

# Council Operations Action Form

Please turn in with resolution & attachments or with your agenda item, to Council Operations, the Wednesday prior to the Council meeting by 4:30 PM If you have questions contact [MelissaRM@Lummi-nsn.gov](mailto:MelissaRM@Lummi-nsn.gov) or ext. 2142

To be completed by Originator:

Clearances	Initial	Date	Comments	Resolution # 2024-039	Agenda Date:
Originator	DH	2/22/24			4/22/2024
ORA	GR	2/14/24		Title: Approval of Cannabis Compact with the Washington Liquor and Cannabis Board	
Depart. Director	SR	2/26/24		Name of Presenter: Derek Harter	
Cultural Department	JS	3/12/24		Financial impact (if yes attach Executive Summary)	Budgeted Y N # of Pages Attached: 27 pages
Treaty Protection Office (TPO)	CC	3/12/24		<b>Distribution</b> (departments or individuals who will need a copy of the certified resolution Circle all that apply):	
CBC Chairperson				Planning	Economic Development
General Manager If Applicable				Human Resources	Reservation Attorney's
Treasurer	JS	3/30		Natural Resources	CFO
Chairman or Vice Chairman	PH	3/20		Education	Council Officers
				General Manager	Other: Schelbinger
				Date / Name of Person Dropping off at Council Operations: 3/13/2024 Derek Harter	

Please give a brief narrative of your agenda item: \_\_\_\_\_

By signing below, I have completed the Action form assuring that there is approval from all listed parties before submitting it to Council Operations also; "Sign here" tabs have also been placed in all areas in need of signature.

Signature of Department: [Signature]

Date & Time 3/13/2024 11:36 am

Signature Received by: [Signature]

Date & Time 3/13/2024 11:36 am

To be completed by Council Operations staff:

### Council Follow Up

Date Sent to Originator or other: \_\_\_\_\_

Staff Signature: \_\_\_\_\_

Resolution # 2024-039





# LUMMI INDIAN BUSINESS COUNCIL

2665 KWINA ROAD • BELLINGHAM, WASHINGTON 98226 • (360) 312-2000

## **RESOLUTION #2024-039 OF THE LUMMI INDIAN BUSINESS COUNCIL**

**TITLE: Approval of Cannabis Compact with the Washington Liquor and Cannabis Board**

**WHEREAS**, the Lummi Indian Business Council (LIBC) is the duly constituted governing body of the Lummi Nation by the authority of the Constitution and Bylaws, as amended, of the Lummi Tribe of the Lummi Reservation, Washington; and

**WHEREAS**, pursuant to Article VI, Section 1(a), (c), and (l) of the Lummi Constitution, the LIBC has the power to administer all tribal property and assets, to collect and expect tribal funds and to safeguard and promote the peace, safety, morals, and general welfare of the Lummi Reservation; and

**WHEREAS**, it is the mission of the LIBC *“To Preserve, Promote and Protect our Sche Lang en”* (LIBC Resolution #2012-025); and

**WHEREAS**, per LIBC Resolution 2021-113, the LIBC approved the Marijuana Policy Task Force (Task Force) to bring a draft Cannabis Compact back to LIBC for approval by resolution, attached as exhibit B; and

**WHEREAS**, per LIBC Resolution 2021-151, the LIBC approved the Task Force to negotiate a Marijuana Compact with the Washington Liquor and Cannabis Board (“WA LCB”), attached as exhibit C; and

**WHEREAS**, after many amendments and meetings, the Task Force and WA LCB have finalized the Cannabis Compact; and

**WHEREAS**, the Cannabis Policy Review Task Force recommends the approval of the Cannabis Compact, attached as Exhibit A.

**NOW, THEREFORE BE IT RESOLVED**, the LIBC approves the attached Cannabis Compact with the WA LCB; and

**BE IT FINALLY RESOLVED**, that the Chairman (or Vice Chair in his absence) is hereby authorized and directed to execute this resolution and any documents connected therewith, and the Secretary (or the Recording Secretary in her absence) is authorized and directed to execute the following certification.



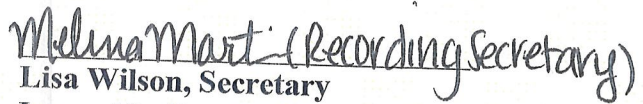
LUMMI NATION



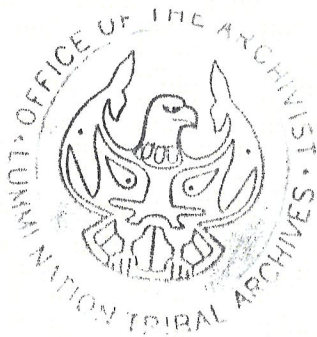
**Anthony Hillaire, Chairman  
Lummi Indian Business Council**

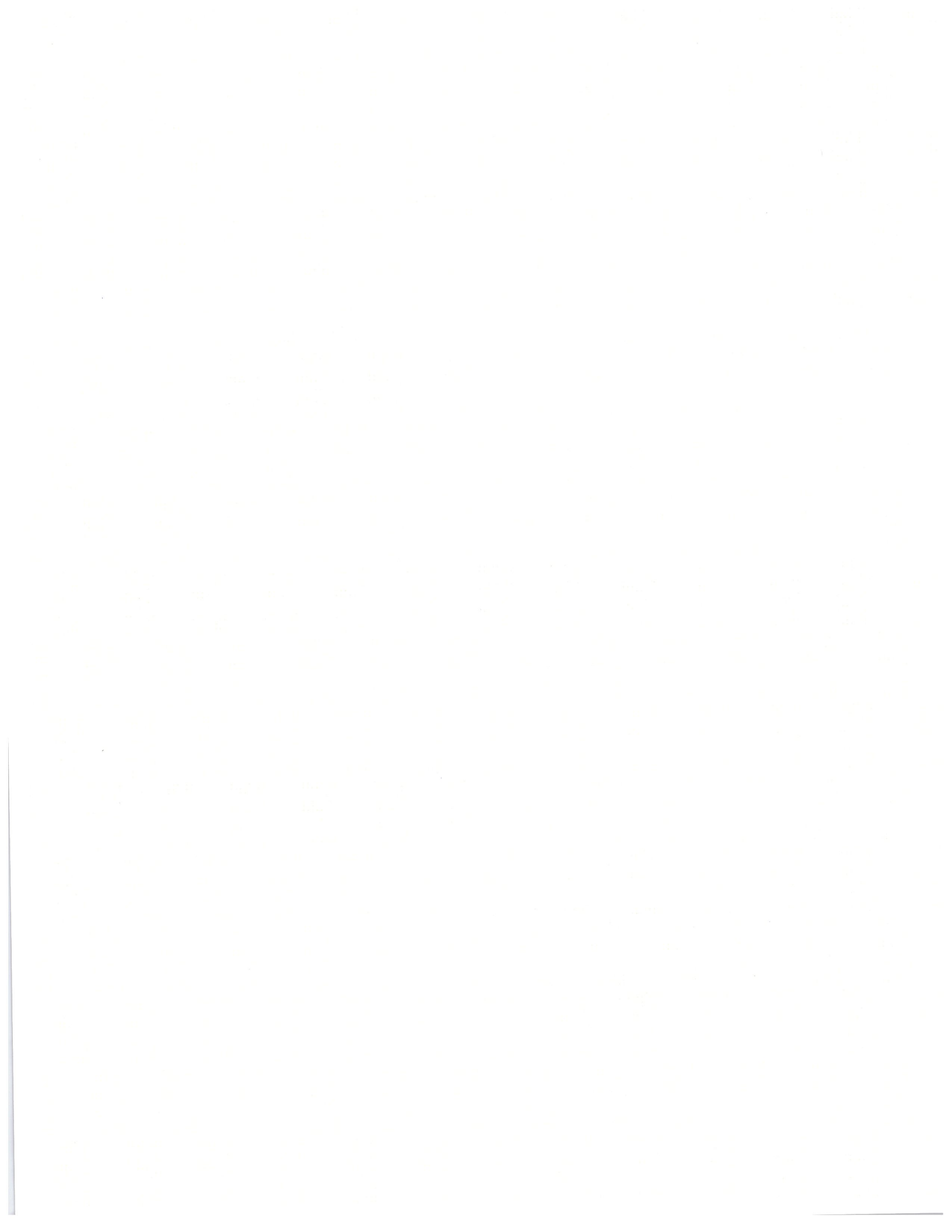
CERTIFICATION

As Secretary of the Lummi Indian Business Council, I hereby certify that the above Resolution #2024-039 was adopted at a **Special** Meeting of the Council held on the 22<sup>nd</sup> day of April 2024, at which time a quorum of 10 was present by a vote of 8 for, 1 against, and 0 abstention(s).



**Lisa Wilson, Secretary  
Lummi Indian Business Council**





**Resolution 2024-039**

**EXHIBIT A**

---

**Cannabis Compact between the Lummi Nation and the  
State of Washington**

Cannabis Compact

---

Between

The Lummi Indian Nation and

The State of Washington



**Table of Contents**

I. INTRODUCTION ..... 2

II. PARTIES ..... 2

III. PURPOSE AND INTENT ..... 2

IV. DEFINITIONS ..... 4

V. GENERAL MATTERS ..... 5

VI. RETAIL SALES ..... 8

VII. PRODUCING AND PROCESSING ..... 9

VIII. RESEARCH AND TESTING OF CANNABIS PRODUCTS ..... 11

IX. NOTICE TO LOCAL JURISDICTIONS ..... 12

X. TAXATION AND RECORD-KEEPING ..... 13

XI. SAFETY AND ENFORCEMENT ..... 14

XIII. COMMUNICATION AND NOTICE ..... 20

XIV. EFFECT, DURATION, AND AMENDMENT ..... 21

## **I. INTRODUCTION**

This compact is entered into pursuant to House Bill 2000, Chapter 207, Laws of 2015 (the “Compacting legislation”). This document will be cited as the “Cannabis Compact Between the Lummi Nation and the State of Washington, hereinafter referred to as the “Compact.”

## **II. PARTIES**

The Parties to this Compact are the Lummi Nation (“Tribe”) and the State of Washington (“State”) (collectively, “Parties”).

The Tribe, whose governmental offices are located on the Lummi Indian Reservation, which is located within the state of Washington, is a federally recognized sovereign Indian Tribal government.

The State of Washington is a state within the United States of America, possessed of the full powers of a state government. The Washington State Liquor and Cannabis Board (“Board”) is an executive department of the State government with statutory authority with respect to cannabis under chapters 69.50 and 69.51A RCW. The Compacting legislation allows the Governor to enter into an agreement with any federally recognized Indian Tribe located within the geographical boundaries of the State regarding cannabis and to delegate the power to negotiate such agreement to the Board.

## **III. PURPOSE AND INTENT**

Historically, the production, possession, delivery, distribution, and sale of cannabis have been illegal across the United States and in Indian Country. In 2012, Washington voters passed Initiative 502 (“I-502”) which sets forth a tightly regulated, state-licensed system allowing for the production, processing, and retail sale of cannabis, cannabis concentrates, useable cannabis, and cannabis-infused products for recreational purposes within the State of Washington.

Through State law and the Board’s implementing rules, the State has legalized possession of limited amounts of cannabis and the production, processing, and sale of cannabis by licensed businesses and has set forth a civil regulatory system that keeps cannabis production, processing, and sale in the State regulated and safe for the public and accomplishes the following priorities: preventing the distribution of cannabis to minors; preventing revenue from the sale of cannabis from going to criminal enterprises, gangs, and cartels; preventing the diversion of cannabis from states where it is legal

under state law in some form to other states; preventing state-authorized cannabis activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity; preventing violence and the use of firearms in the cultivation and distribution of cannabis; preventing drugged driving and the exacerbation of other adverse public health consequences associated with cannabis use; preventing the growing of cannabis on public lands and the attendant public safety and environmental dangers posed by cannabis production on public lands; and preventing cannabis possession or use on federal property.

After serious deliberation, the Tribe, as a sovereign nation, has also determined that present day circumstances make a complete ban of cannabis within Indian Country ineffective and unrealistic and has decriminalized its sale and possession in certain circumstances. At the same time, consistent with the priorities described above, the need still exists for strict regulation and control over the production, possession, delivery, distribution, sale, and use of cannabis in Indian Country.

The State and the Tribe have recognized the need for cooperation and collaboration with regard to cannabis in Indian Country. The State has authorized the entry of this Compact by the Compacting legislation, enacted by the 2015 Regular Session of the Legislature, Laws of 2015, Chapter 207. Through Section 2 of this legislation, codified at RCW 43.06.490, the State authorized the Governor to enter into Compacts concerning the regulation of cannabis and to delegate the authority to negotiate the Compacts to the Board.

The Parties share a strong interest in ensuring that cannabis production, processing, and sales in Indian Country are well-regulated to protect public safety and community interests. The Parties acknowledge that pursuant to federal law, 21 U.S.C. § 812, cannabis is a Schedule I controlled substance and that this Compact does not protect the sales or regulation of cannabis in Indian Country from federal law; however, the Parties have entered into this Compact in order to strengthen their ability to meet these mutual interests and to provide a framework for cooperation to ensure a robust Tribal and state regulatory and enforcement system.

The Parties agree that it is in the best interests of the Tribe and the State that they further implement the government-to-government relationship between them, as recognized in the [Centennial Accord of August 4, 1989](#), by entering into a compact to protect public health and safety, ensure a lawful and well-regulated cannabis market, encourage economic development in Indian Country, and provide fiscal benefits to both the Tribe and the State.

#### IV. DEFINITIONS

- A. "Auditor" means a certified public accountant licensed and in good standing in the State of Washington.
- B. "Board" means the Washington State Liquor and Cannabis Board.
- C. "Cannabis," cannabis concentrates," "cannabis-infused products," and "useable cannabis" as used in this Compact shall have the same meanings as in RCW 69.50.101 or any amendments thereto. Together, these terms shall be referred to as "cannabis product" or "cannabis products."
- D. "Compact" means this Cannabis Compact Between the Lummi Nation and the State of Washington, as it may be amended.
- E. "Indian Country", defined in 18 USC § 1151, includes the Lummi Indian Reservation and all trust lands of the Lummi Indian Reservation under the jurisdiction of the United States Government for the Tribe or any of its Tribal Members.
- F. "Parties" means the Tribe and the State.
- G. "Green Man Enterprises Corporation" or "GMEC" means a corporation chartered under Lummi Tribal law and wholly owned by the Tribe.
- H. "Processor" means any cannabis processor licensed to process, package, and label useable cannabis, cannabis concentrates, and cannabis-infused products for sale at wholesale to processors and retailers by the Board pursuant to RCW 69.50.325 and any cannabis processor in Indian Country licensed or otherwise allowed by the Tribe or any other Tribe with a cannabis compact with the Board.
- I. "Producer" means any cannabis producer licensed to produce and sell cannabis at wholesale to processors and other producers by the Board pursuant to RCW 69.50.325 and any cannabis producer in Indian Country licensed or otherwise allowed by the Tribe or any other Tribe with a cannabis compact with the Board.
- J. "Question of Law" or "Legal Question" means a legal issue, post non-binding arbitration adjudication of which may require the ruling of a court of competent jurisdiction agreed to by the parties.
- K. "Retailer" means any cannabis retailer licensed to sell useable cannabis,

cannabis concentrates, and cannabis-infused products in a retail outlet by the Board pursuant to RCW 69.50.325 and any cannabis retailer in Indian Country licensed or otherwise allowed by the Tribe or any other Tribe with a cannabis compact with the Board.

- L. "State" means the State of Washington.
- M. "State Licensee" means any cannabis producer, cannabis processor, or cannabis retailer licensed by the Board pursuant to chapter 69.50 RCW, chapter 314-55 WAC, or any other regulations promulgated there under.
- N. "State Tax" means the cannabis excise tax as stated in RCW 69.50.535 and the State and local sales and use tax on sales of cannabis as stated in chapters 82.08 and 82.12 RCW.
- O. "Tribal Code" means the Lummi Code of Laws Title 46, Commercial Cannabis Code.
- P. "Tribal Enterprise" means a business wholly or majority owned by the Tribe and authorized to produce, process, test, research or sell cannabis products under this Compact.
- Q. "Tribal Member Business" means a business majority-owned by a Lummi enrollee or enrollee of another federally recognized Indian tribe.
- R. "Tribal Tax" means a tax imposed by the Tribe on cannabis activities.
- S. "Tribe" means the Lummi Nation.

## **V. GENERAL MATTERS**

- A. Sovereign Immunity. The Parties agree that, except for the limited purpose of resolving disputes in accordance with the Dispute Resolution Section below, the execution of this Compact by the Tribe does not imply a waiver of sovereign immunity by the Tribe or any of its subdivisions, enterprises, or constituent parts and is not intended as a waiver of sovereign immunity and that any action by the State in regard to cannabis regulation by the Tribe shall be in accord with this Compact.
- B. Tribe Does Not Submit to State Jurisdiction. By entering into this Compact, the Tribe does not concede that the laws of the State apply to the Tribe, its

businesses, agents, or members regarding activities and conduct within Indian Country.

- C. State Does Not Concede Tribal Immunity. By entering into this Compact, the State does not concede that the Tribe has any immunity from the State law.
- D. This Compact Does Not Create any Third-Party Beneficiaries. No third party shall have rights or obligations under or be considered a beneficiary of this Compact.
- E. Jurisdiction. This Compact does not increase or reduce the jurisdiction of either the Tribe or the State.
- F. No Limitation. The Parties agree that the signing of this Compact and the resultant benefits and obligations shall not be construed as limiting any otherwise lawful activity of the Tribe or its subdivisions or enterprises nor subject the Tribe of its subdivisions or enterprises to any State jurisdiction not agreed to in this Compact.
- G. Applicability. Consistent with RCW 43.06.490, this Compact applies to the production, processing, research, testing and sale of cannabis products in Indian Country where the Tribe or Tribal Enterprise (i) delivers or causes delivery to be made to or receives delivery of cannabis products from a State Licensee or (ii) physically transfers possession of cannabis products from the seller to the buyer within Indian Country. Except as otherwise provided herein, the production, processing, sale, and possession of cannabis products in Indian Country pursuant to the Tribal Code and in accordance with this Compact are not subject to the terms of chapter 69.50 RCW and chapter 314-55 WAC, or any other regulations promulgated under that RCW Chapter, and any such activities will not be a criminal or civil offense under Washington state law.
- H. State Licensees.
  - 1. The Tribe may purchase cannabis products from or sell cannabis products to State Licensees or any other entity operating under a valid Compact authorized by the Compacting legislation, including any amendments thereto, with or otherwise authorized by the State. All transactions between the Tribe or Tribal Enterprise and State Licensees must be reported through the State reporting system, and cannabis products purchased from or sold to State Licensees must be fully compliant with all State cannabis laws and rules, including packaging,

testing, and labelling.

2. The State will not cite, fine, or otherwise take any other adverse licensing or other action against any State Licensee for the mere fact that it bought or sold cannabis products from or to the Tribe or a Tribal Enterprise in accordance with the terms of this Compact and the Tribal Code.
  3. To the extent necessary, the State will work with the Tribe and with any State Licensees or otherwise authorized producers, processors, or retailers to assure such entities that the Tribe and Tribal Enterprises are legally authorized to purchase and sell cannabis products pursuant to the terms of this Compact.
- I. Tribal Member Businesses. “Tribal Member Business” means a business owned by an enrolled member of the Tribe. The current Tribal Code does not permit Tribal Member Businesses to conduct retail sales, producing, processing, research or testing of cannabis products in Indian Country. However, if the Tribal Code is revised to allow Tribal Member Businesses, then the Tribal Member Business may not purchase from or sell to a State Licensee, or conduct research or testing, or transactions with a State Licensee, until such time as state law is amended to allow this activity and this Compact is amended to allow it.
  - J. Buffer Zone Requirements. To maintain community safety, Tribal cannabis producer, processor, and retail businesses in Indian Country must follow buffer zone requirements outlined in RCW 69.50.331(8)(a), and any subsequent amendments thereto as may be modified by the Tribe consistent with subsections (b) through (d), and subject to interpretations of the grounds identified in subsection (a) that are within Indian Country.
  - K. References to Laws, Rules, and Policies. References herein to Tribal ordinances, Tribal and State laws, and to Tribal, State, and Board rules and policies, include ordinances, laws, rules, and policies in existence as of the effective date of this Compact, together with any amendments that may be adopted during the term of the Compact. References herein to specific titles, chapters, or sections of the Tribal Code, the Revised Code of Washington, or the Washington Administrative Code, include the cited titles, chapters, and sections as they exist on the effective date of this Compact, together with any amendments or renumbering that may be adopted during the term of this Compact.
  - L. Non-Tribal Partial Owners and Financiers. If the Tribe is not the sole owner of the Tribal Enterprise producing, processing, testing, researching, or selling cannabis

products or receives financing from an organization outside of the Tribe, the non-Tribal owner or financier is subject to a criminal history background check and financial investigation performed by both parties. The board will use the criteria in WAC 314-55-020; 314-55-040; and 314-55-045. "Owner" means a "true party of interest", as defined in WAC 314-55-035. For a non-Tribal owner or financier to pass the background check and financial investigation, both parties must agree. If the non-Tribal owner or financier does not pass the background check and financial investigation, either party may invoke the Dispute Resolution Process of this Compact.

## VI. RETAIL SALES

- A. Retail Sales. The Tribe and/or its Tribal Enterprise may sell cannabis products in Indian Country pursuant to the Tribal Code and this Compact. This compact does not permit Tribal Member Businesses to conduct retail sales of cannabis products in Indian Country.
- B. Initial Location. The retail locations will be operated by GMEC, a Lummi-chartered corporation. The initial retail location is **4940 Rural Ave. Ferndale, WA 98248**, upon lands held in trust for Lummi Nation.
- C. Other sales by the Tribe or a Tribal Enterprise. The Tribe shall notify the State at least 30 days prior to the opening of any other Retailer owned by the Tribe or Tribal Enterprise. Only new retail locations and not the location set forth in the Initial Location Section above shall be subject to this Section. Such notifications shall include:
1. The identity of the entity which is operating the retail location;
  2. Location of the premises; and
  3. Certification that the premises is located in Indian Country.
- D. Conditions on Retail Sales.
1. Retail sales of cannabis products by the Tribe and any Tribal Enterprise must be conducted in accordance with the Tribal Code and the internal policies and controls of the Tribe or Tribal Enterprise. The Tribal Code as it exists on the date of this Compact is attached as Exhibit 1. Current copies of Tribal Code and cannabis internal policies and controls of the Tribe and any Tribal



Enterprise will be made available online or made available for review by the Board upon request. The Tribe agrees to notify the Board of any changes to the Tribal Code that may affect cannabis products within ten days of the date of adoption by the Tribe.

2. All cannabis products purchased by the Tribe, or a Tribal Enterprise from a State-licensed producer or processor will be verified upon delivery in Indian Country, and confirmation of receipt will be made by executing the delivery invoice. The Tribe or Tribal Enterprise will input or cause to be input all delivered purchases into the State's reporting system within one week of receiving any such delivery.
3. All cannabis products purchased by the Tribe or a Tribal Enterprise from the Tribal government, Tribal Enterprise, or member of another federally recognized Indian Tribe with a reservation located within the state of Washington, or sold by the Tribe or a Tribal Enterprise to a Tribal government, Tribal Enterprise, or member of another federally recognized Indian Tribe with a reservation located within the state of Washington, will be recorded in either the Tribe's or the State's reporting system within one week of any such receipt or delivery. The Tribe and any Tribal Enterprise will make such records available for review by the Board upon request.
4. Drive-through purchase facilities are prohibited. The Tribe agrees not to sell cannabis products at a drive-through purchase facility where cannabis products are sold at retail and dispensed through a window or door to a purchaser who is either in or on a motor vehicle or otherwise located outside the retail premises at the time of sale.

## **VII. PRODUCING AND PROCESSING**

- A. Producing and Processing of Cannabis Products. The Tribe may allow the production and processing of cannabis products in Indian Country pursuant to the following terms:
  1. Production and/or Processing Location. The Producing and/or Processing location will be operated by the Tribe and located within the Lummi Indian Reservation and lands held in trust for Lummi.

2. Production and/or Processing by the Tribe or a Tribal Enterprise. The Tribe shall notify the State at least 90 days prior to the start of operations of any Producer or Processor owned by the Tribe or a Tribal Enterprise. Only new Producing and/or Processing locations and not the location set forth in the Producer and/or Processing Location Section above shall be subject to this Section. Such notifications shall include:
  - a. The identity of the entity which is operating the Producer or Processor location;
  - b. Location of the premises;
  - c. Certification that the premises are located in Indian Country; and
  - d. If the notification is regarding production operations, the amount of cannabis intended to be grown by the Tribe for informational purposes in the co-management of the regulated cannabis market within Washington by the Tribe and the State of Washington.
3. Conditions on Producers and Processors.
  - a. Production and processing of cannabis products by the Tribe and any Tribal Enterprise must be conducted in accordance with the Tribal Code and the internal policies and controls of the Tribe or Tribal Enterprise. The Tribal Code as it exists on the date of this Compact is attached as Exhibit 1. Current copies of the Tribal Code and any internal cannabis policies and controls of the Tribe and any Tribal Enterprise will be made available online or made available for review by the Board upon request. The Tribe agrees to notify the Board of any changes to the Tribal Code that may affect cannabis products within ten days of the date of adoption by the Tribe.
  - b. The State requires that cannabis products sold by Producers or Processors to State Licensees be packaged, tested, and labeled in compliance with State cannabis laws. With respect to “edibles” this must include State preapproval of the product, packaging, and labeling before sale to State Licensees; PROVIDED, that such preapproval shall not be unreasonably withheld and shall be timely provided. All transactions between the Tribe or Tribal Enterprises and State Licensees will be reported through the state reporting system following the same rules as State Licensees. All cannabis products sold to State

Licensees will be fully traceable in the state's reporting system. Cannabis products will trace back to the plant(s) they were derived from and include results for all required quality assurance testing. All required test results must be entered into the reporting system by an independent State-accredited testing laboratory.

### **VIII. RESEARCH AND TESTING OF CANNABIS PRODUCTS**

- A. The Tribe may allow the opening of a Research and Testing Facility pursuant to the following terms:
  - 1. The Tribe shall notify the State and relevant local government at least 90 days prior to the start of operations of any Research and Testing Facility owned by the Tribe or a Tribal Enterprise. Such notifications shall include:
    - a. The identity of the entity which is operating the Research and Testing Facility.
    - b. Location of the premises.
- B. Research and Testing Operations. The Tribe may authorize a research and testing lab that will for a fee conduct scientific and safety testing services for substances including cannabis.
- C. Certification. The Tribe will obtain and maintain certification consistent with State rules including any amendments thereto, from the Board or the Board's vendor before conducting testing for State Licensees and will conduct no testing for State Licensees during any period in which the Tribe's Testing Lab is not certified. The Tribe must pay all vendor fees for certification, recertification, and ongoing monitoring directly to the vendor. The Tribe agrees that the Tribe's Testing Lab will meet the State's certification criteria to be certified as a lab that meets the standards in state law for conducting quality assurance testing consistent with Board rules.
- D. Testing Standards. The Tribe's Testing Lab will perform the tests described in the state rules when conducting testing for State Licensees.
- E. Federal Standards. The Tribe will conduct operations of the Testing Lab in a manner consistent and in compliance with the standards set forth by the United States Department of Justice in the Cole Memorandum and in other documents relevant to the enforcement of laws dealing with cannabis.

- F. Clientele. The Parties recognize that the Tribe's Testing Lab may offer its services to, among others, State-licensed producers, processors and retailers of cannabis, cannabis concentrates, and cannabis-infused products. The Tribe will obtain certification from the State or the State's vendor before conducting testing for State Licensees and will conduct no testing for State Licensees during any period in which the Tribe's Testing Lab is not accredited. When conducting testing for State Licensees, the Tribe's Testing Lab will report all required quality assurance test results directly into the Board's seed-to-sale traceability system within twenty-four hours of completion and record in the State's tracing system an acknowledgment of the receipt of samples from state- licensed producers or processors and verify if any unused portion of the sample was destroyed.
- G. Quality Assurance. The Tribe's Testing Lab may conduct quality assurance testing on cannabis product(s) produced or processed by the Tribe or Tribal Enterprise, as provided for herein.
1. In accordance with WAC 314-55-102(2), for cannabis products produced by the Tribe or Tribal Enterprise for sale to a State Licensee, the Tribe shall ensure that the products are tested by an accredited third-party testing lab in which the Tribe has no financial interest, and that the products comply with all legal and regulatory testing and product requirements. At its option, the Tribe's Testing Lab may also test such products, but no label or statement of testing results shall appear on a cannabis product that differs from the results determined by the accredited third-party testing lab in which the Tribe has no financial interest.
  2. The Tribe's Testing Lab may perform the tests described in the Board rules when conducting testing of cannabis products produced by the Tribe or Tribal Enterprise for sale by the Tribe or Tribal Enterprise at a retail location within Indian Country.

## **IX. NOTICE TO LOCAL JURISDICTIONS**

- A. The Parties agree that it is in the best interests of both Parties that notice be provided to neighboring jurisdictions prior to the commencement of operations of a Producer, Processor, Testing Laboratory, Research Operation or Retailer.
1. When the Tribe or any other Tribal enterprise proposes to open a new

Producer, Processor, Testing Laboratory, Research Operation or Retailer the Tribe will provide, at least 30 days prior to the commencement of operations, written notice to the county or to the incorporated cities in which the activity will occur. The Parties agree that the purpose of the notice is to facilitate an exchange of information that may be helpful to all parties concerned in addressing unanticipated impacts with the understanding that such notice related to Indian country is a matter of intergovernmental courtesy and not required by state law.

In accordance with the direction of the Legislature in RCW 43.06.490(3)(c) and RCW 69.50.331 to address problems arising out of cross-border commerce, when any business that is not a Tribal business applies to the Board for a Producer, Processor, Testing Laboratory, Research Operation or Retailer license for a location in Indian Country, the Board agrees that such license will not be granted without the person or business first obtaining express written consent of the Tribe. The Tribe agrees to respond to the express written consent request within 20 days of notification from the Board. The express written consent request shall be delivered to each of the Tribe's contacts consistent with section XII.C Notice. If the Tribe does not respond within 20 days, the Board will assume non-consent.

- B. The Tribe agrees that it will provide notice to the Board of additional trust lands on which the Tribe intends to use for a cannabis related entity established after the effective date and throughout the term of this Compact. The Tribe will provide the Board with a legal description and maps of such lands throughout the term of this Compact.

#### **X. TAXATION AND RECORD-KEEPING**

The Parties recognize that RCW 43.06.490(2)(a) provides that "Each cannabis agreement adopted under this section must provide for a Tribal cannabis tax that is at least one hundred percent of the state cannabis excise tax imposed under RCW 69.50.535 and state and local sales and use taxes on sales of cannabis." The Parties further recognize that RCW 69.50.555, 82.08.9997, and 82.12.9997, provide exemptions from certain state taxes under the circumstances described in those sections.

### State Tax.

Pursuant to RCW 69.50.555, no State Tax or fee, assessment, or other charge imposed by chapters 69.50 or 69.51A RCW may be assessed against or collected from the Tribe, Tribal Enterprise, or retail customer purchasing from the Tribe or Tribal Enterprises if covered under the provisions of this Compact. The Parties recognize that RCW 43.06.490(2) provides that "Each cannabis agreement adopted under this section must provide for a Tribal cannabis tax that is at least one hundred percent of the state cannabis excise tax imposed under RCW 69.50.535 and state and local sales and use taxes on sales of cannabis."

#### A. Tribal Tax.

1. Sales of cannabis products. The Tribe shall impose and maintain a Tribal Tax that is equal to at least 100 percent of the State Tax on all sales of cannabis products in Indian country, except that, consistent with RCW 43.06.490(2), the Tribe may allow an exemption from tax for: sales to the Tribe, Tribal Enterprise, Tribal Member Business, or an enrolled member of the Tribe; on cannabis grown, produced, or processed within Indian Country; or for transactions otherwise exempt from state cannabis taxation under state or federal law. Medical cannabis products used in the course of medical treatment by a clinic, hospital, or similar facility owned and operated by the Tribe within Indian Country are exempted from tax. The Tribe may choose to levy a Tribal Tax on any transaction that may otherwise be exempt.

- B. At the State's request, the Tribe will retain, at its own expense, an independent Auditor to test the Tribe's compliance with this Taxation and Record-Keeping Section of the Compact. The Auditor will review a sample of records to verify the requirements of this section and will provide the State with a report detailing the results of the testing procedures, to include identification of any instances of noncompliance with the terms of this section.

## **XI. SAFETY AND ENFORCEMENT**

- A. The Tribe shall address safety and enforcement issues in accordance with the Tribal Code, this Compact, and internal policies and controls of the Tribe or Tribal Enterprise.

1. Premises Checks

a. Premise Checks by the Tribe. The Tribal Police or other authorized Tribal agency may conduct its own premises checks in Indian Country to observe compliance with Tribal Code and this Compact and to provide support and education to Tribal Enterprises and staff. To the extent it is informed of the results of such premises checks, the Tribe will share the results of the premises checks with the Board.

a. Premise Checks by the Board. The Board, through its staff, may also conduct premises checks. Prior to conducting any such check, the Board will contact the Tribally authorized law enforcement agency to provide reasonable notice of such premises check. Except as provided in the Cooperation Section below, the Tribally authorized law enforcement agency may observe and participate in all premises checks. The Board will share the results of such premises checks with the Lummi Office of Reservation Attorney.

2. Compliance Checks - Minors

a. Compliance Checks by the Tribe. The Tribe may conduct its own compliance checks in Indian Country using minors ages 18, 19, or 20 through the Tribally authorized law enforcement agency or other authorized agency in accordance with Tribal regulations and policies. To the extent it is informed of the results of such checks, the Tribe will provide the results of the checks to the Board. No criminal action may be taken against any minor who purchases cannabis as part of such a compliance check.

b. Compliance Checks by the Board. Board staff may also conduct compliance checks. Prior to conducting any such check, the Board will contact the Lummi Office of Reservation Attorney to provide reasonable notice of such compliance check. Except as provided in the Cooperation Section below, the Tribally authorized law enforcement agency may observe and participate in all compliance checks. The Board will share the results of such compliance checks with the Tribal Chair.

3. Cooperation. Both Parties will cooperate in good faith to undertake all Board requested premises and compliance checks jointly. The Tribally authorized law enforcement agency will make reasonable efforts to

arrange and conduct all Board requested premises and compliance checks within 24 hours of being provided notice of such request by the Board. All such notices shall be given, via email, to the Chair and Vice Chair in Chair's absence of the Lummi Nation. The Tribe will provide the relevant email addresses to the Board. If the relevant email addresses change, the Tribe will provide the new email addresses to the Board. If the Tribally authorized law enforcement agency is unable or unwilling to arrange and conduct a requested premises or compliance check 48 hours after receiving the original notice, the Board may then perform the premises or compliance check on its own without the Tribally authorized law enforcement agency. The locations to be checked will not be notified in advance of the check by either Party. Should either Party have any concerns arising out of a premises or compliance check or the results thereof, the Parties will meet in good faith to discuss any suggested changes to protocols for the premises and compliance checks themselves or for cannabis sales by the Tribe or Tribal Enterprise that were checked.

4. Transportation Outside Indian Country. Transportation of cannabis products outside the boundaries of Indian Country shall be conducted in compliance with state law and Board rules.

## **XII. DISPUTE RESOLUTION**

- A. Process Required. Neither Party, nor any officer or official acting on behalf of a Party, may petition any court to enforce this Compact unless (a) the dispute resolution process described in this Dispute Resolution section has been followed in good faith to completion without successful resolution or (b) the other Party fails to enter into the dispute resolution. Should a dispute arise between the Parties regarding compliance with this Compact by either Party, the Parties will attempt to resolve the dispute through the following dispute resolution process.
- B. Informal Dispute Resolution. The Parties wish to prevent disagreements regarding, and violations of, this Compact whenever possible, and to resolve any such disagreements quickly and effectively and/or violations whenever they may occur. Accordingly, the Parties agree that, to the extent possible, informal dispute resolution methods, pursued in good faith, shall be used before engaging in the formal processes provided by this Article.
- C. Notification of Violation. If either Party believes a violation of the Compact has occurred, it shall notify the other Party in writing, unless the Parties agree to notice by electronic means pursuant to Article XIII, below. The notice shall state the nature of the alleged violation and any proposed corrective action or remedy.



The purpose of the meeting will be to attempt to resolve, between themselves, the issues raised by the notice of possible violation, and provide an opportunity to agree upon corrective action.

- D. Meet and Confer. The first stage of the process will include an in-person or remote meeting or meetings between representatives of the two Parties to attempt to resolve the dispute by negotiation. The meeting must be convened within 30 days after the receiving Party's receipt of the written notice described in the Notification of Violation subsection above. Representatives of each Party will come to the meeting with the authority to settle the dispute. If the dispute is resolved, the resolution will be memorialized in a writing signed by the parties.
- E. Mediation. The second stage of the process will be that if the Parties are unable to resolve the dispute within sixty (60) days after receipt of the initial written notice, the Parties will engage the services of a mutually agreed-upon qualified mediator to assist them in attempting to negotiate a dispute. Costs for the mediator will be divided equally between the Parties. The Parties will pursue the mediation process in good faith until the dispute is resolved or until ninety (90) days after the date of the mediation demand, whichever occurs first. The Parties may continue mediation after the 90-day period by mutual agreement. If the Parties cannot agree on a format for the mediation process, the format will be determined by the mediator. If a dispute is resolved, the resolution will be memorialized by the mediator in a writing signed by the Parties, which will bind the Parties.
- F. Non-Binding Arbitration. If a Party terminates the mediation process before completion, or if the mediator determines that the dispute cannot be resolved in the mediation process, or if the dispute is not resolved within ninety (90) days after the date the mediator is selected, either Party may initiate non-binding arbitration proceedings in compliance with Arbitrators nominated to the American Arbitration Association's ("AAA") National Roster of Arbitrators and according to the AAA's Commercial Arbitration Rules and Mediation Procedures, as amended, and as agreed upon by the Parties in an attempt to resolve the dispute. The Parties shall present their respective cases to the arbitrator(s), and the arbitrator(s) shall issue a decision and may recommend a course of action that is not binding on either Party. The arbitrator(s) shall confine his or her inquiry to whether a breach of this Compact has occurred. The arbitrator(s) shall have no authority to award monetary damages but may issue a non-binding arbitration decision. Absent an interim order from the arbitrator(s) specifying otherwise, the Parties shall continue to fulfil their obligations under this Agreement in good faith during the course of the proceedings. Each Party will bear its own legal costs incurred under this section. All costs of the arbitrator(s) will be shared equally.
- G. Litigation. If the Parties are unable to resolve the dispute(s) through good faith negotiations, mediation, and/or non-binding arbitration, or one Party fails to engage in the dispute resolution proceedings described in sections A through F,

above, either Party may file an action in a court of competent jurisdiction to resolve questions of law and facts. Both Parties further reserve the right to exhaust all available appellate options.

- H. Venue. The Parties agree that the exclusive venue for any litigation commenced by the Tribe or the State against the other relating to, or arising out of this MOA, including but not limited to, Article 10 section B.1, above, shall be the state courts located in Whatcom County, Washington or the United States District Court, Western District of Washington.
- I. Remedies. Whenever an issue is submitted to arbitration under this Article, the arbitrator(s) may direct corrective action to remedy any violation that has occurred. In no case, however, shall an arbitrator render an independent recommendation or decision on any issue on which the Parties reach agreement. Remedies shall not include an award of monetary damages or costs, or injunctive or other equitable relief, of any kind.
- J. Termination of Compact. If, after nine (9) months from the initial Notice of Violation, or ninety (90) days from the date of the arbitration decision, whichever is later, the Parties are unable to resolve a disagreement regarding an alleged violation, and/or the appropriate corrective action using the dispute resolution methods authorized in this section, or if a Party continues to violate a Compact term after the completion of the arbitration process authorized in this section, this Compact may be terminated pursuant to Article XII section H, below. The Parties may, after no less than six (6) months following any such termination, enter into a new Compact.
- K. Notification of For Cause Termination. Upon forty-five (45) days written notice, either Party may terminate the Compact for cause. For the purposes of this section, "for cause" shall mean only the following violations, as described above:
  - 1. Failure to submit to arbitration; or
  - 2. Failure to take action as required by an arbitrator's decision reached in compliance with this Article XII.

The Parties shall use their best efforts to resolve the dispute within the 45-day notice period. If the Parties reach agreement, or the for-cause violation is corrected, or otherwise satisfactorily addressed, during the notice period, the Compact shall not be terminated.

L. Effect of Termination.

- 1. Winding Up. Upon termination of this Compact, or upon expiration of the

Compact, the Parties shall severally be responsible for winding up all affairs that are the subject of this Compact. The Parties' obligations under this subsection shall survive the term of this Compact.

M. Question of Law. Defined supra at Section IV, Definitions, a Question of Law means a legal issue, post non-binding arbitration, the adjudication of which may require the ruling of a court of competent jurisdiction agreed to by the parties.

N. Notice Requirements. For the purposes of Article XII, notice shall be by certified mail, return receipt requested, unless both Parties agree in writing to accept notice electronically. Notice shall be deemed to be given on the date of delivery. Notice shall be given as follows:

To the Board:

Agency Director  
Liquor and Cannabis Board  
1025 Union Avenue SE  
Olympia WA 98504 3080  
360-664-1650

To the Tribe:

Tribal Chair  
(Vice Chair in Chair's absence)  
Lummi Nation  
2665 Kwina Rd.  
Bellingham, WA 98226  
(360) 312-2349

With a copy to:

Lummi Nation Office of Reservation  
Attorney.  
2665 Kwina Rd. Bellingham, WA 98226  
(360) 312-2349  
ORAAAdmin@lummi-nsn.gov  
General Counsel

### XIII. COMMUNICATION AND NOTICE

- A. Designated Contacts. The Parties agree to maintain regular and open communication regarding the administration and implementation of this Compact. The Parties agree that the following individuals will be designated primary contacts regarding administration of this Compact:

For the State:	Agency Director Liquor and Cannabis Board 1025 Union Avenue SE Olympia WA 98504 3080 360-664-1650
For the Tribe:	Legal Representative Lummi Nation Office of Reservation Attorney 2665 Kwina Rd. Bellingham, WA 98226 (360) 321-2349 ORAAdmin@lummi-nsn.gov General Counsel

- B. The Parties agree that if either Party believes that the goals and objectives of this Compact are not being met, that they will meet promptly to discuss any issues and concerns.
- C. Notice. Any notice that may be or is required to be sent under this Compact shall be sent as follows:

If to the State:	Office of the Governor PO Box 40002 Olympia WA 98504 0002
With a copy to:	Agency Director Liquor and Cannabis Board PO Box 43080 Olympia WA 98504 3080 360-664-1650

If to the Tribe: Tribal Chair & Tribal Vice Chair in Chair's absence.  
Lummi Nation  
2665 Kwina Rd.  
Bellingham, WA 98226  
(360) 312-2349

With a copy to: Lummi Nation Office of Reservation Attorney.  
2665 Kwina Rd. Bellingham, WA 98226  
(360) 312-2349  
ORAdmin@lummi-nsn.gov  
General Counsel

#### **XIV. EFFECT, DURATION, AND AMENDMENT**

- A. Term. This Compact shall remain in effect for a term of ten years unless the Parties mutually agree in writing that the Compact should be vacated or terminated and superseded by a new compact between the Parties within that time frame, or unless the Compact is terminated pursuant to the Dispute Resolution, Procedure if the Dispute Remains Unresolved Section above or the Change in Classification section below. The Compact shall be automatically renewed for successive periods of ten years, unless a Party provides written notice to the other, no later than 120 days before the expiration of the then current ten-year period, that it wishes to modify the terms of the Compact or notice that declines to renew the Compact.
- B. Amendment. No amendment or alteration of this Compact shall arise by implication or course of conduct. This Compact may be altered only by a subsequent written document, approved by the Parties, expressly stating the Parties' intention to amend this Compact.
- C. Severability. If any provision of this Compact or its application to any person or circumstance is held invalid, the remainder of the Compact shall not be affected.
- D. Change in Classification. If the classification of cannabis as a Schedule I drug is altered in any way or federal cannabis enforcement policy changes, the Parties agree to meet and discuss the need to modify this Compact. If such

modifications cannot be agreed upon, then either Party may terminate this Compact upon 60 days written notice.

- E. Renegotiation. The Parties may renegotiate the nature and/or scope of this Compact upon the written notice and request by either Party if or when:
1. Laws in the State governing cannabis are enacted allowing activities which are now prohibited, or prohibiting activities that are now allowed;
  2. The Tribe wishes to engage in forms of cannabis-related businesses other than those authorized in this Compact; or
  3. Federal laws or policies governing cannabis change.
- F. Most Favored Nation Provision in Another Compact. If, at any time after the effective date of this Compact, the State enters into an agreement, compact, or consent decree with any other federally recognized Indian Tribe or governmental agency thereof, relating to the regulation of cannabis in Indian Country which includes a “most favored nation” provision, then, upon the Tribe’s written request, this Compact will be amended to include such provision. A “most favored nation” provision is defined as language by which the State agrees to accord a Tribe or Tribal government agency the same favorable terms that are offered in later agreements with any other Tribe or Tribal government agency. This will not be construed to require that the State offer the Tribe the option to receive the same terms offered to every Tribe or Tribal government agency, in the absence of a most favored nation provision in the Compact. Notwithstanding the foregoing, the parties agree that this “most favored nation” provision does not apply to Article X, Section A of this Compact.

Signature Page Follows

This Compact is hereby made this \_\_\_\_\_ day of \_\_\_\_\_ 2024.

STATE OF WASHINGTON

Lummi Nation

\_\_\_\_\_  
Jay Inslee, Governor

  
\_\_\_\_\_  
Anthony Hillaire, Chairman

WASHINGTON STATE LIQUOR AND  
CANNABIS BOARD

\_\_\_\_\_  
David Postman, Board Chair

\_\_\_\_\_  
Ollie Garrett, Board Member

\_\_\_\_\_  
Jim Vollendroff, Board Member

\_\_\_\_\_  
William Lukela, Agency Director

