

HEMP CONTRACTS – THINGS TO BE AWARE OF

This information sheet is intended only for educational purposes and your general reference. The information contained in this document is not legal advice and should not be relied on in place of legal advice. It was prepared by counsel to Yankee Farm Credit as a way to provide information to Yankee's customers.

If you have questions about hemp, or need general legal assistance, you should contact an attorney.

Things to be aware of before making a contract with a Hemp-Related Business

Hemp that is produced in compliance with the Agriculture Improvement Act of 2018 is no longer a controlled substance. Accordingly, it can be bought and sold like other agricultural commodities.

Because of hemp's new legal status, hemp-related businesses ("HRBs") are offering a variety of services to hemp farmers—including drying, processing, sales, and storage. If you are interested in making an agreement with an HRB, Yankee Farm Credit recommends that you consider the following BEFORE making such an agreement:

- **Carefully review any agreement with an HRB.** This is for a few reasons.
 - **The hemp business is both new and regularly evolving.** Until 2018, hemp was a controlled substance, and thus not a normal agricultural commodity. Settled business practices that are associated with other agricultural commodities will not necessarily be respected by HRBs, because, from a legal perspective, hemp is a NEW commodity. Accordingly, established conventions or rules do not yet exist in the hemp business environment. These will take time to develop.
 - **Increased potential for fraud and unfairness.** When hemp was a controlled substance, not everyone operating in the hemp business was engaged in a legitimate business enterprise. Some of these operators may have remained in the hemp business now that it is no longer a controlled substance. In other words, even though hemp has been legalized, it's possible that some HRBs may be more likely to propose either unfair or misleading terms in their contracts than typical, non-hemp agricultural business. Simply be aware that by growing hemp, you are participating in a new business space that has the potential to attract fraudulent operators.

- **Ask questions about the HRB’s legal compliance.** Hemp remains heavily regulated and is subject to new, as-yet-unwritten laws and rules. HRBs will likely need lawyers to help them stay in compliance with the law. It is completely appropriate for you to ask the HRB about how it is remaining in compliance with the law at the present, and how it intends to remain in compliance with the law in the future. If the HRB does not seem to have a relationship with a lawyer, or isn’t capable of answering these questions, it may be a warning sign to avoid doing business with that HRB.
- **Find out who will own the hemp you deliver to the HRB.** If a HRB offers to sell your hemp crop for you, carefully review any agreement to identify who will OWN the hemp if the HRB is unable to sell it. Will you own the hemp, or does the HRB own it? If the HRB keeps the hemp, does the agreement make the HRB pay you for it?
- **Be wary of agreements that make you responsible for THC levels or contamination.** Be very cautious of agreements that require you to take responsibility for the THC level of the hemp, or that are not clear on where responsibility lies for contaminated hemp. By placing responsibility for these items on you, the HRB is essentially offloading compliance with state and federal law onto you and your business.
- **The UCC probably applies to the hemp you sell.** It is likely that hemp, as an agricultural commodity, is a “good” under the Uniform Commercial Code (the “UCC”). Among other things, the UCC creates certain obligations for you, as the seller, to ensure that the hemp is fit for its intended purpose.
- **Talk to a lawyer.** If you have questions about any proposed agreement with an HRB, or the hemp industry in general, contact a lawyer. The lawyer may be able to help you review any proposed agreement, or put you in touch with someone who can assist you.