

FLORIDA STATE UNIVERSITY – MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (the “MOU”) is made and entered into by and between the Florida State University Board of Trustees (the “University”) and _____ (“Donee”). University and Donee are each referred to herein as a “Party” and collectively as the “Parties.”

WHEREAS, as a result of the global pandemic caused by coronavirus disease 2019 (“COVID-19”), the need for certain medical devices and medical supplies, including face shields and other personal protective equipment (“PPE”), has outpaced the supply available to health care organizations because of the high demand and overall interruptions to the global supply chain; and

WHEREAS, the Food and Drug Administration (“FDA”) and the Centers for Disease Control and Prevention have recognized an ongoing national shortage of medical supplies, and have determined that various technologies and organizations not typically involved in the manufacture of medical devices may be deployed to assist in meeting demand for certain essential products during the COVID-19 pandemic when conventional products are unavailable or when traditional manufacturers cannot meet demand; and

WHEREAS, the Donee has a shortage of face shields and has requested that the University manufacture disposable acrylic face shields (the “Face Shields”) for use in its clinical setting by its healthcare providers; and

WHEREAS, the University has certain fabrication instruments that can be re-purposed to produce the Face Shields; however, the University does not presently and has not previously manufactured PPE or other medical devices, does not maintain product liability insurance for such devices, is not in and does not hold itself out to the public as being in the manufacturing business, and does not seek to make a profit from the production of Face Shields; and

WHEREAS, in response to Donee’s request, and solely for the purpose of helping Donee save lives during the COVID-19 pandemic when conventional face shields and other PPE are unavailable, the University is willing to re-purpose its fabrication instruments to manufacture an agreed-upon number of Face Shields and provide such Face Shields to Donee at no charge, provided that Donee agrees to the terms of this MOU and the attached Florida State University Addendum (“Addendum”), the terms of which are incorporated herein by reference; and

WHEREAS, University is donating the Face Shields to selected Donees and Donee wishes to receive the Face Shields donated by University; and

WHEREAS, University requires all Donees to enter into a similar MOU as a condition of receiving donated Face Shields.

NOW, THEREFORE, in consideration of the foregoing, the mutual promises herein made and exchanged, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and with the intent to be legally bound, the Parties hereby agree as follows:

1. Obligations of University. Subject to the terms of this MOU and the Addendum, University agrees to donate Face Shields to Donee, without charge, to the extent feasible in light of the fact that the current emergency may result in a Force Majeure event limiting the University’s ability to produce the agreed upon number of Face Shields. Upon the parties’ determination of the number of Face Shields to be produced, University shall issue Donee a written acknowledgement. The University may issue Donee multiple acknowledgements as requested by Donee.

2. Obligations of Donee. In consideration for the receipt of an agreed-upon number of Face Shields:

2.1 Donee understands, acknowledges and agrees that University is not, pursuant to this MOU or its production of Face Shields, assuming responsibility for any aspect of Donee's use, attempted use, or non-use of the Face Shields.

2.2 Donee assumes sole and exclusive responsibility for all aspects of Donee's use, attempted use, or non-use of the Face Shields.

2.3 Donee acknowledges and agrees that University has not and will not be providing Donee with any medical advice or advice regarding the use of the Face Shields. Donee acknowledges that the Face Shields have not been reviewed, approved or cleared by the FDA as medical devices. Donee acknowledges and agrees that the Face Shields are only to be used by trained healthcare workers when utilizing other FDA-cleared or approved PPE (if available) such as N-95 respirators, and only when FDA-cleared or approved Face Shields are unavailable. Donee agrees to inform each of its employees of the foregoing use restrictions prior to distributing any Face Shield to any employee. Donee acknowledges and agrees that it is receiving the Face Shields for its own use only and not for resale or distribution to any third party.

2.4 Donee is fully aware of, and assumes, the potential risks involved and potential hazards connected with its employees' use of the Face Shields, including without limitation the risk that employees wearing the Face Shield may be exposed to the coronavirus or other pathogens. Donee hereby elects to voluntarily receive and accept the Face Shields with the full knowledge of these risks and hazards, and to disclose these risks and hazards to its employees prior to any use of the Face Shields.

2.5 Donee acknowledges and agrees to convey to the users of the Face Shields the instructions, warnings, disclaimers and other information that may accompany or be provided on, with, or alongside the Face Shields.

3. Release. In consideration for receiving the Face Shields from the University, Donee hereby releases the State of Florida and the University, as well as their officers, directors, agents, and employees (the "Released Parties"), from all actions, causes of actions, damages, claims or demands which Donee or its successors, administrators, or assigns may have against any or all of the Released Parties for any and all personal injuries or damage to any property or disruption of any business, known or unknown, which Donee has or may incur by use of the Face Shields. Donee is responsible for any injuries to persons or property which may be incurred in connection with the Face Shields.

4. Indemnification. Donee hereby agrees to indemnify, defend and hold harmless the Released Parties from any actual loss, liability, damage or cost (collectively referred to as a "Claim") arising from, or in connection with, the Face Shields received by Donee pursuant to this MOU. For purposes of the foregoing sentence, University shall tender the defense of any Claim and Donee may either accept the defense, with counsel of its choice, and pay such attorneys' fees and the costs of defense resulting therefrom, or pay for the costs of the defense of University at the time they are incurred by University. Donee expressly agrees that the foregoing release and indemnification is intended to be as broad and inclusive as its terms provide, to the extent permitted by the law of the State of Florida, and that if any portion thereof is held invalid, it is agreed that the balance shall, notwithstanding, continue in full legal force and effect. The foregoing obligations of Donee are applicable to the Released Parties only and do not give any rights to third parties. The foregoing obligations of Donee shall not constitute a waiver of any sovereign immunity or other defenses available to the Released Parties or obligate Donee to provide compensation for any Claim to the extent such Claim is limited by sovereign immunity or other defenses available to the Released Parties.

5. **DISCLAIMER OF WARRANTY: THE FACE SHIELDS ARE PROVIDED “AS IS” WITHOUT ANY WARRANTY, EITHER EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE UNIVERSITY MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING THE QUALITY, NATURE, CONDITION, OR COMPOSITION OF THE FACE SHIELDS. DONEE FREELY AND VOLUNTARILY RECEIVES, ACCEPTS AND EXPRESSLY ASSUMES ALL RISKS, DANGERS, AND HAZARDS THAT MAY ARISE FROM THE FACE SHIELDS AND/OR ANY ACTIVITIES THAT COULD RESULT IN PERSONAL INJURY, LOSS OF LIFE AND/OR PROPERTY DAMAGE.**

6. Governing Law and Venue. This MOU is governed by the laws of the State of Florida, without regard to its conflicts of law principles. Exclusive venue of any actions shall be in the state courts of Leon County, Florida. The University is entitled to the full benefits of sovereign immunity.

7. Voluntary Agreement. This MOU contains important legal commitments, releases and waivers. By signing below, the signatories acknowledge that they fully understand the terms of this MOU and are entering into it knowingly and voluntarily. This MOU shall not be construed against either Party as the drafter.

IN WITNESS WHEREOF, the parties, through the signatures of their duly authorized representatives affixed below, hereby agree to the terms of this MOU, as of the last date of signature below.

DONEE:

[Legal Name of Donee]

By: _____
[Signature]

Name: _____

Title: _____

Date: _____

THE FLORIDA STATE UNIVERSITY
BOARD OF TRUSTEES

By: _____
[Signature]

Name: _____

Title: _____

Date: _____

1. Incorporation by Reference. The Florida State University Board of Trustees (“University”) and the undersigned (“Donee”) hereby incorporate this Supplemental Addendum (“Addendum”) into the Memorandum of Understanding between University and Donee (the “MOU”) dated of even date herewith.

2. Purpose. The purpose of this Addendum is as described in the MOU.

3. Relationship of the Parties. Each of the parties is an independent contractor and nothing in the MOU shall designate any of the employees or agents of one party as employees or agents of the other. Donee is not authorized to bind University to any contracts or other obligations.

4. Confidentiality. To the extent Donee has access to University information (e.g., financial, business, strategic, health or student records), Donee agrees to maintain the confidentiality of such information and shall not disclose, discuss, or divulge any such information other than as directly and expressly required to fulfill Donee’s obligations under the MOU or as other required by law.

5. Public Records. University is subject to Chapter 119 of Florida Statutes, known as the Public Records Law. The MOU, this Addendum and any related documents and/or correspondence shall also become a public record subject to the Public Records Law, regardless of any confidentiality provision outlined in the MOU. University may unilaterally cancel the MOU for Donee’s refusal to allow public access to public records related to the MOU. Additionally, Donee shall comply with all applicable requirements of the Public Records Laws, particularly if Donee is a “Contractor” as defined under § 119.0701, F.S. This provision shall survive the expiration or termination of the MOU. The parties do not anticipate that Donee is a “Contractor” of University under the foregoing statute.

6. Work Product. All right, title and interest in and to any invention, work product, idea or creation conceived, developed or produced during the provision of goods/services/benefits under the MOU (including, but not limited to writing, copyrights, trademarks, creative, copy, scripts, story boards, art, music, software and documentation, ideas, charts, graphics, plans, proposals, business systems or ideas, and research projects) if created by University shall be property of University, or if created jointly with the Donee shall be owned jointly by the Parties. This provision shall survive the expiration or earlier termination of the MOU. If appropriate, University may offer Donee a license to use the Work Product, such terms to be mutually agreed to by the parties.

7. LIMITATION OF LIABILITY. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE PARTIES AGREE TO THE ALLOCATION OF RISK SET FORTH HEREIN.

8. Compliance. Donee agrees to abide by all applicable fed-

eral, state, local and University laws, ordinances regulations and policies, specifically including without limitation those pertaining to the privacy and use of student records, health information, and other University data.

9. Publicity. Donee shall not make any announcements relating to the MOU, nor shall Donee use University’s name, trademarks, logos or marks, without the prior written approval from University in each instance.

10. Insurance. University, as a public body corporate, warrants and represents that it is self-funded for general liability insurance, with said protection being applicable to officers, employees, servants, and agents while acting within the scope of their employment by University. Any provision requiring University to provide or acquire insurance coverage other than such self-insurance shall not be effective.

11. Force Majeure. If, as a result of an act of force majeure, including without limitation, an act of God, war, riot, labor dispute, strike or threat thereof, intervention of a governmental agency, or the occurrence beyond the control of either party, the obligations of this MOU cannot be carried out, then either party, upon notifying the other, shall have the right to suspend performance until the event of force majeure has passed; provided, however, that the provisions hereof shall in no event be applicable with respect to the payment of money from Donee to University. If University intends to invoke this provision, it shall immediately notify Donee.

12. Third Parties. University is not liable for the acts of third parties or the consequences of the acts of third parties. There shall be no third-party beneficiary to the MOU.

13. Conflicts. Donee represents that it is aware of the requirements of Chapter 112, Florida Statutes and, to the best of its knowledge, in compliance with the requirements thereof, and other laws and regulations concerning conflicts of interests in dealing with entities of the State of Florida. Violation of this section shall be grounds for termination of the MOU.

14. Termination. Upon giving at least thirty (30) days’ written notice to Donee, University may terminate the MOU without penalty.

15. Notices. All notices required to be given under the MOU shall be sent by certified mail to: Office of the General Counsel, Florida State University, Suite 424, 222 S. Copeland St., Tallahassee, FL 32306-1400

16. Deletion. Any term and/or condition in the MOU on the following subject matters are hereby deleted in their entirety and declared null and void: (a) Grants of exclusivity by University to Donee; (b) Restrictions on the hiring of Donee’s employees; (c) University’s responsibility to pay intangible taxes, property taxes, or sales taxes; (d) Automatic renewals of the term of the MOU; (e) Limitation of time to bring suit; (f) that University performs reporting functions and/or maintains certain types of operations (g) Granting Donee any right to audit University; (h) Attorneys’ or collection fees provisions; (i) Arbitration and mediation clauses; and (j) Indemnification of Donee by University.

17. Assignment. Donee may not, without the advance written approval of University, not to be unreasonably withheld, assign any right or duties under the MOU, or transfer, pledge, surrender or otherwise encumber its interest in any portion of the MOU. Any assignment made without University’s consent shall be, at University’s option, null and void. No subcontracting or delegation shall in any event relieve Donee of any obligation or liability under the MOU.

18. Entire MOU. In the event of inconsistency between the MOU and this Addendum, the MOU will govern. This Addendum and the MOU embody the entire agreement of the parties, and there are no other representations, promises, agreements, conditions or understandings, either oral or written, between University and Donee other than are set forth therein. Any renewals, amendments, alterations or modifications to the MOU must be signed or initialed and approved by all signatories of the MOU. To be clear, the MOU shall not auto-renew and must be upon the written agreement of the parties.

19. Signatures. The parties represent and warrant that any person signing the MOU has the authority to do so and that such signature shall be sufficient to legally bind Donee. The MOU may be signed electronically and shall be considered signed if/when a party’s signature is delivered by facsimile or e-mail transmission of a “.pdf” format date file, including via DocuSign. Such signature shall be treated in all respects as having the same force and effect as an original signature.

By signing below, Donee’s authorized representative agrees to incorporate this Addendum into the MOU, and hereby executes this Addendum as of the date set forth below.

DONEE:

 [Legal Name of Donee]

By: _____

(Signature)

Name: _____

Title: _____

Date: _____