

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 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;

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 desire to avoid litigation and wish to memorialize the terms set forth herein regarding the Parties MOU, subject to HHCA's 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 agrees as follows:

- A. HHCA shall not reference AHCA, AHCA registration numbers, the AHCA Registry, or the AHCA 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 registry, HHCA's rulebook, and HHCA's handbook.
- B. HHCA shall not consider an animal's AHCA registration as a basis for 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. HHCA shall not accept a registration application to the HHCA's registry that attaches or uses AHCA registration papers; all animal information provided to HHCA in the registration process must be supplied exclusively by the registrant;
- E. 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; and

2. 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.

3. 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. **Consequences of Breach.** If a breach is not cured within the thirty (30) day cure period, the following consequences shall apply:
- D. **Legal Action.** AHCA may pursue any and all available legal remedies that it had as of effective date of the MOU, including but not limited to injunctive relief, damages, and attorney's fees;
- E. **Injunctive Relief.** AHCA 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.
- G. **Continuing Breach.** Each day that a breach continues shall constitute a separate and distinct breach of this MOU.

4. Reservation of Right to Sue for Breach

Notwithstanding the foregoing Sections, AHCA expressly reserves the right to bring a legal action for breach of this MOU if HHCA engages in any act described in Section 1, subject to the notice and cure provisions set forth in Section 3, or if HHCA's representation set forth in the WHEREAS provisions that AHCA relied upon in agreeing to this MOU proves to be untrue.

5. 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.

7. 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 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.

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