

**INTERGOVERNMENTAL AGREEMENT FOR CROSS JURISDICTIONAL
COORDINATION AND ENFORCEMENT OF MARIJUANA-RELATED BUSINESSES**

between

**THE CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF
OREGON**

and

THE STATE OF OREGON

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between

**THE CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF
OREGON**

and

THE STATE OF OREGON

This Intergovernmental Agreement (“**Agreement**”) is entered into on this 19th day of January, 2017 (“**Effective Date**”), by the State of Oregon (“**State**”) and the Confederated Tribes of the Warm Springs Reservation of Oregon (“**Tribe**”) pursuant to Section 34 and 35 of House Bill 4014 (2016) (Agreements with Federally Recognized Indian Tribes), Oregon Laws 2016, chapter 24, sections 34 and 35.

I. BACKGROUND

The Tribe is a federally recognized Indian tribe organized under a constitution and bylaws ratified by the members of the Tribe on December 18, 1937, and approved by the Assistant Secretary of the Interior of the United States on February 14, 1938, pursuant to Section 12 of the Act of June 18, 1934 (48 Stat. 984), as amended by the Act of June 15, 1935 (49 Stat. 378).

The Tribe exercises governmental powers over lands and resources within the boundaries of the Warm Springs Indian Reservation (“**Reservation**”) as such Reservation is described in that certain Treaty between the United States of America and the Tribes and Bands of Middle Oregon executed June 25, 1855 (12 Stat. 963).

On November 3, 1998, Oregon voters approved Ballot Measure 67, allowing medical use of Marijuana within limits and establishing a permit system, ORS 475B.400 through ORS 475B.525. On November 4, 2014, Oregon voters approved Ballot measure 91, allowing recreational use of Marijuana for adults within limits and establishing a license system, ORS chapter 475B (as further amended).

Pursuant to a Warm Springs Tribal Referendum on December 17, 2015 (“**2015 Referendum**”), confirmed by Tribal Council Resolution 12,086, the Tribal membership approved a tribally formed but independently managed and operated on-Reservation Marijuana cultivation and processing facility with retail sales allowed only off the Reservation.

Pursuant to the 2015 Referendum, the Tribal Council adopted Warm Springs Tribal Code Chapter 743, Marijuana Cultivation, Processing and Sale (“**WSTC 743**”) to regulate the Marijuana activities authorized by the 2015 Referendum, and to assure compliance with federal policy as articulated in the Cole and Wilkinson Memoranda.

Pursuant to the 2015 Referendum, the Tribe formed, under its constitutional authority, a community benefit business enterprise (“**Tribal Cannabis Enterprise**”) that will operate the on-Reservation facility and which will also engage in off-Reservation retail sales as a State Licensee for the express purpose of improving job opportunities and increasing tribal tax revenues and community benefit revenues to benefit the tribal community.

The Tribe has regulatory jurisdiction over tribal Marijuana activities on-Reservation.

The Tribal Cannabis Commission is responsible for adopting and enforcing regulations relating to the production, processing, testing, and wholesale of Marijuana on the Reservation.

The State has regulatory jurisdiction over tribal Marijuana activities off-Reservation.

The Oregon Liquor Control Commission (“**OLCC**”), the Oregon Health Authority (“**OHA**”), the Oregon Department of Agriculture (“**ODA**”), and the Oregon Department of Revenue (“**DOR**”) are responsible for adopting and enforcing regulations relating to the production, processing, testing, sale and taxation of Marijuana in the State of Oregon, including regulations relating to the use of pesticides on Marijuana plants used for production of Marijuana Items, and regulations relating to food safety for Cannabinoid Edibles offered for sale in the State of Oregon.

The OLCC, OHA, ODA and DOR regulations relating to the production, processing, sale and taxation of Marijuana in the State of Oregon, and regulations relating to food safety for Cannabinoid Edibles, are incorporated into the State Marijuana Laws and will be amended from time to time.

The Tribe is authorized to act through Ordinance and Resolution adopted by its Tribal Council, subject to the referendum powers of the members of the Tribe.

Pursuant to ORS 190.110 and HB 4014, Sections 34 and 35 (2016), the State of Oregon is authorized to enter this Agreement through the Governor or a designee of the Governor.

In consideration of the mutual undertakings and agreements set forth herein, the Tribe and the State enter into the following Agreement:

II. PURPOSE AND INTENT

A. The Tribal 2015 Referendum Implementation.

Consistent with the 2015 Referendum, the Tribe through its Tribal Cannabis Commission proposes to license the Tribal Cannabis Enterprise to produce and process Marijuana Items at the Production and Processing Facility located on the Reservation. The Tribe proposes to allow the licensed Tribal Cannabis Enterprise to cultivate Marijuana at the facility and process both Marijuana produced by the Tribal Cannabis Enterprise and Marijuana purchased by the Tribal Cannabis Enterprise from State Licensees. The Tribe further proposes to allow the licensed Tribal Cannabis Enterprise to conduct wholesale and retail sales of tribally produced Usable

Marijuana and Marijuana Items, including Medical Grade Marijuana, off of the Reservation and within the State Market through OLCC licensed retail outlets. The Tribe has formed the Tribal Cannabis Enterprise, and the Tribal Cannabis Enterprise may form subsidiary or affiliate entities that will seek to become State Licensees to conduct retail sales at yet-to-be-determined locations off of the Reservation. The Tribal Cannabis Enterprise's initial plans are to operate three State-licensed retail outlets off-Reservation.

B. Federal, State and Tribal Legal Framework.

The federal Controlled Substances Act continues to designate Marijuana as a Schedule 1 substance. The United States Department of Justice issued federal policy guidelines pertaining to Marijuana enforcement in the "Memorandum from James M. Cole, Deputy Attorney General, to All United States Attorneys, re Guidance Regarding Marijuana Enforcement" (Aug. 29, 2013) ("**Cole Memorandum**"). In that memorandum, James M. Cole set forth eight enforcement priorities of particular importance to the federal government, including:

1. Preventing the distribution of Marijuana to minors;
2. Preventing revenue from the sale of Marijuana from going to criminal enterprises, gangs, and cartels;
3. Preventing the diversion of Marijuana from states where it is legal under state law in some form to other states;
4. Preventing State-authorized Marijuana activity from being used as cover or pretext for the trafficking of other illegal drugs or illegal activity;
5. Preventing violence and the use of firearms in the cultivation and distribution of Marijuana;
6. Preventing drugged driving and the exacerbation of other adverse public health consequences associated with Marijuana use;
7. Preventing the growing of Marijuana on public lands and the attendant public safety and environmental dangers posed by Marijuana production on public lands; and
8. Preventing Marijuana possession or use on federal property.

According to the Cole Memorandum, state and local governments should provide sufficiently robust regulatory and enforcement systems to protect against those harms described above, and federal law enforcement efforts will focus on conduct that interferes with those stated priorities.

On October 28, 2014, Monty Wilkinson, Executive Director of the Executive Office for United States Attorneys, issued a memorandum to all United States Attorneys, "re Policy Statement Regarding Marijuana Issues in Indian Country" ("**Wilkinson Memorandum**"). That

memorandum stated that the eight priorities in the Cole Memorandum would guide federal Marijuana enforcement efforts in Indian Country.

The Tribe and the State have laws allowing for Marijuana activities within their regulatory jurisdictions and the State and Tribe each impose licensing and regulatory requirements with either agency or commission oversight and enforcement authority. In particular, the State of Oregon has legalized personal possession and production, has provided legal protections for medical production, possession and use and has regulated commercial production, processing and sale. Through State law and the implementing rules of the OLCC, OHA, ODA, and DOR, the State has attempted to enact and implement a civil regulatory system that accomplishes the federal priorities in the Cole Memorandum and makes the production, processing and sale of Marijuana Items safe for the public. The parties recognize that the recreational Marijuana industry is new in Oregon and that State Marijuana Laws are likely to continue to change as the regulatory agencies and industry learn from their experiences.

The Tribe has not legalized any personal possession or retail sales on the Reservation but its membership voted to allow a tribally regulated and formed enterprise to cultivate and process Marijuana for off-Reservation sales.

C. Need for Coordination.

The State and Tribe recognize the need for cooperation and collaboration with regard to the production and processing of Marijuana on the Reservation for sale off-Reservation. Because the 2015 Referendum provides for a tribal licensed enterprise to conduct retail sales off-Reservation, within the State's regulatory authority, and because State Licensees and individuals are likely to travel through the Reservation, the cross- jurisdictional activities necessitate the following coordination:

1. The conditions under which the State will consider tribally produced or processed Marijuana Items as legal for sale in the State Market and thereby allow the Tribe to compete in the State Market.
2. Regulatory treatment of non-tribal members working on the Reservation under Tribal Licenses and non-tribal members otherwise possessing Marijuana on the Reservation.
3. Regulatory treatment of tribally licensed businesses and representatives off-Reservation and State Licensees and licensee representatives on the Reservation.

D. Recognition of Federal Enforcement Priorities.

The State of Oregon has an interest in ensuring that its regulatory program and the activities of all participants in the State Market further the enforcement policy considerations set forth in the Cole Memorandum. The Tribe has an interest in ensuring that its regulatory program and participants further the enforcement policy considerations set forth in the Wilkinson Memorandum. Accordingly, the State and the Tribe share interests in ensuring that Marijuana

production, processing, and sales in the State of Oregon and on the Reservation are well regulated and protect public health and safety and community interests.

The parties recognize that this Agreement does not protect the sales or regulation of Marijuana from enforcement of federal law; however, the parties have entered into this Agreement in order to strengthen their ability to meet their mutual interests and to provide a framework for ensuring a robust Tribal and State regulatory and enforcement system sufficient to meet the federal priorities.

E. Protection of Health and Safety for Marijuana Items Marketed Off-Reservation.

The State maintains regulatory jurisdiction over the sale, production, and processing of Marijuana Items off-Reservation and over all retail outlets off-Reservation, and possesses a strong interest in consumer health and safety as to Marijuana Items sold off-Reservation. In addition, protection of the health and safety of consumers and the public in the State of Oregon is important to the success of the 2015 Referendum and to the Tribal Cannabis Enterprise.

Accordingly, it is in the mutual interest of the Tribe and State that strict health and safety standards apply to Marijuana Items produced or processed on the Reservation by the Tribal Cannabis Enterprise and sold off-Reservation. In particular, it is in the mutual interest of the Tribe and the State that the State agencies that license and regulate retail outlets, as well as members of the public who purchase tribal Marijuana Items at State-licensed retail outlets, have confidence that tribal Marijuana Items are being produced and processed pursuant to enforceable consumer health and safety standards. The Tribe agrees that it is in the Tribe's best interests to apply standards that are the same or as protective of health and safety as those standards used for Marijuana Items produced and processed at State-licensed facilities off-Reservation.

In order to facilitate the sale of tribally produced Marijuana Items into the State Market through its OLCC-licensed retail outlets, the Tribe and State intend to ensure that all tribal Marijuana Items meet all packaging, labeling, and concentration and serving limit requirements related to Marijuana Items sold at OLCC licensed retail outlets, are tested to the same standards as OLCC-licensed Marijuana Items, are tested by mutually acceptable licensed facilities, and utilize mutually acceptable pesticides and solvents, to ensure consumer health and safety.

III. DEFINITIONS

- A. "Business days"** means Monday through Friday, 8:00 a.m. to 5:00 p.m., Pacific Time, excluding State and regularly scheduled Tribe-observed holidays.
- B. "Cannabinoid"** means any of the chemical compounds that are the active constituents of Marijuana.
- C. "Cannabinoid Concentrate"** means a substance obtained by separating cannabinoids from marijuana by:

1. A mechanical extraction process;
2. A chemical extraction process using a nonhydrocarbon-based or other solvent, such as water, vegetable glycerin, vegetable oils, animal fats, isopropyl alcohol or ethanol;
3. A chemical extraction process using the hydrocarbon-based solvent carbon dioxide, provided that the process does not involve the use of high heat or pressure; or other process identified by the OLCC in rule.

D. “Cannabinoid Edibles” means food or potable liquid into which a cannabinoid concentrate, cannabinoid extract or dried Marijuana leaves or flowers have been incorporated.

E. “Cannabinoid Extract” means a substance obtained by separating cannabinoids from Marijuana by: a) a chemical extraction process using a hydrocarbon-based solvent, such as butane, hexane or propane; b) a chemical extraction process using the solvent carbon dioxide, if the process uses high heat or pressure; or c) any other process identified by OLCC in rule.

F. “Cannabinoid Product” means a Cannabinoid Edible and any other product intended for human consumption or use, including a product intended to be applied to the skin or hair, that contains Cannabinoids or dried Marijuana leaves or flowers, but does not include: i) Usable Marijuana by itself; ii) A Cannabinoid concentrate by itself; iii) A Cannabinoid Extract by itself; or iv) Industrial hemp.

G. “CTS” or “Cannabis Tracking System” means the system for tracking the transfer of Marijuana Items and other information as maintained by OLCC.

H. “Guidelist for Pesticides and Cannabis” means the list of pesticides, as amended from time to time, that ODA has identified for use in the cultivation of Marijuana to be produced and sold in Oregon.

I. “Marijuana” means the plant genus Cannabis family Cannabaceae, any part of the plant genus Cannabis family Cannabaceae and the seeds of the plant genus Cannabis family Cannabaceae. “Marijuana” does not include industrial hemp, as defined in ORS 571.300.

J. “Marijuana Items” means Marijuana, Usable Marijuana, Cannabinoid Products, Cannabinoid Concentrates and Cannabinoid Extracts, as well as samples of any of those items, including without limitation Medical Grade Marijuana.

K. “Medical Grade Marijuana” means a “medical grade cannabinoid product, cannabinoid concentrate or cannabinoid extract,” which mean a Cannabinoid Product, Cannabinoid Concentrate or Cannabinoid Extract that has a concentration of tetrahydrocannabinol that is permitted under ORS 475B.625 in a single serving of the Cannabinoid Product, Cannabinoid Concentrate or Cannabinoid Extract for consumers who hold a valid registry identification card issued under ORS 475B.415.

L. **“Process”** means to process, compound or convert Marijuana into Cannabinoid Products, Cannabinoid Concentrates or Cannabinoid Extracts, but does not include to package or label.

M. **“Produce”** means the manufacture, planting, cultivation, growing or harvesting of Marijuana. **“Produce”** does not include: a) the drying of Marijuana by a Marijuana processor, if the marijuana processor is not otherwise producing marijuana; or b) the cultivation and growing of an immature marijuana plant by a Marijuana processor, Marijuana wholesaler or Marijuana retailer if the Marijuana processor, wholesaler, or retailer purchased or otherwise received the plant from a licensed Marijuana producer.

N. **“Production and Processing Facility”** means the production and processing facility as discussed in this Agreement, on the Reservation in the approximate location of the Dry Creek area or at other duly licensed locations on the Reservation or on trust land contiguous to the Reservation.

O. **“State License”** means a license issued by OLCC for the purpose of Marijuana production, processing, wholesale or retail sales.

P. **“State Licensee”** means a person who holds a valid State License issued by the OLCC.

Q. **“State Marijuana Laws”** means all state statutes creating or implementing the State’s medical or recreational Marijuana programs and all related rules adopted by the Oregon Liquor Control Commission, the Oregon Department of Agriculture, the Oregon Health Authority, the Oregon Department of Revenue, and other State agencies charged with implementing the State’s medical and recreational Marijuana programs, as amended from time to time.

R. **“State Market”** means the lawful commercial dealings, including production, transport, labeling, wholesale, and retail sale, of Marijuana, as regulated by the State of Oregon within the boundaries of the State.

S. **“Tribal Cannabis Code”** means WSTC 743 and the amendments to WSTC 305 and any and all regulations adopted by the Tribal Cannabis Commission implementing WSTC 743 as those codes and regulations may be amended from time to time.

T. **“Tribal Cannabis Commission”** means the Warm Springs Cannabis Regulatory Commission established in WSTC 743.

U. **“Tribal Cannabis Enterprise”** means the business enterprise formed by the Tribe pursuant to the 2015 Referendum and constitutional authority and any subsidiary or affiliate entities that will own and operate the Production and Processing Facility and off- Reservation Tribal Retail Entities, all subject to appropriate licensing and regulation for on- Reservation and off- Reservation activities.

V. **“Tribal License”** means a cultivation and processing, testing, or wholesale license issued by the Tribal Cannabis Commission under the Tribal Cannabis Code.

W. “Tribal Licensee” means an entity that holds a valid Tribal License issued by the Tribal Cannabis Commission.

X. “Tribal Retail Entities” means an entity or entities that are affiliates or subsidiaries of the Tribal Cannabis Enterprise and that will obtain State Licenses to conduct retail sales off-Reservation within the State Market.

Y. “Usable Marijuana” means the dried leaves and flowers of Marijuana but does not include the seeds, stalks and roots of Marijuana or waste material that is a by-product of producing or processing Marijuana.

IV. TRIBAL MARIJUANA ACTIVITIES IMPACTING THE STATE MARKET

A. Applicability.

This Agreement applies to the following:

1. The production, processing, testing, delivery, wholesale, retail sale and transport of Marijuana Items produced or processed on the Reservation by Tribal Licensees to State Licensees on premises that are licensed by the State.

2. The production, processing, testing, wholesaling and transporting of Marijuana Items on the Reservation by non-tribal members who are employed by a Tribal Licensee.

3. The transport of Marijuana Items in personal or medical possession quantities within and along State highway corridors within the Reservation.

4. The transport of Marijuana Items by State Licensees within and along State highway corridors within the Reservation.

5. The purchase, processing, delivery, sale, and transport of Marijuana Items produced by State Licensees, and brought onto the Reservation by Tribal Licensees for processing on the Reservation.

B. Production, Processing, Testing, Wholesale, Retail Facilities and Activities.

1. **Production and Processing Facility.** The Production and Processing Facility will be constructed, owned and operated by a Tribal Licensee who intends to conduct Marijuana cultivation, processing, testing, wholesale and other associated activities in accordance with the terms and restrictions of the Tribal Cannabis Code and this Agreement. The initial facility is planned to have up to 36,000 square feet of mature canopy.

a. The Tribal Cannabis Code permits expansion of the Production and Processing Facility canopy pursuant to Section 743-1405, which limits maximum canopy size

based on recent lawful sales. The Tribe will maintain similar requirements in the Tribal Cannabis Code.

b. In the event that the Tribal Cannabis Commission obtains information that the Tribal Cannabis Enterprise plans to expand the facility or add another facility so that the mature canopy size exceeds 36,000 square feet, the Tribal Cannabis Commission will provide 180-days notice to the State before the expansion or addition. The Tribe agrees to confer with the State about the proposed expansion upon the State's request.

c. The Tribal Cannabis Commission will provide 180-days notice to the State prior to construction, acquisition or operation, whichever comes first, in the event that the Tribal Cannabis Commission obtains information that the Tribal Cannabis Enterprise, or another Tribal Licensee, plans to license, construct, own, or operate a separate and additional Production and Processing Facility with the intent to conduct Marijuana cultivation, processing, testing, wholesale or other associated activities in accordance with the terms and restrictions of the Tribal Cannabis Code and this Agreement. The Tribe agrees to confer with the State about the proposed expansion upon the State's request.

2. **Retail Facilities.** The Tribal Cannabis Enterprise plans to form a subsidiary or subsidiaries who will seek to become State Licensees to operate retail locations off-Reservation at locations yet to be determined ("**Tribal Retail Entities**"). The Tribal Retail Entities desire to obtain State Licenses for three initial retail locations. The State agrees to process the initial three license applications within a reasonable amount of time but not more than 60 days from receipt of a completed application provided the Tribal Retail Entity meets the applicable licensing criteria. All State laws and regulations will apply to Tribal Retail Licensees as they do to any other State Licensee.

3. **Transfer of Marijuana Items.** The Tribe agrees that the Tribal Cannabis Enterprise will not transfer Marijuana Items to anyone other than a State Licensee, unless:

a. the transfer is to a licensee of another Tribe which has entered an effective intergovernmental agreement with the State pursuant to Section 34 and 35 of House Bill 4014 (2016) (Agreements with Federally Recognized Indian Tribes); or

b. the Tribe and State have otherwise coordinated appropriate compliance with the Cole and Wilkinson Memoranda as to the tribal enterprise activities within State jurisdiction. The Tribe acknowledges that the Cole and Wilkinson Memoranda require the prevention of diversion of Marijuana from states where it is legal under state law in some form to other states. In the event transfers to other states can be accomplished in compliance with the Cole and Wilkinson Memoranda or with other applicable law and the Tribal Cannabis Enterprise desires to sell Marijuana to a legalized market outside the state of Oregon, the Tribe will meet with the State to discuss any State concerns before selling Marijuana in a market outside the State of Oregon and to amend this agreement to reflect that discussion as appropriate.

C. **Implementation and Amendment of Regulatory Programs.**

1. Application of Tribal Cannabis Code. In order to ensure a robust regulatory scheme, the Tribe agrees to establish and maintain the Tribal Cannabis Commission as an independent commission with oversight authority over Tribal Licensees, ensure that the Tribal Cannabis Commission has sufficient numbers of adequately trained personnel to monitor and regulate Tribal Licensees' Marijuana-related activities, and ensure that the Tribal Cannabis Commission has sufficient resources to perform its duties under the Tribal Cannabis Code and this Agreement. The Tribe agrees, by and through its Tribal Cannabis Commission, to apply the Tribal Cannabis Code to any entity engaged in the production, processing, testing and wholesaling of Marijuana Items and to enforce the requirements of the Tribal Cannabis Code.

The Tribe agrees that it will only authorize other on-reservation cannabis-related activities if the activity does not impact the State Market. If the Tribe authorizes on-Reservation cannabis-related activities not addressed in this Agreement, the Tribe agrees to notify the State and to ensure that those activities will only occur at a separate location from any and all cannabis-related activities addressed in this Agreement.

The Tribe will make available to the State, upon request of any State-designated representative, the current version of the Tribal Cannabis Code, any Tribal Cannabis Commission Regulations and all internal policies or controls of any tribal enterprise operated under the Tribal Cannabis Code.

2. Application of State Marijuana Laws. The Oregon legislature has authorized the OLCC, ODA, DOR and OHA to apply the State Marijuana Laws to any person or entity engaged in the production, processing, testing and wholesaling of Marijuana Items and to enforce the requirements of the State Marijuana Laws. Through State law and the implementing rules of the OLCC, ODA, DOR and OHA, the State has attempted to enact and implement a civil regulatory system that accomplishes the federal priorities in the Cole Memorandum.

3. Designation of Primary Representative. The Tribal Cannabis Commission and the OLCC-designated representatives shall act as the primary representative to whom any notices or communications required or permitted pursuant to this Agreement shall be provided, unless otherwise stated in this Agreement.

4. Regulatory Changes.

a. The State agrees to provide the Tribe electronic notification of amendments to agency rules, issued by the State's electronic notification program, where such system exists. If no such electronic notification system exists, the agency will make reasonable best efforts to provide notice of amendments to the Tribe. The Tribe and State acknowledge that the version of the State Marijuana Laws applicable to this Agreement on the Effective Date will be amended throughout the term of this Agreement. The Tribe and State agree that the standards that the Tribe has agreed to implement in this Agreement in Sections IV.B.2 (Retail Facilities), IV.B.3, (Transfer of Marijuana Items), IV.C.6 (Tracking ("Seed to Sale Program")), IV.C.7 (Consumer Health and Safety Standards), IV.D.4 (Video Surveillance), and IV.E (Testing) will meet or exceed those standards contained in the State Marijuana Laws, as amended. The Tribe and State agree that, if the State adopts new regulatory standards in amendments to the State

Marijuana Laws, those standards related to consumer health and safety will apply to this Agreement.

b. The Tribe agrees to use reasonable best efforts to provide the State not less than 60 days' written notice of any amendments to its regulatory laws or procedures, unless emergency or public health and safety considerations merit otherwise, in which case the Tribe agrees to provide notice of such changes or proposed changes as quickly as practicable. The Tribe agrees to highlight to the State any amendments that may affect public health and safety.

c. Either party may object to the other party's changes in law and regulations and shall make a good faith effort to notify the other party of any objections within the timeline set forth in the notice, or if no timeline is established, within a reasonable time. The State's failure to notify the Tribe of an objection to tribal changes in its laws or regulations does not constitute the State's agreement that the regulations meet the standards identified in this Agreement or satisfy the policy criteria expressed in the Cole or Wilkinson Memoranda. At the request of either party, the parties agree to make reasonable efforts to seek to resolve concerns raised by the requesting party arising from the Amendment, before final adoption of the Amendment.

5. **Tribal Licenses.** Copies of all Tribal Licenses issued by the Tribal Cannabis Commission shall be made available to the State via its OLCC-designated regulatory representative who may share such licenses, as appropriate in the OLCC's reasonable determination, with the OHA or any other relevant regulatory or law enforcement agency of the State.

6. **Tracking ("Seed to Sale Program").** The State and Tribe agree that the State and the Tribe will track the Tribal Cannabis Enterprise's Marijuana Items and any Marijuana Items the Tribal Cannabis Enterprise receives from a State Licensee, through the CTS and that the Tribal Cannabis Code will require the use of the CTS as the Tribal Cannabis Enterprise's tracking system. The Tribe agrees that the Tribal Cannabis Commission will require Tribal Licensees to enter into CTS any and all information prompted or required by the CTS and that the Tribal Licensees will maintain all CTS records. The Tribe agrees that the Tribal Cannabis Commission shall permit Tribal Licensees, employees, agents, and permittees to transport Marijuana Items only when using a manifest generated from CTS that satisfies the requirements of OLCC's rules relating to transportation and delivery of Marijuana Items. OLCC will provide the Tribal Cannabis Enterprise access to the CTS. The Tribe and OLCC agree to cooperate in establishing and adhering to a protocol for the Tribal Cannabis Enterprise to access the CTS, at a negotiated cost, as a non-OLCC licensee. The Tribe agrees to require the Tribal Cannabis Enterprise to assign a CTS administrator who will attend all system trainings required of State Licensees, as described in OLCC's rules in the State Marijuana Laws.

7. **Consumer Health and Safety Standards.** The Tribe's production, processing and regulatory activities shall ensure that the Tribal Cannabis Enterprise's Marijuana Items meet the following standards (as currently adopted and as may be amended from time to time) as described below:

a. Packaging and Labeling.

i. The Tribe agrees to apply and enforce the packaging and labeling requirements of the Tribal Cannabis Code. The Tribe further agrees that the packaging and labeling of Marijuana Items that will be sold to consumers or transferred to a State Licensee for ultimate sale to consumers in the State Market will meet or exceed the packaging and labeling procedures and standard requirements of the State, in the State Marijuana Laws, as amended from time to time. Prior to selling a Marijuana Item to a consumer, the Tribe agrees that the Tribal Enterprise will comply with all packaging and labeling pre-approval process requirements required of licensees by the State Marijuana Laws.

ii. The Tribe agrees that, to be sold in the State Market, Marijuana Items must satisfy the standards identified in this section 7.a. The Tribe agrees that it will not allow Marijuana Items for sale off-Reservation in the State Market to be Processed or Produced except in accordance with this section 7.a.

b. Pesticides.

The Tribe agrees to apply and enforce the pesticide use standards of the Tribal Cannabis Code. In particular, the Tribe agrees that, for Marijuana Items that will be sold or transferred for sale in the State, the Tribal Cannabis Commission will adopt a list of authorized pesticides and will prohibit Tribal Licensees from using any pesticides other than those on the authorized list and will require that the application of the pesticides meets or exceeds State standards directly related to consumer health and safety rules in the State Marijuana Laws. The Tribe agrees to provide ODA a list of pesticides authorized by the Tribal Cannabis Commission and to notify ODA if the list is changed.

i. The Tribe agrees that the list of authorized pesticides to be adopted by the Tribal Cannabis Commission will only include those pesticides that are listed on ODA's "Guidelist for Pesticides and Cannabis." The Tribe may notify the State of the Tribe's desire to meet and confer regarding the potential addition of a pesticide to the Tribal Cannabis Commission's list of authorized pesticides. The Tribe and the State shall meet and confer in good faith regarding the proposed addition. If both parties agree that the pesticide may be added to the Tribal Cannabis Commission's list of authorized pesticides, the State and Tribe may enter into a written agreement that sets forth the additional allowed pesticide, a consumer safety protocol for use of the pesticide, and any other agreed upon terms. Any written agreement adding one or more pesticides to the Tribal Cannabis Commission's list of authorized pesticides pursuant to this section 7.b. is incorporated as an amendment to this Agreement on execution.

ii. The Tribe agrees that it will not allow the use of pesticides on Marijuana Items that will be sold off-Reservation in the State Market except as provided in this section 7.b.

c. Solvents.

i. The Tribe agrees to apply and enforce the solvent use standards of the Tribal Cannabis Code. The Tribe further agrees that, for Marijuana Items that will be sold or transferred for sale in the State, those standards will meet or exceed solvent standards relevant to protecting consumer health and safety in the State Marijuana Laws. The Tribe agrees to provide ODA a list of solvents authorized by the Tribal Cannabis Commission and to notify ODA if the list is changed.

ii. The Tribal Cannabis Commission will not authorize Tribal Licensees to use solvents on Marijuana Items that are intended for sale off-Reservation other than solvents that are authorized for use in Marijuana processing by OLCC. The Tribe may notify the State of the Tribe's desire to meet and confer regarding the proposed addition of a solvent to a Tribal Cannabis Commission's list of authorized solvents. The Tribe and the State shall meet and confer in good faith regarding the proposed addition. If both parties agree that the solvent may be added to the Tribal Cannabis Commission's list of authorized solvents, the State and Tribe may enter into a written agreement that sets forth the additional allowed solvent, a consumer safety protocol for use of the solvent, and any other agreed upon terms. Any written agreement entered adding one or more solvents to the Tribal Cannabis Commission's list of authorized solvents pursuant to this section 7.c. is incorporated as an amendment to this Agreement on execution.

iii. The Tribe agrees that it will not allow the use of solvents on Marijuana Items that will be sold off-Reservation in the State Market except as provided in this section 7.c.

d. **Edibles.** The Tribe agrees that the Tribal Cannabis Commission will not authorize Tribal Licensees to produce Cannabinoid Edibles for off-Reservation sale until the Tribe has entered into a memorandum of understanding with ODA on the food and safety standards to be applied by the Tribal Cannabis Commission in order to operate a food establishment that will satisfy consumer health and safety requirements. ODA shall engage in good faith with the Tribe to reach a memorandum of understanding. Any memorandum of understanding entered into pursuant to this section 7.d. is incorporated as an amendment to this Agreement on execution.

e. **Scales.** The Tribe agrees that the Tribal Cannabis Commission will only approve a weighing device for use by a Tribal Licensee if that weighing device is an ODA licensed weighing device of appropriate size and capacity as the Tribal Cannabis Commission and ODA shall reasonably agree.

f. **Concentration and Serving Limits.** The Tribe agrees to apply the concentration and serving limits of the Tribal Cannabis Code. The Tribe further agrees that the Tribal Cannabis Commission will require that concentration and serving limits of Marijuana Items that will be sold or transferred for sale in the State Market will meet or be more restrictive than the concentration and serving limits set by the State.

g. Microbiological Contaminant Testing. Unless the State and the Tribe reach a written agreement otherwise, the Tribal Cannabis Commission will require the Tribal Cannabis Enterprise to submit samples to the State for microbiological contaminant testing in a manner provided for by the State Marijuana Laws.

h. Failure to Meet Product Standards. In the event that a Marijuana Item does not meet the standards described in this Agreement, the Tribe acknowledges that the Marijuana Item cannot be sold in the State Market. If a tribal Marijuana Item enters the State Market that the State believes does not comply with the standards identified in this Agreement, the State may recall and embargo the Marijuana Item. The Tribe agrees to track recalled Marijuana in the CTS system. If a tribal Marijuana Item is recalled and embargoed, the State will notify the Tribe's designated representatives, and the Tribe may return the recalled items to the Reservation to determine whether the item(s) can be remediated. The State and the Tribe agree that if Marijuana Items fail pesticide testing or microbiological contaminant testing and State Marijuana Laws prohibit the remediation of the Marijuana Item, then those Marijuana Items may not be returned to the Reservation or remediated. The Tribe agrees that the Tribal Cannabis Commission will adopt standards for remediation that are similar to and as rigorous as State administrative rules relating to remediation. If the Tribal Cannabis Commission believes the item(s) can be remediated, it shall provide a notice to the State, and the Tribe and State agree to expeditiously meet on the matter. If the State does not agree with the Tribal Cannabis Commission determination about remediation, the Tribe may initiate the dispute resolution process discussed in the "Dispute Resolution" section of this Agreement. If the Tribe does not return the items to the Reservation or otherwise initiate the dispute resolution process within 7 days of the State's notice, the State may take any action authorized under its regulations with respect to the recalled items (including destruction of items) located within the State's jurisdiction.

i. Medical and Recreational Marijuana. The Production and Processing Facility will produce and process recreational Marijuana Items and Medical Grade Marijuana Items, which will be sold to OLCC licensees authorized to sell Medical Grade Marijuana Items. Production and processing of these items shall be well-marked, labeled and tracked to maintain separation of their respective supply streams.

D. Verification. In order to ensure compliance with federal priorities expressed in the Cole and Wilkinson Memoranda and to protect public health and safety, the parties agree to provide for verification that the Marijuana Items meet the standards set out in this Agreement as follows:

1. Inspections.

a. The Tribe agrees that the Production and Processing Facility shall be subject to unnoticed, random inspections for compliance with the Tribal Cannabis Code, by and through its Tribal Cannabis Commission or its designee. The Tribe further agrees, by and through its Tribal Cannabis Commission or its designee, to provide a copy of all inspection reports to the OLCC agency representative in a form reasonably acceptable to the Tribe and State if the inspection pertains to any of the public health and safety standards identified in this

Agreement. The Tribal Cannabis Commission will make reasonable efforts to provide the OLCC agency representative with not less than 10 Business Days' notice of any inspection of the Production and Processing Facility, unless an emergency or other public health and safety concerns require that the inspection be conducted more quickly, in which case the Tribe shall provide the OLCC agency representative with notice as quickly as practicable. If the State, through any of its designated representative(s), requests to have a representative present during the Tribal Cannabis Commission's inspection of the Production and Processing Facility, the Tribe agrees to permit an appropriate State agency representative (including OLCC, OHA, or ODA) or law enforcement representative to attend the next scheduled, or as mutually agreed, inspection. If the State identifies a reasonable concern regarding the frequency of the Tribal Cannabis Commission's public health and safety inspections, the Tribe agrees to accommodate reasonable requests from the State for more frequent inspections. If the Tribe believes that the State's request is not reasonable, the Tribe may initiate the "Dispute Resolution" section in this Agreement.

b. If the Tribe requests that a representative or designee of the Tribal Cannabis Commission be present during State regulatory inspections of the premises of State Licensees, the State agrees to work with the Tribe to facilitate cross training with Tribal inspectors or a joint inspection of a State Licensee.

2. Access to Records.

a. The Tribe agrees that, in order to ensure the protection of public health and safety, the Tribal Cannabis Commission will make available to the State subject to this Section D.2. and upon request from the State, records that a Tribal Licensee possesses and records that the Tribal Cannabis Commission either has or may obtain through its regulatory oversight of its licensee(s) that are related to the specific public health and safety issue stated in the State's request, which may include but is not limited to records relating to packaging, testing, labeling, diversion, product safety (including solvents and pesticides), food safety, and extracts. The State shall only request records when it reasonably believes that the records it is requesting to access reasonably relate to consumer health and safety concerns as to Marijuana Items sold off-Reservation or reasonably related to the State's interests in robust off-Reservation regulation to protect public health and safety. If the Tribal Cannabis Commission has already conducted an investigation of the concern, it may provide to the State information pertaining to the Tribal Cannabis Commission's conclusion of that investigation. If the Tribal Cannabis Commission does not possess the records or has not conducted an investigation into the concern, the Tribal Cannabis Commission shall have the option to obtain the requested records and either provide them to the State or conduct its own investigation of the records and provide the Tribal Cannabis Commission's conclusion of that investigation to the State. If the State continues to have concerns after receiving the report, the State may request that the Tribal Cannabis Commission promptly deliver the requested records. If the State continues to have concerns after receiving the requested records, the State may request that the Tribal Cannabis Commission obtain additional records. In addition, if the State notifies the Tribal Cannabis Commission that the State reasonably believes there would be a threat to public health or safety while the Commission

conducts its investigation and prepares its report, the Tribal Cannabis Commission will obtain and provide the requested records as quickly as feasible.

b. The State agrees to make reasonable best efforts not to disclose “trade secrets” or “information submitted in confidence” as defined in the Oregon Public Records Law, ORS 192.410 et seq. when it concludes that an exemption to disclosure is supported by law. The State agrees to provide not less than 5 Business Days advance notice to the Tribe of its intent to disclose any document obtained from the Tribal Cannabis Commission.

c. The State agrees, that in order to demonstrate that the State is ensuring the protection of public health and safety through its regulatory scheme, the State will make available upon request from the Tribal Cannabis Commission records that State agencies possess that would be disclosed to a “person” making a public records request, pursuant to ORS 192.420.

d. In the event that either party believes the other party is requesting records that do not relate to a specific public health and safety interest of the party, as recognized by this Agreement, or believes that the records or information provided by the other party are insufficient to verify that a threat to such public health and safety interests does not exist, the Tribal Cannabis Commission and the relevant agency representative(s) agree to meet and endeavor to agree on the scope of the records that will satisfy the other party’s interest in verifying that that a threat to public health and safety does not exist.

e. If the parties cannot agree on the relevancy of records that the other party is requesting, the party seeking records may provide notice to the other party’s Government Representative that there is a perceived threat to a public health and safety interest of the party. The notice shall include a reasonable basis for the perceived threat. If there is a disagreement about the reasonableness of the facts used to substantiate the concern raised by the requesting party, then: (i) the Government Representatives of the State and the Tribe, as identified in the “Designated Representatives and Notice” section below, shall, at the request of either party, promptly meet to try to resolve the disagreement, or (ii) either party may seek to resolve the disagreement through the dispute resolution procedures in this Agreement.

f. If the State believes that requesting records from the Tribal Cannabis Commission would be unlikely to resolve the State’s concerns, then the State may direct its request to meet to the Tribe’s Government Representative as identified in the “Designated Representatives and Notice” section below.

g. The Tribe agrees that the Tribal Cannabis Commission will maintain and enforce regulations that impose the requirements currently codified at Tribal Cannabis Commission regulation 743-1050, as amended from time to time subject to the “Regulatory Changes” section of this Agreement, and will maintain, for a period of three years, all records that it receives from Tribal Licensees pursuant to Tribal Cannabis Commission regulation 743-1900(1).

3. Emergencies. In addition to the inspections described in the “Inspections” section of this Agreement, the Tribe agrees that the Tribal Cannabis Commission shall conduct an inspection of the Production and Processing Facility and allow the State to have a representative present during the inspection, within 24 hours of the State providing the Tribal Cannabis Commission notice that the State has concluded that such an inspection is necessary because: (i) the State reasonably believes that there may be a threat to consumer health and safety as a result of a condition of a Marijuana Item produced by a Tribal Licensee; or (ii) the State reasonably believes that a Marijuana Item produced by a Tribal Licensee has been or is being diverted to or from the unregulated market or outside the State of Oregon.

4. Video Surveillance. The Tribe agrees that the Tribal Cannabis Commission will require a Tribal Licensee to make available to the State, at the State’s cost and upon reasonable notice, the Tribal Licensee’s surveillance recordings that it has maintained in accordance with the requirements currently codified at Tribal Cannabis Commission regulation 743-1225. The Tribe agrees that the Tribal Cannabis Commission will maintain and enforce regulations that meet the standards required by State rules regarding video surveillance and equipment, including but not limited those rules currently codified in the State Marijuana Laws.

E. Testing.

1. State Licensed Lab Testing. Unless agreed to otherwise in writing by the Tribe and State as provided below, the Tribe agrees to require Tribal Licensees to have Marijuana Items that will be sold or transferred for sale in the State Market sampled and tested by a State testing laboratory licensed pursuant to the State’s statutes and the OLCC and rules pertaining to State laboratory licensing requirements in the State Marijuana Laws, as amended from time to time. The Tribe shall authorize the State licensed lab to collect testing samples at the Production and Processing Facility. The Tribe agrees that testing of Marijuana Items that will be sold or transferred for sale in the State Market will meet or exceed the testing procedures and standard requirements of the State Marijuana Laws.

2. Tribal Licensed Lab Testing.

a. The State understands that the Tribe may desire in the future to establish a tribal testing laboratory under the Tribal Cannabis Code that meets the eligibility requirements of the Tribal Cannabis Code. Upon the Tribe’s request, the State agrees to engage in discussions with the Tribe about the mutually agreeable conditions necessary for a tribally licensed testing laboratory to meet the consumer health and safety needs of the State. The Tribe agrees that any such testing laboratory would be accredited by the Oregon Environmental Laboratory Accreditation Program, that independent oversight on sampling would be required and that the facility otherwise will need to meet or exceed the testing procedures and standard requirements of the State.

b. If the Tribe establishes a tribal testing laboratory and wishes to provide Marijuana Item testing services to State Licensees, the State agrees to engage in discussion with the Tribe regarding the conditions necessary for a tribally licensed testing laboratory to meet the

consumer health and safety needs of the State. The State currently believes that those conditions will include the requirement that the Tribal laboratory would not test Marijuana Items produced by Tribal Licensees and that the tribal testing laboratory agrees to be licensed by the OLCC for a number of years according to terms and conditions that are mutually agreeable to the State and the Tribe.

V. REGULATORY AND ENFORCEMENT COORDINATION

A. Licensing and Law Enforcement Coordination.

1. **Tribal production, processing, wholesale and testing licenses.** Provided that the conditions of this Agreement are satisfied as appropriate to the license category, and that the Tribal Licensee, licensee representative, or Marijuana Item, is also in compliance with the Tribal License, then Tribal Licenses pertaining to the Production and Processing Facility, licensee representatives for such Tribal Licensees, and Marijuana Items produced, processed, or tested at the Production and Processing Facility will be accorded by the State, its agencies and instrumentalities the same regulatory and law enforcement treatment as that of, as applicable, a State License, licensee representative, and Marijuana Item produced, processed, or tested by a State Licensee. This treatment includes, without limitation:

a. The ability to transfer Marijuana Items from a premises subject to a Tribal License to premises subject to a State License.

b. The ability of non-tribal members who are employees of a Tribal Licensee to perform their duties on Reservation in accordance with the terms of the Tribal License and without state law enforcement or regulatory penalties.

c. The ability of tribal and non-tribal members who are employees of a Tribal Licensee to perform their duties off-Reservation as permitted in this Agreement including without limitation the acquisition of Marijuana from State Licensees and in accordance with the terms of the Tribal License without State law enforcement or regulatory penalties.

2. **Transport Across Reservation.** State Licensees shall be permitted to transport Marijuana Items across the Reservation within State highway corridors only, provided such State Licensees are in compliance with the terms of their State License and the requirements of the Tribal Cannabis Code while on the Reservation (see e.g., Temporary Regulation 743-2000). The State Licenses of State Licensees who comply with this section shall be deemed a valid licensee for purposes of WSTC 305.570 and such State Licensees, licensee representatives and permittees shall not be subject to criminal or civil liability for transporting Marijuana Items across the Reservation.

3. **Transport by Tribal Licensees Off-Reservation.** Tribal Licensees shall be permitted to transport Marijuana Items off-Reservation within the State of Oregon, provided such licensees meet the terms of their license and the requirements pertaining to transportation and delivery of Marijuana Items in OLCC's rules in the State Marijuana Laws, as amended from

time to time. The Tribal Licenses of Tribal Licensees who comply with this section shall be deemed a valid license for purposes of the State Marijuana Laws and such licensees, licensee representatives and permittees shall not be subject to State criminal or civil liability for transporting Marijuana Items off-Reservation.

4. Tribal Law Enforcement Discretion. The Tribe agrees that, absent other public health and safety circumstances, the Tribal law enforcement will decline to exercise any enforcement authority it possesses relating simply to the transport, in personal possession or medical possession quantities as such Marijuana Items are labeled and as authorized under State law, by individuals who are not State Licensee representatives or are not tribal members traveling via automobile, motorcycle or bicycle within and along State highway corridors within the Reservation boundaries.

5. Enforcement Cooperation. The State and Tribe by and through their regulatory agencies each agree to cooperate with any law enforcement investigation of the other, including by providing those agencies with access to any papers, books, records, and reports that the cooperating regulatory agency receives from any applicant, licensee or permittee, to the extent permitted by State and Federal law. While the mutual intent of the State and Tribe is to cooperate on all enforcement matters, the State and Tribe each retains discretion on the manner and scope of cooperation with respect to each other's regulatory investigations.

B. Ongoing Coordination.

1. Government to Government Meetings. The Tribe and the State agree to meet on a government to government basis once every year to review implementation of the Agreement and discuss any adjustments or amendments of this Agreement that may be necessary to achieve its intent.

2. Regulatory and Law Enforcement Agency Meetings. The Tribe and State agree that their designated agency and law enforcement representatives, including without limitation representatives for OLCC and the Tribal Cannabis Commission, shall meet on an as needed and prompt basis at the request of either party to confer on regulatory and enforcement matters and procedures, which meetings shall occur no fewer than two times per year. The purpose of these meetings is to advance communication between the regulatory and law enforcement agencies and facilitate the compatible implementation of rights and obligations under or associated with this Agreement. The State agrees that during these meetings, its designated agency representatives in attendance will use reasonable best efforts to discuss regulatory amendments the representative believes will occur.

3. Meeting Upon Request. In addition, the parties agree to meet promptly if the Tribe is concerned that the State's activities are impairing or may impair the Tribe's ability to meet the policy criteria set out in the Wilkinson memorandum, the Tribe perceives a threat to consumer health and safety, or the Tribe is concerned that the conditions of the Agreement are not being met. The parties also agree to meet promptly if the State is concerned that the Tribe's activities are impairing or may impair the State's ability to meet the enforcement policy criteria

set out in in the Cole Memorandum, the State perceives a threat to consumer health and safety, or the State is concerned that the conditions of this Agreement are not being met. If the State or Tribe believes that meeting between the agency or law enforcement representatives would be unlikely to resolve the State's or Tribe's concerns, then the State or Tribe may direct its request to meet with the Government Representative as identified in the "Designated Representatives and Notice" section below.

VI. GENERAL TERMS

A. Insurance. The Tribe anticipates that the Tribal Cannabis Enterprise will obtain the following insurance coverage:

1. Commercial general liability insurance on an occurrence basis with limits of not less than two million dollars (\$2,000,000) each occurrence combined single limit on bodily injury, death or property damage.

2. Product liability insurance on an occurrence basis with limits of liability not less than one million dollars (\$1,000,000) single occurrence and two million dollars (\$2,000,000) aggregate; and

3. Commercial automobile coverage with symbol 1 covering any vehicles owned by the Tribal Cannabis Enterprise with limits of liability of at least \$1,000,000 combined single limit.

B. State as Named Insured. The liability insurance coverage the Tribal Cannabis Enterprise obtains shall include the State of Oregon, and its agencies, departments, divisions, commissions, branches, officers and employees as Additional Insureds but only with respect to the activities to be performed under this Agreement. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

C. Endorsement – Sovereign Immunity. The Tribal Cannabis Enterprise's insurance policies obtained under this Agreement must have an endorsement providing that the insurer may not invoke tribal sovereign immunity up to the limits of the policy in any state or federal court.

D. Notice of Cancellation of Change. There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without sixty (60) days' written notice from the Tribal Cannabis Enterprise or its insurer(s) to the State.

E. Indemnification.

1. The Tribe shall indemnify and defend the State of Oregon and its agency and their officers, employees, and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever arising out of, or relating to the intentional misconduct, reckless acts, or negligent acts or omissions of its commissioners, employees, permittees, officers, contractors, subcontractors, or agents under this Agreement.

2. Subject to the limitations of Article XI, § 7 of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 through 30.300), the State shall indemnify, within the limits of and subject to the restrictions in the Tort Claims Act, the Tribe against any liability for personal injury or damage to life or property arising from the State's negligent activity under this Agreement provided, however, the State shall not be required to indemnify the Tribe for any such liability arising out of the wrongful acts of the Tribe, the Tribal Cannabis Enterprise, the Tribal Cannabis commission, their officers, employees or agents.

F. Tort Claims against the Tribal Cannabis Commission and the Tribal Cannabis Enterprise. The Tribe has authorized tort claims against the Tribe, its subordinate organizations, enterprises, officers, agents, servants and employees subject to the conditions and limitations set forth in Warm Springs Tribal Code Chapter 205 (“WSTC 205”). Members of the general public who claim to have suffered injury off-Reservation and wish to assert a tort claim against the Tribe, the Tribal Cannabis Commission, the Tribal Cannabis Enterprise, or any of their officers, agents, servants or employees arising from the Tribal Cannabis Commission’s regulatory activities and the Tribal Cannabis Enterprise’s activities relating to Marijuana Items (collectively, “Covered Tort Claims”) may assert the Covered Tort Claims in accordance with WSTC 205, except that the limitations on damages set forth in WSTC 205.004(1) shall be inapplicable to the Covered Tort Claims. Instead, limitations of liability applicable to the Covered Tort Claims shall be the limitations of liability applicable to a “local public body” (as that term is defined in ORS 30.260(6)) set forth in the Oregon Tort Claims Act, ORS 30.260 to ORS 30.300.

G. Survival of Clauses. The following provisions of this Agreement will survive termination or expiration of the Agreement: Definitions; Access to Records; Indemnification; Tort Claims against the Tribal Cannabis Commission and the Tribal Cannabis Enterprise; Survival of Clauses; Governing Law; Venue; Sovereign Immunity; No Third Party Beneficiaries; and Entire Agreement.

H. License Requirements. Unless otherwise stated in this Agreement, no State statute or rule referenced in this Agreement, either by citation or incorporated by reference or future amendments, shall be read to:

1. require the Tribal Cannabis Enterprise to obtain a State License, permit, or other authorization for any activity conducted on the Reservation, ; or
2. to expand State regulatory jurisdiction onto the Reservation beyond that which would apply under federal Indian law.

I. Term and Termination.

1. **Term.** This Agreement shall begin on the Effective date and remain in effect for ten (10) years unless it is renegotiated, or terminated according to its terms. The term of this Agreement shall automatically renew for successive ten (10) year terms unless one party provides written notice to the other party at least ninety (90) days in advance of the end of the

then existing term, indicating that it does not wish to renew, or wishes to renegotiate, this Agreement.

2. Early Termination. This Agreement may be terminated:

- a. By mutual written consent of the parties.
- b. If the State or Tribe amends its laws to criminally prohibit within the State or Reservation, respectively, Marijuana production, processing or sale.
- c. If a court of competent authority makes a final determination that the specific activities permitted in this Agreement are criminally prohibited under controlling State, tribal or federal law.
- d. If the federal government revokes the policy guidance in the Cole Memorandum or Wilkinson Memorandum, and replaces either or both with a federal enforcement policy inconsistent with the activities permitted in this Agreement.
- e. On the election of a non-breaching party if, following the conclusion of the Dispute Resolution process described herein, a final, binding determination or judgment of an arbitrator or the Circuit Court of the State of Oregon for Marion County concludes that the other party is in material breach of this Agreement and such material breach continues for 30 days following the date of such final determination.
- f. On the election of the State, following a decision by the Circuit Court of the State of Oregon for Marion County ("court"), under the Embargo provisions herein, extending a State imposed embargo for more than sixty (60) days, unless the court in extending the embargo finds that the duration for the embargo is necessary to remedy an operational defect and that the Tribe has established by a preponderance of the evidence that it is capable of and is prepared to diligently pursue the remedy for the operational defect. Operational defects do not include any activities or processes that involve criminal misconduct under Oregon or Tribal law, use of pesticides or solvents not authorized by state law, or activities or processes that demonstrate a lack of institutional capacity to prevent diversion or regulate the activities in accordance with this Agreement.
- g. On the election of the State, following a decision by the Circuit Court of the State of Oregon for Marion County, under the Embargo provisions herein, extending an embargo, for more than 30 days, and that extension is the third (or more) instance of any State imposed embargo being extended by the Circuit Court of the State of Oregon for Marion County.

J. Governing Law. Unless otherwise stated in this Agreement, the laws of the State of Oregon (without giving effect to its conflicts of law principals) govern all matters arising out of or relating to this Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement; provided that nothing in this clause shall be read to expand State regulatory jurisdiction beyond that which would apply under federal law.

K. Venue. For the purpose of enforcing this Agreement under the Dispute Resolution or Embargo provisions, each party hereby consents to the exclusive jurisdiction of the Circuit Court of the State of Oregon for Marion County, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

L. Sovereign Immunity.

1. State Waiver of Sovereign Immunity. The Oregon legislature has waived the State's sovereign immunity to suit in State court pursuant to ORS 30.320. No part of this Agreement is a waiver by the State of Oregon of any form of immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment of the Constitution of the United States.

2. Limited Tribal Waiver of Immunity. THIS WAIVER OF THE SOVEREIGN IMMUNITY OF THE TRIBE FROM SUIT OR ACTION IS ADOPTED PURSUANT TO WARM SPRINGS TRIBAL CODE CHAPTER 30 AND SHALL BE STRICTLY CONSTRUED AND LIMITED TO ITS SPECIFIC TERMS AND THE SPECIFIC WAIVER GRANTED. The Tribe hereby waives its immunity to suit in State court for the limited purpose of enforcing this Agreement according to the terms of the Dispute Resolution and Embargo provisions herein.

M. Dispute Resolution. Except as to disputes for which the Embargo process herein is invoked, at the discretion of either party, in the event one party believes that the other party has failed to comply with any requirement of the Agreement, that party may invoke the following dispute resolution procedure in order to foster cooperation and avoid the costs of litigation:

1. The party asserting noncompliance shall serve written notice on the other party in the manner set forth in the Notice provisions herein. The notice shall identify the specific provision of the Agreement alleged to have been violated and shall specify the factual basis for the alleged noncompliance. The State and the Tribe shall thereafter meet within thirty (30) days in an effort to resolve the dispute.

2. If the party's concern is not resolved informally within 30 days, the parties may agree to attempt to resolve their dispute through non-binding mediation. To be qualified, the mediator must have some background and familiarity with Federal Indian law. Either party may withdraw from the mediation process at any time upon provision of written notice to the other party.

3. If the party's concern is not resolved informally or through mediation, either party may initiate a proceeding in the Circuit Court for the State of Oregon for Marion county or, if the parties agree, binding arbitration. To be qualified, the arbitrator must have some background and familiarity with Federal Indian law.

4. General principles applicable to each mediation or arbitration:

a. The mediator or arbitrator, as the case may be, shall be selected in the following manner:

i. The parties shall obtain a list of qualified arbitrators from U.S. Arbitration and Mediation of Oregon, or any other mediation or arbitration panel agreed to by the parties.

ii. Each party, in turn, shall strike one name from the list, until one name remains. The parties shall draw lots to determine which party makes the first strike.

b. The parties shall divide the cost of the mediation or arbitration proceeding equally between them.

c. The arbitration shall be conducted in accordance with the then-current rules of Arbitration Services of Portland.

5. The State and the Tribe shall reasonably cooperate in order to cause the arbitrator to issue a final determination no more than 90 days after being chosen.

a. Nothing in this subsection shall be construed to waive, limit or restrict any remedy that is otherwise available to either party to enforce the provisions of this Agreement or limit or restrict the ability of the parties to pursue, by mutual agreement, alternative methods of dispute resolution.

b. With respect to Marijuana related items or activities not authorized by tribal or state law, nothing in this Agreement shall be construed to limit the authority of the State or Tribe to enforce and prosecute its laws.

6. Either party may file an action in the Circuit Court of the State of Oregon for Marion County (Circuit Court) to enforce a final, binding determination of an arbitrator.

N. Embargo.

1. If the State has reasonable cause to believe that there is a serious danger to public health or public safety, and has concluded that substantial harm is likely to result during the time that would pass if the Dispute Resolution procedure established herein is followed, the State shall give written notice to the Tribal Cannabis Commission that the State is invoking the Embargo Process herein. The written notice shall describe the factual basis for the State's concern. The State's concern must be limited to off-Reservation health or safety. Off-Reservation health or safety concerns may include risks that implicate the enforcement priorities identified in the Cole Memorandum. The written notice shall recommend specific action or actions the State believes will prevent substantial harm from occurring. The State will attempt to tailor the recommended action to address only the specific harm. The State and the Tribal Cannabis Commission shall meet and confer, in person or by conference call, within 24 hours

after the Tribal Cannabis Commission, or any member thereof, receives the notice. The Tribal Cannabis Commission and the State shall, in good faith, confer to establish a reasonable course of action that may be taken to address the State's concerns. If the Tribal Cannabis Commission and the State are able to reach an agreement regarding the course of action that should be taken to address the State's concerns, the Tribal Cannabis Commission shall promptly institute that course of action and take such other action as mutually agreed by the Tribal Cannabis Commission and the State as necessary to protect public health or safety. Nothing in this subparagraph shall preclude either party from invoking the dispute resolution procedures provided in this Agreement after the Tribal Cannabis Commission has taken action.

2. If the Tribal Cannabis Commission and the State, in good faith, are unable to agree on a reasonable course of action to resolve the State's concerns and the State retains a good faith belief that there is a serious danger to public health or public safety that is likely to result in substantial harm, or the Tribal Cannabis Enterprise fails to comply within any order of the Tribal Cannabis Commission implementing the course of action agreed to by the Tribal Cannabis Commission and the State pursuant to subsection (1) above within the time required by that order, the State may "embargo," i.e., suspend those sections of the Agreement that allow for distribution of all or some Marijuana Items to state-licensed premises or that allow transport outside of the Reservation as to those Marijuana Items, and the Tribal Cannabis Commission will not authorize those Marijuana Items to be transported off-Reservation. The parties agree that if the State's concern is diversion, some or all tribal Marijuana Items may be embargoed even though those Marijuana Items themselves may not present a public health or public safety risk. The parties agree that embargo of tribal Marijuana Items will act as an incentive to eliminate the diversion or risk of diversion. The embargo will last for a period of thirty (30) days ("**Embargo Period**"), after which time it will automatically cease, unless one of the following occurs:

- a. The State is satisfied that the danger to public health or safety has been addressed before that time and lifts the embargo;
- b. The parties extend the Embargo Period by mutual agreement;
- c. The State initiates an action in the Circuit Court of the State of Oregon for Marion County (Circuit Court). In that action, the State shall move for an order extending the Embargo Period. It shall be the State's burden to prove by a preponderance of the evidence that a serious danger to public health or public safety exists and that the Embargo Period should be extended until such time as the Tribe satisfies the State or the Circuit Court that there is no longer a serious danger to public health or public safety. If the State satisfies that burden, the Circuit Court shall issue an order continuing the Embargo Period as the court deems necessary. The Embargo Period will continue until the Circuit Court rules on the State's motion.

3. If the Tribe disputes, at any time in this process, that embargo is warranted, the Tribe may initiate an action in the Circuit Court of the State of Oregon for Marion County (Circuit Court) seeking an order to lift the embargo. If the Tribe initiates an action to lift the Embargo, the Tribe shall have the burden to prove by a preponderance of the evidence that there is not a serious danger to public health or safety and that the embargo is no longer necessary.

4. The State and the Tribe agree that any action pursuant to this Embargo process may be filed in the Circuit Court of the State of Oregon for Marion County, that the moving party shall have the burden to prove by a preponderance of the evidence that there is, or is not as the case may be, a serious danger to public health or safety and the embargo should be extended (or lifted), and each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum with respect to any such action.

5. Evidence of a serious danger to public health or public safety may include, but is not limited to, the following:

a. A criminal indictment for activity related to the Production and Processing Facility is filed against any licensee or employee, agent or representative;

b. Reliable information that Marijuana Items produced at the Production and Processing Facility are being diverted to an unregulated market or outside the State of Oregon; or that failure to follow security standards has created an unreasonable risk of diversion;

c. Test results, inspection, or other reliable information that show the presence of pesticides not on the Oregon Department of Agriculture list of pesticides authorized for use on marijuana or cannabis, or otherwise authorized by this Agreement, or at levels presenting a risk to consumers;

d. Test results, inspection, or other reliable information that show the presence of solvents other than those solvents authorized by State law or this Agreement, or at levels presenting a risk to consumers;

e. Reliable information that a Marijuana Item is adulterated or contaminated, creating a serious threat of illness or injury to consumers.

O. Further Assurances. The parties agree to do all acts and to deliver all necessary documents as from time to time are reasonably necessary to carry out the terms and provisions of this Agreement.

P. Cooperation. Each of the parties agrees to cooperate in good faith with the other to timely implement the purposes of the Agreement. Any consents or approvals required to be given in connection with this Agreement shall not be unreasonably withheld or delayed by the parties.

Q. No Third-Party Beneficiaries. The parties do not intend to confer any right or remedy on any third party.

R. Entire Agreement. This Agreement constitutes the entire Agreement between the Tribe and the State relating to the subject matter herein.

S. Amendments. Any and all amendments to this Agreement shall be null and void unless approved by the State and Tribe in writing. Any written agreement that the Tribe and the State, or any of their respective representatives, enter into pursuant to this Agreement is incorporated as an amendment to this Agreement on execution and governed by the terms and conditions of this Agreement, unless such further agreement specifies otherwise.

T. Designated Representatives and Notice. The following shall be the parties' designated representatives and all notices shall be filed by first class mail:

State:

Government Representative:

Office of the Governor
General Counsel
160 State Capitol
900 Court Street NE
Salem, Oregon 97301
Phone: (503) 378-6386
Attn: Ben Souede

Agency Representative:

Oregon Liquor Control Commission
9079 SE McLoughlin Boulevard
Portland, Oregon 97222
Phone: (503) 872-5250
E-mail: jesse.sweet@oregon.gov
Attn: OLCC Executive Director
Attn: Jesse Sweet

Agency Representative:

Oregon Health Authority
P.O. Box 14450
Portland, Oregon 97293-0450
Phone: (971) 673-1339
Attn: OHA Executive Director
Attn: Andre Ourso, Manager OMMMP

State Law Enforcement Representative:

Oregon State Police, Gaming, & Employee Services Bureau
3565 Trelstad Avenue, SE
Phone: (503) 934-0261
E-Mail: joel.lujan@state.or.us
Attn: Joel Lujan

Copy to:

Oregon Department of Justice:

Stephanie Striffler
Senior Assistant Attorney General
Native American Affairs Coordinator
100 SW Market Street
Portland, Oregon 97201
Phone: (971) 673-1880
E-mail: Stephanie.striffler@doj.state.or.us

And:

Judith Giers, Deputy Chief Counsel
General Counsel division
1162 Court Street, NE
Salem, Oregon 97301-4096
Phone: (503) 947-4437
E-mail: judith.a.geirs@doj.state.or.us

Tribe:

Government Representative:

Secretary-Treasurer
The Confederated Tribes of the Warm Springs Reservation of Oregon
PO Box C
Warm Springs, OR 97761
Phone: (541) 553-3232
E-mail: michele.stacona@wstribes.org
Attn: Michele Stacona

Copy to:

Karnopp Petersen, LLP
360 SW Bond Street, Suite 400
Bend, OR 97702
Phone: (541) 382-3011
E-mail: ehg@karnopp.com
Attn: Ellen Grover

Agency Representative:

Warm Springs Cannabis Regulatory Commission

P.O. Box C

Warm Springs, Oregon 97761

E-mail: _____

Phone: _____

Attn: Executive Director

Copy to:

Law Offices of Kent S. Robinson

121 SW Morrison Street

Suite 400

Portland, Oregon 97204

Phone: (503) 754-8113

E-mail: kent@kentrobinsonlaw.com

Attn: Kent Robinson

Tribal Law Enforcement Representative:

Warm Springs Public Safety

P.O. Box C

Warm Springs, Oregon 97761

E-mail: stan.suenaga@wstribes.org

Phone: (541) 553-2283

Attn: Stan Suenaga, Public Safety General Manager

U. Signatures. This Agreement may be signed in counterparts. A fax or electronic email transmission of a signature page will be considered an original signature page. At the request of a party, a party will confirm a fax or electronic transmitted signature page by delivering an original signature page to the requesting party.

[Signature page follows]

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed and made effective for all purposes as of the Effective Date.

State of Oregon



Kate Brown,
Governor

Confederated Tribes of the Warm
Springs Reservation of Oregon

E. Austin Greene, Jr.,
Chairman, Tribal Council

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed and made effective for all purposes as of the Effective Date.

State of Oregon

**Confederated Tribes of the Warm
Springs Reservation of Oregon**

**Kate Brown,
Governor**

E. Austin Greene, Jr. 4/26/17

**E. Austin Greene, Jr.,
Chairman, Tribal Council**