

UNIVERSITY OF WEST FLORIDA BUSINESS ENTERPRISES, INC. –
_____ (enter name of 3rd party health care provider)
MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (the “MOU”) is made and entered into by and between the University of West Florida Business Enterprises, Inc. (the “UWF BEI”, a direct support organization of the University of West Florida Board of Trustees) and _____ (“Donee”). UWF BEI 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;

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;

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

WHEREAS, the UWF BEI has access to certain fabrication instruments that can be re-purposed to produce the Face Shields; however, the UWF BEI does not presently and has not previously manufactured PPE or other medical devices including Face Shields, 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;

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 UWF BEI is willing to re-purpose the 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 UWF BEI Addendum (“Addendum”), the terms of which are incorporated herein by reference; and

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

WHEREAS, UWF BEI requires all Donees to enter into this Agreement as a condition of receiving donated Face Shields

NOW, THEREFORE, in consideration of the foregoing recitals, and intending to be legally bound, the Parties to this MOU agree as follows:

1. Obligations of UWF BEI. Subject to the terms of this MOU and the Addendum, the UWF BEI agrees to donate Face Shields to Donee, without cost, to the extent feasible in light of the fact that the current emergency may result in a Force Majeure event limiting the UWF BEI's ability to produce the agreed upon number of Face Shields. Upon the parties' determination of the number of Face Shields to be produced, the UWF BEI shall issue Donee a written acknowledgment. The UWF BEI may issue Donee multiple written acknowledgments 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 UWF BEI 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.

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

2.4 Donee acknowledges and agrees that UWF BEI 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 to any third party.

2.5 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.

2.6 Donee acknowledges and agrees to convey to the users of the Face Shields the instructions, warnings, disclaimers and other information provided on, with, or alongside the Face Shields.

3. Release. In consideration for receiving the Face Shields from the UWF BEI, Donee hereby releases the State of Florida, the University of West Florida Board of Trustees and the UWF BEI, 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, UWF BEI 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 UWF BEI at the time they are incurred by UWF BEI. 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, 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 Escambia 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.

(intentionally left blank)

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, the parties, through their duly authorized representatives, hereby agree to the terms of this MOU.

**UNIVERSITY OF WEST FLORIDA
BUSINESS ENTERPRISES, INC.**

By: _____

By: _____

Name: _____

Name: Dr. Ed Ranelli

Title: _____

Title: Chief Executive Officer

Date: _____

Date: _____

UNIVERSITY OF WEST FLORIDA BUSINESS ENTERPRISES, INC.

1. **Incorporation by Reference.** The University of West Florida Business Enterprises, Inc. ("UWF BEI") and the undersigned ("Donee") hereby incorporate this Supplemental Addendum ("Addendum") into the Memorandum of Understanding between UWF BEI and Donee (the "Agreement") dated of even date herewith.

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

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

4. **Confidentiality.** To the extent Donee has access to UWF BEI 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 Agreement or as other required by law.

5. **Public Records.** UWF BEI is subject to Chapter 119 of Florida Statutes, known as the Public Records Law, under certain circumstances. The Agreement, this Addendum and any related documents and/or correspondence shall also become a public record subject to the Public Records Law if required by law, regardless of any confidentiality provision outlined in the Agreement. UWF BEI may unilaterally cancel the Agreement for Donee's refusal to allow public access to public records related to the Agreement. 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 Agreement. The parties do not anticipate that Donee is a "Contractor" of UWF BEI 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 Agreement (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 UWF BEI shall be property of UWF BEI, 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 Agreement. If appropriate, UWF BEI 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 federal, state, local and UWF BEI laws, ordinances regulations and policies, specifically including without limitation those pertaining to the privacy and use of student records, health information, and other UWF BEI data.

9. **Publicity.** Donee shall not make any announcements relating to the Agreement, nor shall Donee use UWF BEI's name, trademarks, logos or marks, without the prior written approval from UWF BEI in each instance.

10. **Insurance.** UWF BEI, as a public body corporate and direct support organization, 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 UWF BEI. Any provision requiring UWF BEI 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, pandemic, or the occurrence beyond the control of either party, the obligations of this Agreement 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. If UWF BEI intends to invoke this provision, it shall immediately notify Donee.

12. **Third Parties.** UWF BEI 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 Agreement.

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 Agreement.

14. **Termination.** Upon giving at least thirty (30) days' written notice to Donee, UWF BEI may terminate the Agreement without penalty. Donee shall be liable for payment of goods/services/benefits received by Donee prior to the date of notice of termination.

15. **Notices.** All notices required to be given under the Agreement shall be sent by certified mail to: University of West Florida Business Enterprises, Inc., Attn: Dr. Ed Ranelli, Bldg. 10, 11000 University Parkway, Pensacola, Florida 32514.

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

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

18. **Entire Agreement.** In the event of inconsistency between the Agreement and this Addendum, the Agreement will govern. This Addendum and the Agreement embody the entire agreement of the parties, and there are no other representations, promises, agreements, conditions or understandings, either oral or written, between UWF BEI and Donee other than are set forth therein. Any renewals, amendments, alterations or modifications to the Agreement must be signed or initialed and approved by all signatories of the Agreement. To be clear, the Agreement 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 Agreement has the authority to do so and that such signature shall be sufficient to bind Donee. The Agreement 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 Agreement, and hereby executes this Addendum as of the date set forth below.

DONEE: _____

By: _____

Name: _____

Title: _____

Date: _____