

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE NORTH DAKOTA DEPARTMENT OF AGRICULTURE
AND
INDUSTRIAL HEMP PILOT PROGRAM PILOT PRODUCER**

This Memorandum of Understanding (MOU) is made and entered into upon the last date of execution signed below between the **North Dakota Department of Agriculture** (“NDDA”) and the **undersigned applicant** (“Pilot Producer”), collectively “the Parties.”

BACKGROUND:

Pursuant to N.D.C.C. § 4-41, NDDA oversees any grower who wishes to produce industrial hemp in North Dakota;

Pursuant to the federal Controlled Substances Import and Export Act and the federal Agricultural Act of 2014, Section 7606 (hereinafter 7 U.S.C. § 5940), permissible growth of industrial hemp and distribution of its seed in North Dakota is limited to activities by NDDA through a pilot program or institutions of higher education in North Dakota for purposes of agricultural or academic research;

7 U.S.C. § 5940 requires that sites used for growing or cultivating industrial hemp in North Dakota must be certified by, and registered with, the NDDA;

NDDA created its Industrial Hemp Pilot Program to research the growth, cultivation, and marketing of industrial hemp;

Industrial hemp seed importation is subject to federal law as a controlled substance;

In order to acquire industrial hemp seed for its pilot program, NDDA registered with the United States Department of Justice, Drug Enforcement Administration (“DEA”), as an importer of controlled substances;

The NDDA Industrial Hemp Pilot program was created for the purposes, expressly stated in federal law, 7 U.S.C. § 5940, the research on the growth, cultivation, and marketing of industrial hemp; and,

Pilot Producer wishes to participate in NDDA’s Industrial Hemp Pilot Program and/or to receive industrial hemp seed through the efforts of NDDA.

Accordingly, in consideration of the above, and for the Parties’ mutual benefit and consideration of participating in NDDA’s Industrial Hemp Pilot Program and/or to receive industrial hemp seed through NDDA, NDDA and Pilot Producer hereby agree as follows.

I. NDDA agrees to:

1. If applicable and if Pilot Producer meets all prerequisites, register Pilot Producer as a participant in NDDA's Industrial Hemp Pilot Program for the sole purposes of researching the growth, cultivation, and marketing of industrial hemp;
2. Will make reasonable effort to:
 - a. Inform Pilot Producer of the requirements applicable to the production of industrial hemp in North Dakota;
 - b. Act as a general resource only for Pilot Producer on regulatory questions regarding the Industrial Hemp Pilot Program, provided that NDDA cannot and will not provide Pilot Producer legal advice and recommends Pilot Producer seek the advice of an attorney for all substantive legal questions;
 - c. Provide Pilot Producer with industrial hemp seed, upon Pilot Producer's request and at Pilot Producer's sole expense, in a quantity and variety determined at the sole discretion of NDDA; and,
 - d. Catalog data received, in cooperation with Pilot Producer, other program participants, and institutions of higher education in North Dakota, for improved methods and techniques in growing, cultivating, and marketing industrial hemp.

II. Pilot Producer agrees to:

1. Participate in the Industrial Hemp Pilot Program for the sole purpose of research of industrial hemp and its growth, cultivation, and marketability per their attached proposal. Any deviation from the proposal must be requested by the producer prior to the deviation. The deviation must be approved by the NDDA;
2. Abide by all applicable laws and regulations incident to the growth, cultivation, or marketing of industrial hemp. Pilot Producer will conduct itself and its agricultural operations to grow, cultivate, and/or market industrial hemp in a lawful manner, wholly consistent with all applicable state and federal laws and regulations. Pilot Producer acknowledges and agrees that knowledge and understanding of all applicable laws and regulations, and compliance with all those applicable laws and regulations, are entirely the sole responsibility and obligation of Pilot Producer;
3. Acknowledge and agree that any action—intended or incidental—that is contrary to such laws and regulations—known or unknown—falls entirely outside the scope of Industrial Hemp Pilot Program. Pilot Producer acknowledges that this provision applies to all actions incident to its licensed production of industrial hemp, including but not limited to any sale or disposition of the resulting plants, plant materials, or seeds for which Pilot Producer;
4. Inform NDDA of any discussions or plans relating to:

- a. Any possible sale, transfer or other distribution of the industrial hemp produced in the pilot programs;
 - b. Any movement of Pilot Producer's industrial hemp plants, plant materials, or seeds outside the licensed growing area;
 - c. Any sale of or benefit received in exchange for Pilot Producer's industrial hemp plants, plant materials, or seeds; and,
 - d. Any commercial details of such movement, sale, or exchange for use by NDDA to research the marketability and logistical production of industrial hemp in North Dakota
 - e. Any unused seed. The pilot producer must inform the NDDA of any residual seed and obtain approval from the NDDA to return or properly dispose of the seed;
5. Defend, indemnify, hold harmless, and release forever the State of North Dakota, its departments, agencies, officers, employees, and agents of any kind from all liability claims arising out of Pilot Producer's actions involving the growth or production of industrial hemp. The legal defense provided by Pilot Producer to the State of North Dakota under this paragraph must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary. Any attorney appointed to represent the State must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. § 54-12-08. Pilot Producer also agrees to defend, indemnify, and hold the State of North Dakota harmless for all costs, expenses and attorneys' fees incurred if the State of North Dakota prevails in an action against Pilot Producer in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this MOU;
6. Warrant and agree that Pilot Producer is not an employee of the State of North Dakota for any purpose. Pilot Producer agrees that Pilot Producer, its employees, agents, or representatives are not employees of NDDA for any purpose, including but not limited to, the application of the Social Security Act, the Fair Labor Standards Act, the Federal Insurance Contribution Act, the Federal Unemployment Act, the North Dakota Unemployment Compensation Law, and the North Dakota Workforce Safety and Insurance Act;
7. Assume total and sole responsibility for any of Pilot Producer's acts or omissions involving the growth or production of industrial hemp or arising out of Pilot Producer's participation in NDDA's Industrial Hemp Pilot Program;
8. Not contract for or on behalf of, or incur any obligations on behalf of, NDDA;
9. Allow NDDA, and any institution of higher education in North Dakota, full access to those sites registered by Pilot Producer with NDDA for production of industrial hemp. Such access shall be allowed upon notice from NDDA to Pilot Producer and shall extend for all purposes determined at the discretion of NDDA related to research of industrial hemp and its growth, cultivation, and marketing;

10. Allow, upon request, federal, state, or local authorities to inspect and/or sample, at any time, the on-site industrial hemp growing area, plants, plant materials, seeds, equipment, or facilities incident to the growth, cultivation, or marketing of industrial hemp, without subpoena or any other authorization;
11. Allow, upon request, federal, state, or local authorities to inspect and/or audit all business and financial records incident to the growth, cultivation, or marketing of industrial hemp, at any time, without subpoena or any other authorization;
12. Affirm that pilot producer, and all employees, agents, and other representatives do not have any prior criminal convictions;
13. Acknowledge and agree that NDDA has ultimate and sole discretion with respect to what pilot producers and sites are included in NDDA pilot programs;
14. Acknowledge and agree that NDDA, in its sole discretion, can de-certify and de-register a site used to grow or cultivate industrial hemp immediately upon NDDA written notice to Pilot Producer without hearing or other process or procedure;
15. Remit to NDDA all license fees and other expenses of the Pilot Program, including but not limited to all fees related to:
 - a. Sampling and analysis of hemp plants and plant materials; and,
 - b. Destruction of resulting hemp crops found by NDDA to be non-compliant with applicable laws and regulations;
16. Acknowledge and agree that with respect to Pilot Producer's production of industrial hemp, NDDA's role is to fulfill regulatory oversight of the production and where possible, to facilitate receipt of viable seed. Pilot Producer understands and agrees that it shall not receive any reimbursement, compensation or wages from NDDA, and NDDA will not offer or provide financial resources, tangible products, equipment, land, facilities, or commercial labor in support of Pilot Producer's industrial hemp crop;
17. Adhere narrowly and strictly to the specific research focus for which Pilot Producer is participating in the Industrial Hemp Pilot Program. Collect necessary data and complete and submit NDDA's Industrial Hemp Pilot Program 2017 Final Report.
18. Complete and submit all reports and/or statements requested by NDDA relative to Pilot Producer's production of industrial hemp, and acknowledge and agree that a failure to submit any required or requested report may result in immediate suspension or revocation of Pilot Producer's industrial hemp license;
19. Acknowledge and agree that any industrial hemp grown in North Dakota without an active industrial hemp license issued by NDDA:

- a. Falls entirely outside Pilot Producer's limited relationship with NDDA;
 - b. Is considered to be a controlled substance under federal law; specifically the Controlled Substances Act (CSA), 21 U.S.C. § 801 *et seq*;
 - c. Constitutes the impermissible manufacture and possession of a controlled substance under federal and state law; and,
 - d. That such action may be subject to criminal prosecution and administrative adverse regulatory actions in accordance with all applicable laws;
20. Destroy and/or dispose at the express direction of NDDA any industrial hemp crop, plant, plant material, or seed determined by NDDA or law enforcement to be non-compliant with applicable laws or regulations;
 21. May not transport viable kernels or plant parts of industrial hemp out of state without getting the approval of the states they are transiting and the federal government.
 22. The licensee or an assistant (named on the licensee's application) must pick up the industrial hemp seed provided by the department at a time and date specified by the department.
 23. Proof of sterilization of industrial hemp grain must be provided to the NDDA. If sterilization is completed on the farm site, the producer must provide proof and submit a sample of sterilized grain to the NDDA for testing.
 24. Maintain an 8 foot isolation border area around the industrial hemp plot. Record the GPS coordinates at each corner.
 25. Use best management practices for the growth and production of industrial hemp, as available, and take reasonable precaution to prevent unauthorized growth or distribution of industrial hemp.
 26. Comply with any direction from NDDA's Industrial Hemp Coordinator with respect to the growth, cultivation, or marketing of industrial hemp not otherwise contemplated within this MOU; and,
 27. Contact NDDA immediately upon receiving a request for information under the North Dakota open records law and to comply with NDDA's instructions on how to respond to the request.

III. The Parties agree:

1. That NDDA provides oversight of the Industrial Hemp Pilot Project. Pilot Producer is a participant of the Industrial Hemp Pilot Program only. NDDA and Pilot Producer are independent of each other. No acts or assistance given by either party to the other in performance of their respective obligations under this MOU shall be construed to alter the independent relationship between the parties, and nothing contained in this MOU shall be construed to place the parties in a contractual relationship or a relationship of partners, joint ventures, or principal and agent;
2. That no part of this MOU may be construed to represent the creation of an employer/employee relationship between NDDA and Pilot Producer. Pilot Producer bears sole and absolute responsibility for all Pilot Producer's activities, obligations, and responsibilities as a Pilot Producer under this MOU;
3. That neither party is authorized to act on behalf of the other party, including without limitation, entering into any contract on behalf of the other party without the express prior written consent of the other party;
4. That NDDA reserves the right, in its sole discretion, to amend or otherwise change the research focus of the certified and registered pilot sites and, if NDDA does so, will immediately inform the Pilot Producer of such decision(s);
5. That any violation of this MOU by Pilot Producer may result in immediate suspension or revocation of the pilot site certification and Pilot Producer license and registration, and may subject the Pilot Producer to referral to appropriate authorities for criminal prosecution;
6. That if any term of this MOU is declared by an administrative judge or court having jurisdiction to be illegal or unenforceable, the validity of the remaining terms are unaffected, and the rights and obligations of the parties are to be construed and enforced as if the MOU did not contain that term;
7. That this MOU is governed by and construed in accordance with the laws of State of North Dakota without reference to the choice of law provisions of North Dakota law. Any legal action initiated by Pilot Producer in relation to this MOU must be filed and adjudicated exclusively in the state District Court of Burleigh County, North Dakota.
8. That NDDA must disclose to the public upon request any records it receives from Pilot Producer, that any records that are obtained or generated by Pilot Producer under this MOU, except for records that are confidential, may be open to the public upon request under the North Dakota open records law;
9. That this MOU shall be renewable only upon effective renewal of Pilot Producer's North Dakota Industrial Hemp License and a subsequent signed, written agreement between the Parties;

10. That this MOU supersedes all existing memoranda of understanding between them, including any supplements or amendments thereto, with respect to NDDA's Industrial Hemp Pilot Program; and,

11. That this MOU shall be effective only after it is signed and fully executed by both parties, and shall be effective only during the period of Pilot Producer's active North Dakota licensure to grow industrial hemp.

PILOT PRODUCER

Date

NORTH DAKOTA DEPARTMENT OF AGRICULTURE,

Date

SAMPLE