

## Conditional Memorandum of Understanding

This Conditional Memorandum of Understanding ("MOU") is made and entered into as of the date of the last signature ("Effective Date"), by and between American Highland Cattle Association, located at Historic City Hall, 22 S. 4th Ave., Ste. 201, Brighton, Colorado 80601 ("AHCA"), and Heartland Highland Cattle Association, located at 976 State Highway 64, Tunas, Missouri 65764 ("HHCA"). AHCA and HHCA may be referred to individually as a "Party" and collectively as the "Parties."

**WHEREAS**, AHCA's [Committee Name] Committee has alleged that HHCA's usage of AHCA's intellectual property and other proprietary information constitutes copyright infringement and constitutes unfair misappropriation and exploitation of business value, which action was approved through the meeting minutes attached as Exhibit A;

**WHEREAS**, HHCA denies such allegations and affirmatively represents that "HHCA has never received any information directly from AHCA's registry";

**WHEREAS**, AHCA enters into this MOU in reliance on HHCA's above affirmative representation that "HHCA has never received any information directly from AHCA's registry"; ~~and~~

WHEREAS, the Parties expressly agree that certain factual information, including but not limited to pedigree information, breeding records, and other factual details about an animal are not copyrightable, and are expressly permitted to be disclosed by an individual animal's owner, regardless of that owner's membership with either Party as an organization;

WHEREAS, the Parties mutually desire to promote and preserve the highland cattle breed and support their respective members; and

**WHEREAS**, the Parties mutually desire to avoid litigation and wish to memorialize the terms set forth herein regarding the Parties MOU, subject to ~~HHCA's~~ the Parties' adherence to the restrictions described below.

**NOW, THEREFORE**, the Parties agree as follows:

### 1. Stand Down

AHCA agrees that it shall stand down on its threats to initiate or maintain any legal action, claim, or proceeding against HHCA, so long as ~~HHCA~~ the Parties agrees as follows:

- A. ~~HHCA~~ Neither Party shall ~~not~~ reference ~~AHCA~~ the other, ~~AHCA~~ the other Party's registration numbers, the ~~AHCA~~ other Party's Registry, or the

~~AHCA other Party's Certificates of Registration in any HHCA materials, including but not limited to, HHCA website (and any future domains), any HHCA affiliated websites (e.g., highlandauction.com), HHCA's auction events, HHCA's breed registryregistries, HHCA's rulebooks, marketing materials, social media accounts, and HHCA's handbooks.~~

- B. HHCA shall not consider an animal's AHCA registration as a ~~basis for factor~~ when evaluating ~~or determining the~~ animal's classification in the HHCA registry or HHCA herdbook;
- ~~C. HHCA shall remove references to "registered purebred cattle" from its instructions regarding supplemental pedigree information in its application form, and remove the question, "Registered as a purebred highland with another registry?" from its online application;~~
- ~~D.C.~~ D.C. HHCA shall not accept a registration application to the HHCA's registry that attaches or uses AHCA registration papers after the Effective Date; all animal information provided to HHCA in the registration process must be supplied exclusively by the ~~registrant~~applicant;
- ~~E.D.~~ E.D. HHCA shall not use, access, copy, or incorporate any information from AHCA's database, including but not limited to animal registration data, pedigree information, breeding records, or any other proprietary data maintained by AHCA that is not provided by a registrant on the registration form.

No provision within this Section 1 shall be interpreted to create an affirmative obligation upon HHCA to remove any animal information provided to HHCA prior to the Effective Date of this MOU. The Parties shall work diligently to remove references required under Section 1(A) of this MOU, and in no event shall removal take more than thirty (30) days.

## 2. Exceptions for Auctions, Classifieds, and Research

- A. The Parties acknowledge that members of the Parties may have cattle registered with the other Party. The owner of an animal has the ultimate authority to determine when and where to advertise or auction an animal, and would be disadvantaged by the Parties being unable to list an animal's registration status with the other Party. The Parties are permitted to reference the fact that an individual animal is registered with the other Party in the context of classified advertisements or at an auction, provided that such information is offered to a Party by the owner of the individual animal for the purpose of selling the animal.
- B. The Parties further acknowledge that members of either Party may need to refer to the other Party in the context of conducting genetic research for

publications or for other educational purposes. Any references made in this context shall not be considered a breach of this MOU.

### 2.3. Cumulative Remedies

The rights and remedies under this MOU are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise.

## 4. Alternative Dispute Resolution

A. **Exclusive Dispute Resolution Mechanism.** The Parties shall resolve any dispute, controversy, or claim arising out of or relating to this MOU, or the breach, termination, or invalidity hereof (each, a “Dispute”), under the provisions of this Section 4. The procedures set forth in this Section 4 shall be the exclusive mechanism for resolving any Dispute that may arise from time to time, and Section 4 is an express condition precedent to litigation of any Dispute.

B. **Negotiations.** A Party shall send written notice to the other Party of any Dispute (“Dispute Notice”). The Parties shall first attempt in good faith to resolve any Dispute set forth in the Dispute Notice by negotiation and consultation between themselves, including not fewer than two (2) negotiation sessions attended by an executive or board member of each Party. In the event that such Dispute is not resolved on an informal basis within fifteen (15) days after one party delivers the Dispute Notice to the other party, either party may, by written notice to the other party (“Escalation to Executive Notice”), refer such Dispute to the executives of each party set out below (or to such other person or equivalent or superior position designated by such party in a written notice to the other party) (“Executive(s”).

Executive for AHCA: Diane Clark, President  
3196 Turkey Creek Rd.  
Waverly, TN 37185  
Email:

Executive for HHCA: Harold Ramey, President  
2074 County Rd. 314  
Alton, MO 65606  
Email: fordkingcobra2@gmail.com

For the purposes of clarification, the party sending the Dispute Notice and the Escalation to Executive Notice shall send such notices in compliance with this MOU’s notice provision (Section 8), provided that the party

sending an Escalation to Executive Notice shall also send a copy of such notice to the executives designated above.

If the Executives cannot resolve any Dispute during the time period ending fifteen (15) days after the date of the Escalation to Executive Notice (the last day of such period, the “Escalation to Mediation Date”), either party may initiate mediation under Section 4(C).

**C. Mediation.**

- i. Subject to Section 4(B), the Parties, at any time after the Escalation to Mediation Date, submit the Dispute to any mutually agreed to mediation service for mediation by providing to the mediation service a joint, written request for mediation, setting forth the subject of the dispute and the relief requested. The Parties shall cooperate with one another in selecting a mediation service and shall cooperate with the mediation service and with one another in selecting a neutral mediation and in scheduling the mediation proceedings. The Parties covenant that they will use commercially reasonable efforts in participating in the mediation. The Parties agree that the mediator’s fees and expenses and the costs incidental to the mediation will be shared equally between the Parties.
- ii. The Parties further agree that all offers, promises, conduct, and statements, whether oral or written, made in the course of the mediation by any of the Parties, their agents, employees, experts, and attorneys, and by the mediator and any employees of the mediation service, are confidential, privileged, and inadmissible for any purpose, including impeachment, in any litigation, arbitration, or other proceeding involving the Parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation.

**D. Litigation as a Final Resort.** If the Parties cannot resolve any Dispute for any reason, including, but not limited to, the failure of either party to agree to enter into mediation or agree to any settlement proposed by the mediator, within thirty (30) days after the Escalation to Mediation Date, either party may file suit in a court of competent jurisdiction in accordance with the provisions of Section 5.

**3.5. Breach of Contract and Consequences**

**A. Material Breach.** Any violation of the provisions set forth in Section 1 of this MOU shall constitute a material breach of this MOU.

~~B. **Notice and Cure Period.** In the event of an alleged breach by HHCA, AHCA shall provide written notice to HHCA specifying the nature of the breach. HHCA shall have thirty (30) days from receipt of such notice to cure the breach.~~

C.B. **Consequences of Breach.** If a breach is not cured within the thirty (30) day cure period, the following consequences shall apply:

D.C. **Legal Action.** ~~AHCA~~ The non-breaching Party may pursue any and all available legal remedies that it had as of ~~the Effective Date~~ effective date of the MOU, including but not limited to injunctive relief, damages, and attorney's fees;

E.D. **Injunctive Relief.** ~~AHCA~~ The non-breaching Party may seek immediate injunctive relief to prevent further violations without posting bond; and

~~F. **Attorney's Fees.** HHCA shall be responsible for all reasonable attorney's fees and costs incurred by AHCA in enforcing this MOU.~~

C.E. **Continuing Breach.** Each day that a breach continues shall constitute a separate and distinct breach of this MOU.

#### 4.6. **Reservation of Right to Sue for Breach**

Notwithstanding the foregoing Sections, ~~AHCA~~ the Parties expressly reserves the right to bring a legal action for breach of this MOU if ~~HHCA~~ the other Party engages in any act described in Section 1, subject to the notice and cure provisions set forth in Section ~~34~~, or if ~~HHCA's either Party's~~ representations set forth in the WHEREAS provisions ~~that AHCA~~ relied upon in agreeing to this MOU proves to be untrue.

#### 5.7. **No Waivers of Rights**

Except as expressly stated in this MOU, AHCA does not waive, release, or relinquish any rights, claims, or remedies it may have against the HHCA under law or equity in the event of a breach of this MOU.

#### ~~6. **Governing Law and Exclusive Venue**~~

~~This MOU shall be governed by and construed in accordance with the laws of the State of Colorado, without regard to its conflict of law principles. The Parties irrevocably and unconditionally agree that:~~

- ~~A. any suit, action, or legal proceeding arising out of or relating to this MOU will be brought in the state court located in Adams County, Colorado, or the United States District Court for the District of Colorado;~~
- ~~B. they hereby submit to and accept the exclusive jurisdiction of such court in any suit, action, or proceeding;~~
- ~~C. they waive any objection to the laying of venue in any such court and any claim that such suit, action, or proceeding has been brought in an inconvenient forum; and~~
- ~~D. service of process or any other court paper may be made upon it by mail in accordance with the provisions of Section 1, Section 3, and Section 4 of this MOU, or by any other permissible method provided under applicable laws or rules of the State of Colorado or federal law.~~

8. Notice. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the first page of this MOU (or to such other address that may be designated by the receiving Party from time to time in accordance with this Section). All notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile or email (with confirmation of transmission), or certified or registered mail (in each case, return receipt requested, postage pre-paid). Except as otherwise provided in this MOU, a Notice is effective only (a) upon receipt by the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

#### 7.9. Miscellaneous

- A. **Entire MOU.** This MOU contains the entire understanding between the Parties and supersedes all prior discussions or agreements related to the subject matter.
- B. **Amendment.** This MOU may not be modified except in writing signed by both Parties.
- C. **Severability.** If any provision of this MOU is found invalid or unenforceable, the remaining provisions shall remain in full force and effect.
- D. **Counterparts.** This MOU may be executed in counterparts, each of which shall be deemed an original.
- E. **Assignment.** This ~~MOU Agreement~~ and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

F. Effectiveness. This MOU is not effective until executed by both parties.

G. Relationship of Parties. Nothing herein shall be construed to create a joint venture or partnership between the parties hereto or an employee-employer or agency relationship.

H. Public Announcements. Upon final execution of this MOU, the Parties hereto expressly agree that this MOU may be provided to their respective members. Additionally, the Parties shall make a joint public statement, signed by the Executives, substantially in the following language:

F. American Highland Cattle Association and Heartland Highland Cattle Association have entered into a memorandum of understanding with regard to the use of certain factual information on dual-registered animals with an aim to preserve the quality and distinctive characteristics of the highland cattle breed and protect their rights as distinct organizations. A copy of the executed memorandum is available for members upon request. Those who hold memberships in both organizations that may have questions or concerns about potential impacts may contact with American Highland Cattle Association or with Heartland Highland Cattle Association. The organizations remain committed to promoting the highland cattle breed and adding value for their respective members.

IN WITNESS WHEREOF, the Parties have executed this MOU as of the Effective Date of the last signature.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

Date:\_\_\_\_\_

Date:\_\_\_\_\_

**American Highland Cattle Association**

**Heartland Highland Cattle Association**

EXHIBIT A

Meeting Minutes of AHCA Committee Approving Initiation of Dispute