

MEMORANDUM of UNDERSTANDING for SHELTERING EXOTIC RESCUES

I. Purpose

The purpose of this Memorandum of Understanding (“*MOU*”) is for institutions housing rescued and/or surrendered exotic animals (each, an “*Institution*,” and collectively, the “*Institutions*”) to agree to certain terms regarding a collaboration among the Institutions to provide Disaster Assistance (as hereafter defined) to Affected Institutions (as hereafter defined) in preparation of or in response to Incidents (as hereafter defined) that place exotic animals in crisis. An Affected Institution could benefit from additional resources from Responding Institutions (as hereafter defined) preceding or following an Incident thereby maximizing the welfare of exotic animals in regards to an Incident and minimizing the loss of life and animal suffering that might occur from an Incident through a coordinated, effective and safe response.

II. Definitions

“*Affected Institution*” means the Institution preparing for or responding to an Incident for which Disaster Assistance is required. The plural is “*Affected Institutions*.”

“*Disaster Assistance*” includes assistance that may be required by an Affected Institution in preparation for or in response to an Incident, which may include, but not be limited to, small and large animal strike teams, situational and rapid assessment, staff, assistance and relief (e.g., housing animals, providing emergency veterinary care, etc.), recovery and repair and use of equipment and supplies.

“*Dispute*” means any and all unresolved issues or decisions, questions, claims, controversies or disputes arising out of or relating to this MOU, and the validity, construction, meaning, performance, effect, breach or material breach of this Agreement.

“*Incident*” means a major incident such as a natural or man-made disaster of significant proportion that places animals at risk.

“*Institution*” means an institution housing exotic animals. The plural is “*Institutions*.”

“*Institution Party*” means shareholders, members, partners, directors, trustees, officers, employees, agents, representatives and volunteers of a particular Institution. The plural is “*Institution Parties*.”

“*MOU*” means this Memorandum of Understanding.

“*Notice of Dispute Resolution Process*” means written notice provided by an Institution to another Institution(s) that there is a Dispute and that the Institutions are to immediately initiate and in good faith seek to complete the dispute resolution process set forth at Section I of this Agreement.

“*Responding Institution*” means an Institution that provides Disaster Assistance to an Affected Institution. The plural is “*Responding Institutions*.”

“*Revocation*” means a written instrument wherein an Institution seeks to revoke its agreement to the terms of this MOU.

III. Terms

- A. **Contact List.** To ensure readiness, a contact list for the various Institutions will be maintained and made available to any Institution that is a party to this MOU.
- B. **Primary Responsibility to Respond to Incidents.** Each Affected Institution will have the primary responsibility to respond to Incidents affecting the Affected Institution and Disaster Assistance will only be provided upon the request of or with the consent of the Affected Institution.
- C. **Disaster Assistance.**
- (1) In preparation of or in response to an Incident, (1) an Affected Institution may contact other Institutions requesting Disaster Assistance or (2) an Institution may volunteer Disaster Assistance to an Affected Institution.
 - (2) The Affected Institution will specify the scope and type of Disaster Assistance required and, where practicable, provide the Responding Institution with such information as may be necessary for the Responding Institution to determine the extent to which it is able to fulfill the Disaster Assistance required. In the event it is not practical for the Affected Institution to specify the scope and type of Disaster Assistance Required, the Affected Institution and the Responding Institution will, in consultation, jointly assess and decide upon the scope and type of Disaster Assistance required.
 - (3) Disaster Assistance will only be deployed at the request of, or with the consent of, the Affected Institution. The Affected Institution will exercise the overall direction, control and supervision of the Disaster Assistance within its Institution.
 - (4) Should a governmental organization take over the overall direction, control and supervision of Disaster Assistance within an Affected Institution, the Affected Institution and the Responding Institutions will adhere to the direction, control and supervision of such governmental organization.
- D. **Disaster Assistance Afforded At Responding Institution's Risk and Cost.**
- (1) Each Institution acknowledges that the Disaster Assistance contemplated under this MOU involves a high degree of risk or injury to the Responding Institution and any Institution Party. Any Disaster Assistance provided by a Responding Institution will be at the sole risk of the Responding Institution.
 - (2) **EACH INSTITUTION HEREBY WAIVES AND RELEASES EACH OTHER INSTITUTION, AND THE OTHER INSTITUTION'S INSTITUTION PARTIES, FROM ALL DAMAGES, LOSSES, INJURIES, LIABILITIES, CLAIMS, DEMANDS, AND CAUSES OF ACTION IN EACH CASE SUFFERED BY THE INSTITUTION, OR BY ANY INSTITUTION PARTY, ARISING OUT OF OR IN CONNECTION WITH THE INSTITUTION'S PROVISION OF DISASTER ASSISTANCE TO AN AFFECTED INSTITUTION, EXCEPT IF THE SAME IS CAUSED BY THE GROSS NEGLIGENCE OR RECKLESS MISCONDUCT OF THE AFFECTED INSTITUTION.**

- (3) Any Disaster Assistance provided by a Responding Institution will be at the sole cost of the Responding Institution, unless, however, the Responding Institution obtains the written agreement of the Affected Institution to bear all or certain of the cost of Disaster Assistance afforded to or for the benefit of the Affected Institution.
 - (4) All compensation and benefits relating to employees of the Responding Institution engaging in efforts to provide Disaster Assistance to an Affected Institution will be the responsibility of the Responding Institution.
 - (5) Any equipment or property purchased by a Responding Institution to utilize for Disaster Assistance for an Affected Institution will remain the property of the Responding Institution unless the Responding Institution and the Affected Institution otherwise agree in writing regarding the same.
- E. Insurance.** Each Institution will carry and maintain, at its sole cost and expense, Workers' Compensation and Disability Insurance in an amount, not less than the applicable statutory limits and Employer's Liability Insurance as required by the state in which the Institution is constituted. If no such insurance is required by an agency of competent jurisdiction, this clause will be considered satisfied.
- F. Post Disaster Assistance Follow Up.** Following an Incident where Disaster Assistance was rendered, the Affected Institution and the Responding Institution(s) are encouraged to confer for an after action analysis, including but not limited to, the successes, challenges and areas for improvement.
- G. Effect of this MOU.** Nothing in this MOU will be intended to obligate an Institution to provide Disaster Assistance to another Institution. The provision of Disaster Assistance by an Institution will be within the sole discretion of the respective Institution.
- H. Name and Logo.** The parties may use the other's name, logo, and other marks (collectively, "marks") on Shelter and Rescue materials and for external communication purposes. The parties may use the other's name, logo, and other marks on their corporate websites in compliance with each other's branding and co-branding guidelines. The use of the other's name, logo, and other marks shall include a reciprocal link(s) to the other's website in compliance with each other's branding and co-branding guidelines. For clarity, The parties will obtain no rights to each other's marks, other than the limited rights set out in this MOU.
- I. Confidentiality.** Each Institution agrees to keep, and ensure that any Institution Party keeps, confidential all information and materials that are provided to the foregoing in connection with their respective Disaster Assistance and that is not available to the general public, including, without limitation, financial information, and information and materials regarding another Institution and its operations, campaigns, strategic and tactical plans. Each Institution will ensure that it and its Institution Parties, do not use, disclose or make public any private information or photos pertaining to the Disaster Assistance afforded without the prior written approval of the applicable Institution.

- J. Dispute Resolution Process.** Before an Institution may institute a lawsuit against another Institution(s) regarding this MOU, the Institution will comply with the dispute resolution process set forth at this Section I.
- (1) **Negotiation.** If at any time there is an unresolved Dispute between Institutions, an Institution will submit a Notice of Dispute Resolution to the other Institution(s), and within ten (10) business days following receipt of the Notice of Dispute Resolution Process, the Institutions will engage in good faith face-to-face negotiations in an attempt to resolve the Dispute with the appropriate officials from each Institution with the authority to resolve such dispute in attendance. If, after a four (4) week period during which the Institutions have engaged in such negotiations, the Institutions have not negotiated a resolution, the Institutions will choose a mutually agreeable neutral third party who will mediate the Dispute pursuant to Section I(1) of this Agreement.
- (2) **Mediation.** The Institutions will agree upon a mutually satisfactory mediator. The Institutions will participate in the mediation in good faith in accordance with the recommendations of the mediator and will follow the procedures for mediation as suggested by the mediator. Mediation will be non-binding and confidential to the extent permitted by law. The Institutions will share the expenses of mediation equally.
- K. Venue and Governing Law.** This MOU is governed by Florida law.
- L. Relationship of Institutions.** It is expressly understood and agreed that the Institutions are not partners, agents, or joint venturers in any business enterprise. Moreover, in the performance of this MOU, the Institutions do not have any authority to bind another Institution.
- M. Severability.** If any clause or provision of this MOU is illegal, invalid or unenforceable under applicable present or future laws, then it is the intention of the Institutions that the remainder of this MOU will not be affected but will remain in full force and effect; provided, however, that if such modification would cause this MOU to fail in its essential purpose or purposes, it will be deemed terminated by mutual agreement of all the Institutions.
- N. Counterparts; Delivery of Signature.** This MOU may be executed in multiple counterparts, each of which will be deemed an original for all purposes and all of which, when taken together, will constitute a single counterpart instrument, and executed signature pages to any counterpart instrument may be detached and affixed to a single counterpart, which single counterpart with multiple executed signature pages affixed thereto will constitute the original counterpart instrument; all of these counterpart pages will be read as though one and they will have the same force and effect as if all of the parties had executed a single signature page, and execution copies of this MOU may be delivered by facsimile or portable document format (PDF) signature as if it were an original signature.
- O. Amendment of MOU.** This MOU may only be amended in writing. For an amendment to apply to an Institution, the Institution must execute the amendment in writing. If an issue arises between multiple Institutions regarding the MOU, as amended, the applicable terms for the Institutions will be the MOU and any latest amendment(s) signed by **all** the respective Institutions. Thus, between two Institutions, if a First Amendment to the MOU has been executed by only one Institution, the applicable terms for the Institutions will be the MOU, and the First Amendment will not apply

between the Institutions. Notwithstanding the foregoing, the MOU of an Institution will automatically terminate upon the lapse of six (6) months past the introduction of an amendment to the MOU if the Institution has not executed the applicable amendment to the MOU.

P. Term;

- (1) **Expiration.** The term of this MOU is perpetual unless terminated under any of the other provisions of this Section P.
- (2) **Mutual Agreement.** This MOU may be terminated by a writing signed by the parties that state their intent to terminate this MOU and the date upon which such termination will take effect.
- (3) **Revocation.** The term of this MOU are perpetual. An Institution may revoke its agreement to the terms of the MOU at any time by furnishing a written instrument indicating the same (such written instrument, a “**Revocation**”), and providing such Revocation to Allison A. Sakara, Executive Director, the High Alert Institute, at 4800 Ben Hill Trail, Lake Wales, Florida 33898 or asakara@HighAlertInstitute.org. Such termination will be effective 30 days after receipt of notice by the non-terminating party.
- (4) **Termination for Breach.** If either party breaches any of its obligations under this MOU, the non-breaching party may provide the breaching party with written notice of the breach. If the breaching party fails to cure the breach within 15 days after receipt of such notice, the non-breaching party may terminate this MOU upon delivery to the breaching party of a written notice to that effect, with the termination effective upon receipt of such notice by the breaching party. The non-breaching party may in its reasonable discretion determine whether the breach has been cured.
- (5) **Termination for Reputational Concerns.** Either party to this MOU may immediately terminate this Agreement by giving written notice to the other if it reasonably believes that the other party has engaged or is engaging in conduct, or has been alleged to have engaged in conduct, including, without limitation, conduct involving harassment or discrimination, of a nature which reflects or could reflect materially and unfavorably upon the reputation of the terminating party. Such termination will be effective upon delivery of the notice by the terminating party.
- (6) **Effect of Termination.** Upon the expiration or termination of this MOU, all parties will promptly cease any use of the other’s materials, names, logos, and other marks, except as permitted under Section 4.6. If the MOU terminates, the parties will cooperate in transition activities and will use reasonable efforts to minimize interruption and any adverse impacts of the termination. Sections G, H, I, J, K, L, M, O, P(6), Q, R, S and T will survive the expiration or termination of this MOU.

Q. Waiver. Any waiver of the provisions of this MOU must be in writing and signed by the party granting the waiver. Waiver of any breach or provision of this MOU will not be considered a waiver of any later breach or of the right to enforce any provision of this MOU.

R. Assignment. Neither party may, directly or indirectly, assign its rights or delegate its duties under this MOU to anyone else without the prior written consent of the other party, except that either may

assign all of its rights and obligations under this MOUSE without the other's prior written consent in connection with a merger, acquisition, reorganization, sale or transfer of substantially all of its assets, or other operation of law.

- S. **Counterparts.** This MOU may be executed in one or more counterparts, each of which will be deemed an original and all of which will be taken together and deemed to be one instrument. Transmission by fax or PDF of executed counterparts will constitute effective delivery.
- T. **Custodian of MOU Documents.** The High Alert Institute, Inc. will serve as the custodian of the executed MOUs, executed amendments of the MOU, and any Revocations.

* * * * *

The Institute and Partner4Good signed this MOUSE as of the date stated in its first paragraph.

High Alert Institute, Inc.

Shelter/Rescue: _____

By: _____

By: _____

Allison A. Sakara
Founder & Executive Director
4800 Ben Hill Trail
Lake Wales, FL 33898
asakara@HighAlertInstitute.org
863.696.8090

Name: _____

Title: _____

Address: _____

Address 2: _____

City, State, Zip: _____

Email: _____

Phone: _____