a factor of two (2) to reflect the classification under this Act of such violation as a civil infraction rather than a criminal act.

(b) A civil fine imposed or accruing under Band law pursuant to this Act may be recovered in a civil action brought in the Tribal Court and all such civil fines shall be cumulative. A suit for the recovery of one civil fine shall not bar or affect the recovery of any other civil fine, judgment, penalty, forfeiture, restitution, or damages, nor bar the power of the Tribal Court to punish for contempt or any criminal prosecution.

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## LEGISLATIVE HISTORY

Cannabis Regulatory Act, enacted December 9, 2021, by Res. No. 21-12-09-02;  
amended March 23, 2022, by Res. No. 22-03-23-01.