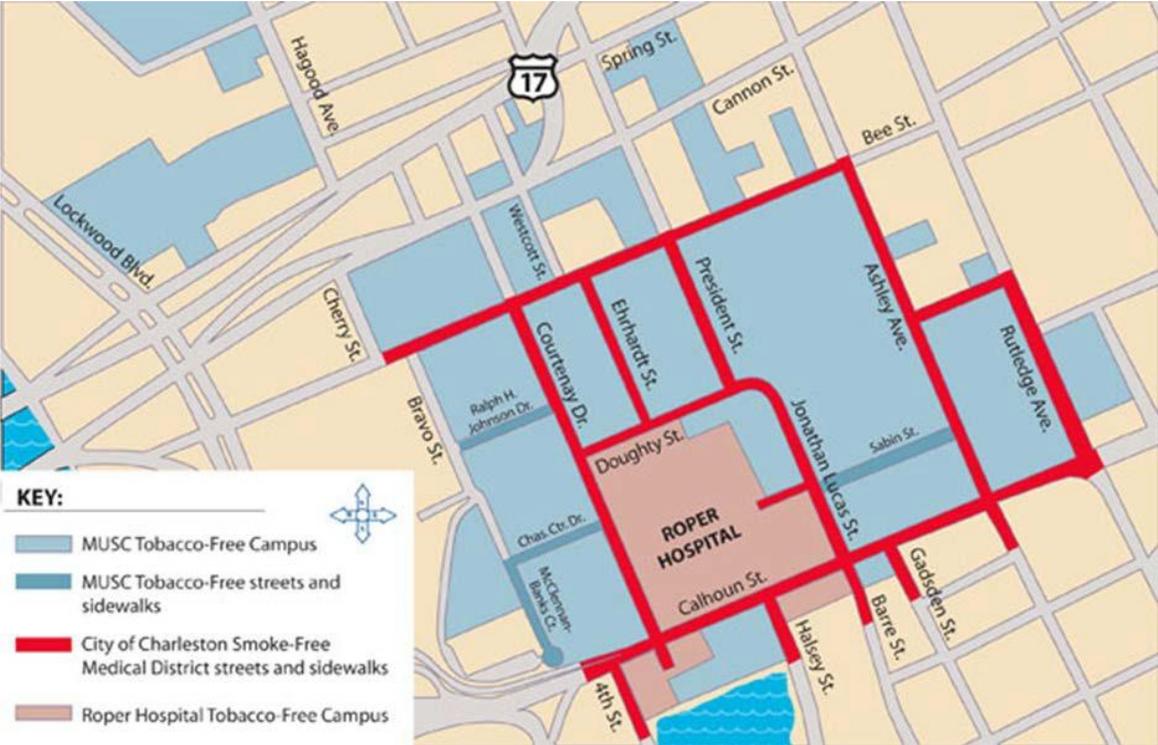


MUSC Campus Map of Smoke Free Zone



# OFFEROR'S CHECKLIST

## *AVOID COMMON BID/PROPOSAL MISTAKES*

Review this checklist prior to submitting your bid/proposal.  
If you fail to follow this checklist, you risk having your bid/proposal rejected.

- DO NOT INCLUDE ANY OF YOUR STANDARD CONTRACT FORMS!
- UNLESS EXPRESSLY REQUIRED, DO NOT INCLUDE ANY ADDITIONAL BOILERPLATE CONTRACT CLAUSES.
- REREAD YOUR ENTIRE BID/PROPOSAL TO MAKE SURE YOUR BID/PROPOSAL DOES NOT TAKE EXCEPTION TO ANY OF THE STATE'S MANDATORY REQUIREMENTS.
- MAKE SURE YOU HAVE PROPERLY MARKED ALL PROTECTED, CONFIDENTIAL, OR TRADE SECRET INFORMATION IN ACCORDANCE WITH THE INSTRUCTIONS ENTITLED: SUBMITTING CONFIDENTIAL INFORMATION. ***DO NOT MARK YOUR ENTIRE BID/PROPOSAL AS CONFIDENTIAL, TRADE SECRET, OR PROTECTED! DO NOT INCLUDE A LEGEND ON THE COVER STATING THAT YOUR ENTIRE RESPONSE IS NOT TO BE RELEASED!***
- HAVE YOU PROPERLY ACKNOWLEDGED ALL AMENDMENTS? INSTRUCTIONS REGARDING HOW TO ACKNOWLEDGE AN AMENDMENT SHOULD APPEAR IN ALL AMENDMENTS ISSUED.
- MAKE SURE YOUR BID/PROPOSAL INCLUDES A COPY OF THE SOLICITATION COVER PAGE. MAKE SURE THE COVER PAGE IS SIGNED BY A PERSON THAT IS AUTHORIZED TO CONTRACTUALLY BIND YOUR BUSINESS.
- MAKE SURE YOUR BID/PROPOSAL INCLUDES THE NUMBER OF COPIES REQUESTED.
- CHECK TO ENSURE YOUR BID/PROPOSAL INCLUDES EVERYTHING REQUESTED!
- IF YOU HAVE CONCERNS ABOUT THE SOLICITATION, DO NOT RAISE THOSE CONCERNS IN YOUR RESPONSE! **AFTER OPENING, IT IS TOO LATE! IF THIS SOLICITATION INCLUDES A PRE-BID/PROPOSAL CONFERENCE OR A QUESTION & ANSWER PERIOD, RAISE YOUR QUESTIONS AS A PART OF THAT PROCESS!** PLEASE SEE INSTRUCTIONS UNDER THE HEADING "SUBMISSION OF QUESTIONS" AND ANY PROVISIONS REGARDING PRE- BID/PROPOSAL CONFERENCES.

This checklist is included only as a reminder to help offerors avoid common mistakes. Responsiveness will be evaluated against the solicitation, ***not*** against this checklist.

You do not need to return this checklist with your response.

THIS IS THE END OF THIS DOCUMENT

## EXHIBIT I: TRADEMARK LICENSE AGREEMENT

**THIS TRADEMARK LICENSE AGREEMENT** (this "Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between Medical University of South Carolina, ("Licensor"), a body corporate and politic organized and existing under the laws of the State of South Carolina, with a place of business at [preferred address], \_\_\_\_\_ and, a [TYPE OF LEGAL ENTITY, e.g., corporation] organized under the laws of the state of [STATE WHERE LICENSEE IS ORGANIZED/INCORPORATED] having a principal place of business at [ADDRESS] ("Licensee").

WHEREAS, Licensor is the owner of all right, title, and interest in and to certain marks comprising designs, trademarks and service marks, logos, and/or symbols that are associated with and identify Licensor, its educational, athletic and entertainment services and related merchandise (as defined below);

WHEREAS, Licensor has the right to license such marks and desires to provide a license for the use of such marks and associated goodwill for the aforementioned purpose subject to the terms and conditions set forth below; and

WHEREAS, Licensee desires to manufacture, advertise, distribute and sell certain products containing Licensor' licensed marks, and Licensor is willing, subject to the terms and conditions set forth below, to grant this license.

NOW, THEREFORE, in consideration of the parties' mutual covenants and undertakings, and other good and valuable consideration the receipt and sufficiency of which are acknowledged, the parties agree as follows:

### 1. DEFINITIONS

In addition to the terms defined elsewhere in this Agreement, as used in this Agreement, the following terms shall have the following respective meanings:

- a. "Licensed Indicia" means the marks and identifying indicia of Licensor shown in Appendix B, including, without limitation, the trademarks, service marks, collective membership marks, trade dress, abbreviations, slogans, designs, colors, logographics, seals and other symbols associated with or referring to those marks shown in Exhibit B.
- b. "Licensed Articles" means the products listed in Appendix C which contain Licensed Indicia.
- c. "Authorized Brands" means any additional brand names or labels Licensee may use in association with the Licensed Articles. Authorized Brands are listed in Appendix D.
- d. "Distribution Channels" means the channels of trade in which Licensee may advertise, distribute and sell the Licensed Articles in the Territory. The Distribution Channels authorized herein are indicated in Appendix D, which may also identify Distribution Channels that are not authorized in this Agreement. Licensee shall not advertise, distribute or sell Licensed Articles to any third party that Licensee knows or should reasonably know intends or is likely to advertise, redistribute or resell Licensed Articles outside the authorized Distribution

Channels.

- e. “Territory” means world-wide. However, nothing contained herein shall be deemed as a representation or warranty that the Licensor has superior trademark rights to the Licensed Indicia outside of the United States.

## 2. GRANT OF LICENSE

- a. Upon execution of this Agreement, and subject to its terms and conditions, Licensor hereby grants to Licensee the nonexclusive, revocable, nontransferable right to manufacture, advertise, distribute and sell the Licensed Articles listed in Appendix C, containing the Licensed Indicia shown in Appendix B, under the applicable Authorized Brands and in the Distribution Channels indicated in Appendix D, in the Territory, during the Term. Licensee shall exercise such rights in accordance with this Agreement and any of Licensor’s guidelines, policies and requirements provided to Licensee, which shall be deemed part of the Agreement.
- b. Nothing in this Agreement shall be construed to prevent Licensor from granting any other licenses or rights for use of the Licensed Indicia. Licensor shall retain all rights to use and license their respective Licensed Indicia.
- c. Licensee shall have no right to delegate any responsibility to any Sublicensee of any Licensed Article without the prior written approval of Licensor. A “Sublicensee” shall mean any third party that manufactures any Licensed Article, ships such product to retailers, and invoices retailers directly.

## 3. Term

This Agreement shall begin on the effective date shown above and shall continue for the period of one year ("Initial Term"), unless terminated sooner or renewed in the manner provided in this Agreement. At the end of the Initial Term, this Agreement and the License granted herein shall be automatically renewed for additional and consecutive renewal terms of one (1) year each (each such year being referred to herein as a "Renewal Term"), unless a party provides at least thirty (30) days written notice of intention to terminate this Agreement prior to the end of the Initial Term or respective Renewal Term. The Initial Term and Renewal Terms shall be referred to collectively herein as the "Term". Licensee acknowledges and agrees that there is no right to renew this Agreement and Licensor has no obligation to renew this Agreement.

## 4. MODIFICATION OF APPENDICES

- a. Licensor may amend its royalty charges listed in Appendix A, the Licensed Indicia shown in Appendix B, the Licensed Articles listed in Appendix C, the Authorized Brands and Distribution Channels indicated in Appendix D, through periodic advisory bulletins or notices, including without limitation, notification via email, Licensor will give Licensee written reasonable notice of any changes to appendices or policies. Licensee, upon receipt of the bulletins or notices, is responsible for distributing them promptly to the appropriate party(s) and complying with the modified appendices and policies.
- b. Licensee recognizes and agrees that certain changes to Appendices A, B, C, or D may affect Licensee’s rights regarding certain Licensed Indicia, Licensed Articles, Authorized Brands or Distribution Channels. Licensee agrees that such rights shall cease on the effective date of the

notice of such changes, in accordance with the terms of the notice. In such event, those provisions of Section 15 regarding disposal of inventory shall become effective for the affected Licensed Indicia, Licensed Articles, Authorized Brands or Distribution Channels unless Licensee obtains written permission from Licensor to continue to use the Licensed Indicia, or to manufacture, advertise, distribute or sell the Licensed Articles.

## 5. ROYALTY PAYMENTS

- a. Rate: Licensee agrees that it shall pay to Licensor the applicable royalty charges set forth in Appendix A.
- b. For purposes of determining the Royalty Payments, sales shall be deemed to have been made when Licensed Articles are billed, invoiced, shipped, or paid for, whichever occurs first.

## 6. ROYALTY STATEMENT AND PENALTIES

- a. On a quarterly basis Licensee shall submit to Licensor, in a format provided or approved by Licensor, a full and complete statement, showing the quantity of unit sales of the Licensed Articles distributed and/or sold during the preceding quarterly period. Such report shall include any additional information kept in the normal course of business by the Licensee which is appropriate to enable an independent determination of the amount due hereunder. All Royalty Payments then due Licensor shall be made simultaneously with the submission of the statements. If no sales or use of the Licensed Articles were made during any reporting period for one or more Licensor, Licensee shall provide Licensor a written statement to that effect as part of the report.
- b. Licensee shall pay Licensor an additional charge of one and one-half percent (1.5%) per month, compounded on a monthly basis, or the maximum rate allowed by law, if lower, on any payment due under the Agreement that remains unpaid after such payment becomes due.
- c. Licensor's receipt or acceptance of any statements or Royalty Payments, or the cashing of any royalty checks, shall not preclude Licensor from questioning the correctness thereof at any time. Upon discovery of any verifiable inconsistency or mistake in such statements or payments, Licensee shall immediately rectify such inconsistency or mistake.
- d. Licensee shall, unless otherwise directed in writing by Licensor, send all payments and statements to Licensor [ADDRESS FOR ACCOUNT RECEIVABLE], or transmit the same via electronic format approved by Licensor

## 7. OWNERSHIP OF LICENSED INDICIA AND PROTECTION OF RIGHTS

- a. Licensee acknowledges and agrees that Licensor owns the Licensed Indicia, modifications of the Licensed Indicia, as well as any other Licensed Indicia adopted for use by Licensor, that each of the Licensed Indicia is valid, and that it has the exclusive right to use each of its Licensed Indicia subject only to limited permission granted to Licensee to use the Licensed Indicia pursuant to this Agreement. Licensee acknowledges the validity of the state and federal

registrations that Licensor owns, obtains or acquires for its Licensed Indicia. Licensee shall not, at any time, file any trademark application with the United States Patent and Trademark Office, or with any other governmental entity for the Licensed Indicia, regardless of whether such Licensed Indicia is shown in Appendix B. Licensee shall not use any of the Licensed Indicia or any similar mark as, or as part of, a trademark, service mark, trade name, fictitious name, company or corporate name anywhere in the world. Any trademark or service mark registration obtained or applied for that contains the Licensed Indicia or any similar mark shall be immediately transferred to Licensor without compensation.

- b. Licensee shall not oppose or seek to cancel or challenge, in any forum, including, but not limited to, the United States Patent and Trademark Office, any application or registration of the Licensed Indicia by Licensor. Licensee shall not object to, or file any action or lawsuit because of any use by Licensor of their Licensed Indicia for any goods or services, whether such use is by Licensor directly or through licensees or authorized users.
- c. Licensee recognizes the great value of the good will associated with the Licensed Indicia and acknowledges that such good will belongs to Licensor, and that such Licensed Indicia have inherent and/or acquired distinctiveness. Licensee shall not, during the term of this Agreement or thereafter, dispute or contest the property rights of Licensor, dispute or contest the validity of this Agreement, or use the Licensed Indicia or any similar mark in any manner other than as licensed hereunder.
- d. Licensee agrees to assist Licensor in the protection of the rights of Licensor in and to the Licensed Indicia and shall provide, at reasonable cost to be borne by Licensor, any evidence, documents, and testimony concerning the use by Licensee of the Licensed Indicia, which Licensor may request for use in obtaining, defending, or enforcing rights in any Licensed Indicia or related application or registration. Licensee shall notify Licensor in writing of any infringements by others of the Licensed Indicia of which it is aware. Licensor shall have the right to determine whether any action shall be taken on account of any such alleged infringements. Licensee shall not institute any suit or take any action on account of any such alleged infringements without first obtaining the written authorization of Licensor. Licensee agrees that it is not entitled to share in any proceeds received by Licensor (by settlement or otherwise) in connection with any formal or informal action brought by Licensor.
- e. (1) Acknowledgment: Licensee acknowledges that any original designs, artwork or other compilations (“Works”) created by it pursuant to this Agreement that contain the Licensed Indicia are “compilations” or “supplementary works” as those terms are used in Section 101 of the Copyright Act, and that the Works will be, and will be treated as having been, specially ordered or commissioned for use as a compilation or supplementary work rendered for, at the instigation and under the overall direction of Licensor; and therefore that all the work on and contributions to the Works by Licensee, as well as the Works themselves, are and at all times shall be regarded as “work made for hire” by the Licensee for Licensor. Without limiting the foregoing acknowledgment or subsequent assignment, Licensee further acknowledges that any rights that Licensee might have under this Agreement do not in any way dilute or affect the interests of Licensor in the Licensed Indicia or any derivatives thereof nor permit Licensee to copy or use the Works or the Licensed Indicia, except as expressly permitted under this

Agreement; nor to affix a copyright or trademark notice to any product bearing the Works or the Licensed Indicia, except as expressly permitted under this Agreement.

2. Assignment: Without curtailing or limiting the foregoing acknowledgment, Licensee assigns, grants and delivers (and agrees further to assign, grant and deliver) exclusively to the respective Licensor, all rights, titles and interests of every kind and nature whatsoever in and to the Works, and all copies and versions, including all copyrights and all renewals. Licensee further agrees to execute and deliver to Licensor such other and further instruments and documents that Licensor may request for the purpose of establishing, evidencing and enforcing or defending the complete, exclusive, perpetual and worldwide ownership by such respective Licensor of all rights, titles and interests of every kind and nature whatsoever, including all copyrights, in and to the Works, and Licensee appoints Licensor as agent and attorney-in-fact, with full power of substitution, to execute and deliver such documents or instruments as Licensee may fail or refuse promptly to execute and deliver, this power and agency being coupled with an interest and being irrevocable.

- f. Licensee acknowledges that its breach or threatened breach of this Agreement will result in immediate and irremediable damage to Licensor and that money damages alone would be inadequate to compensate Licensor. Therefore, in the event of a breach or threatened breach of this Agreement by Licensee, Licensor may, in addition to other remedies, immediately obtain and enforce injunctive relief prohibiting the breach or threatened breach or compelling specific performance. In the event of any breach or threatened breach of this Agreement by Licensee or infringement of any rights of Licensor, if Licensor employ attorneys or incur other expenses, Licensee shall reimburse Licensor for its reasonable attorney's fees and other expenses.

## 8. DISPLAY AND APPROVAL OF LICENSED INDICIA

- a. Licensee shall use the Licensed Indicia properly on all Licensed Articles, as well as labels, containers, packages, tags and displays (collectively "Packaging"), and in all print and online advertisements and promotional literature, and television and radio commercials promoting Licensed Articles (collectively "Advertising Materials"). Any use of any Licensed Indicia shall conform to the requirements as specified in Appendix B. Licensor may also, from time to time, provide to Licensee guidance on the proper use of the Licensed Indicia. A true representation or example of any proposed use by Licensee of any of the Licensed Indicia listed, in any visible or audible medium, and all proposed Licensed Articles, Packaging and Advertising Materials containing or referring to any Licensed Indicia, shall be submitted at Licensee's expense to Licensor for written approval prior to such use, as provided in Section 9.
- b. The proper symbol to identify the Licensed Indicia as a trademark (i.e., the ® symbol if the Licensed Indicia is registered in the United States Patent and Trademark Office or the ™ symbol if not so registered) and/or copyright legend (i.e., © [Date] Licensor) shall be placed adjacent to each Licensed Indicia.

## 9. PROCEDURE FOR APPROVAL

- a. Licensee understands and agrees that it is an essential condition of this Agreement to protect the standards and good reputation of Licensor, and agrees that the Licensed Articles, Advertising Materials and/or designs containing the Licensed Indicia shall be of high and consistent quality, subject to the prior written approval and continuing supervision and control of Licensor. Licensee shall submit all Licensed Articles, packaging for such articles, Advertising Materials and/or designs containing the Licensed Indicia to Licensor in a timely fashion to ensure that Licensor has adequate time to review such materials prior to the date of their proposed use by Licensee, and Licensee must receive prior written quality control approval by Licensor as provided herein.
- b. Prior to the manufacture, use, distribution or sale of any Licensed Article, Advertising Materials and/or designs containing the Licensed Indicia, Licensee shall submit to Licensor for approval, at Licensee's expense and in the format required by Licensor, at least one sample of each proposed Licensed Article and packaging therefor, Advertising Materials and/or design as the same would be manufactured, used, distributed or sold. If Licensor approves in writing the proposed Licensed Article and packaging therefor, Advertising Materials and/or design, the same shall be accepted to serve as an example of quality for that Licensed Article and packaging therefor, Advertising Materials and/or design, and production quantities may be manufactured by Licensee in strict conformity with the approved sample. All approvals provided herein are effective only for the Term or renewal period in which Licensee has submitted and Licensor has approved the Licensed Articles and packaging therefor, Advertising Materials and/or designs, unless Licensee is otherwise notified in writing by Licensor. Licensee shall not depart from the approved quality standards in any material respect without the prior written approval of Licensor. Licensed Articles and packaging therefor, Advertising Materials and/or designs not meeting those standards, including seconds, irregulars, etc., shall not be distributed or sold under any circumstances without Licensor's prior written authorization.
- c. Licensee may only use the Licensed Indicia as shown in Appendix B and approved in the manner set forth herein. Licensee may not modify the Licensed Indicia without the prior written approval of Licensor as provided in Section 9(b) above. The use of the Licensed Indicia in conjunction with original artwork supplied by the Licensee requires the express approval of Licensor as provided in Section 9(b) above. Licensee may submit sketches of proposed artwork for preliminary approval before submitting finished samples.
- d. At time of renewal, or upon request by Licensor at any other time, in addition to any other requirement, Licensee shall submit to Licensor such number of each Licensed Articles and packaging therefor, Advertising Materials and/or design manufactured, used, distributed or sold under the Licensed Indicia as may be necessary for Licensor to examine and test to assure compliance with the quality and standards for Licensed Articles, Advertising Materials and/or designs approved herein. Each item shall be shipped in its usual container or wrapper, together with all labels, tags, and other materials usually accompanying the item. Licensee shall bear the expense of manufacturing and shipping the required number of Licensed Articles, Advertising Materials and/or designs to the destination(s) designated by Licensor.

- e. If Licensor notifies Licensee of any defect in any Licensed Article, Advertising Materials and/or designs or of any deviation from the approved use of any of the Licensed Indicia, Licensee shall have fifteen (15) days from the date of notification from Licensor to correct every noted defect or deviation. Defective Licensed Articles, Advertising Materials and/or designs in Licensee's inventory shall not be used, distributed or sold and shall, upon request by Licensor, be immediately recalled from the marketplace and destroyed or submitted to Licensor, at Licensor's option and at Licensee's expense. However, if it is possible to correct all defects in the Licensed Articles, Advertising Materials and/or designs in Licensee's inventory, said items may be distributed or sold after all defects are corrected to the satisfaction of Licensor, which shall be indicated in writing. Licensor and/or its authorized representatives shall have the right at reasonable times without notice to inspect Licensee's plants, warehouses, storage facilities and operations related to the production of Licensed Articles.
- f. Licensee shall comply with all applicable laws, regulations, standards and procedures relating or pertaining to the manufacture, use, advertising, distribution or sale of the Licensed Articles. Licensee shall comply with the requirements, including reporting requirements, of any regulatory agencies which shall have jurisdiction over the Licensed Articles. Both before and after Licensed Articles are put on the market, Licensee shall follow reasonable and proper procedures for testing Licensed Articles for compliance with laws, regulations, standards and procedures, and shall permit Licensor and/or its authorized representatives, upon reasonable notice, to inspect its and its Manufacturer's testing, manufacturing and quality control records, procedures and facilities and to test or sample Licensed Articles for compliance with this Section. Licensed Articles found by Licensor at any time not to comply with applicable laws, regulations, standards and procedures shall be deemed disapproved, even if previously approved by Licensor, and shall not be shipped and/or shall be subject to recall unless and until Licensee can demonstrate to Licensor's satisfaction that such Licensed Articles have been brought into full compliance.
- g. Licensee shall inform Licensor in writing of any complaint regarding the Licensed Articles promptly upon Licensee's receipt of such complaint.
- h. Any unauthorized or unapproved use by Licensee of any Licensed Indicia shall constitute grounds for immediate termination of this Agreement and also may result in action against Licensee for trademark infringement and/or unfair competition, other applicable claims, and collection of monetary damages.

#### 10. NO JOINT VENTURE OR ENDORSEMENT OF LICENSEE

Nothing in this Agreement shall be construed to place the parties in the relationship of partners, joint venturers or agents, and Licensee shall have no power to obligate or bind Licensor in any manner whatsoever. Licensor is not in any way a guarantor of the quality of any product produced by Licensee. Licensee shall neither state nor imply, directly or indirectly, that the Licensee or its activities, other than under this license, are supported, endorsed or sponsored by Licensor and, upon the direction of Licensor, shall issue express disclaimers to that effect.

## 11. REPRESENTATIONS

Licensee represents, warrants and agrees that the Licensed Articles and packaging therefor, Advertising Materials and/or designs shall (i) be of good quality in design, material and workmanship and suitable for their intended purpose, (ii) not cause harm when used with ordinary care, and (iii) not infringe or violate the rights of any third party. Licensee further represents, warrants and agrees that all work on and contribution to the Works shall be by bona fide “employees” of Licensee working “within the scope of employment” as those terms are used in 17 U.S.C. § 101, et. seq. Each party represents and warrants that it has the right and authority to enter into and perform under this Agreement.

## 12. INDEMNIFICATION AND INSURANCE

- a. Licensee is solely responsible for, and will defend, indemnify and hold harmless Licensor, and its respective officers, agents, and employees (collectively “Indemnified Parties”) from any claims, demands, causes of action or damages, including reasonable attorney’s fees, arising out of (i) any unauthorized use of or infringement of any patent, copyright, trademark or other proprietary right of a third party by Licensee in connection with the Licensed Articles, Advertising Materials and/or designs covered by this Agreement, (ii) defects or alleged defects or deficiencies in said Licensed Articles, Advertising Materials and/or designs or the use thereof, (iii) false advertising, fraud, misrepresentation or other claims related to the Licensed Articles, Advertising Materials and/or designs not involving a claim of right to the Licensed Indicia, (iv) the unauthorized use of the Licensed Indicia or any breach or alleged breach by Licensee of any of its representations, warranties, covenants or obligations contained in this Agreement, (v) libel or slander against, or invasion of the right of privacy, publicity or property of, or violation or misappropriation of any other right of any third party, and/or (vi) agreements or alleged agreements made or entered into by Licensee to effectuate the terms of this Agreement. The indemnifications hereunder shall survive the expiration or termination of this Agreement.
- b. Prior to the first sale or distribution of any Licensed Article, or use of the Licensed Indicia, Licensee shall obtain from an insurance carrier having a rating satisfactory to Licensor by the A.M. Best & Co. or other rating satisfactory to Licensor, and thereafter maintain, Commercial General Liability insurance, including product, advertising and contractual liability insurance. Licensee’s insurance coverage shall provide adequate protection for the Indemnified Parties as additional insured parties on Licensee’s policy against any claims, demands, or causes of action and damages, including reasonable attorney’s fees, arising out of any of the circumstances described in Section 12(a) above. Such insurance policy shall not be canceled or materially changed in form without at least thirty (30) days written notice to Licensor. Prior to the first sale or distribution of any Licensed Article, or use of the Licensed Indicia, Licensee shall furnish Licensor a certificate of such insurance and endorsements in the form prescribed by Licensor. Licensee agrees that such insurance policy or policies shall provide coverage of one million dollars (\$1,000,000) for personal and advertising injury, bodily injury and property damage arising out of each occurrence, or Licensee’s standard insurance policy limits, whichever is greater. However, recognizing that the aforesaid amounts may be inappropriate with regard to specific classes of goods, it is contemplated that Licensor may require reasonable adjustment to the foregoing amounts. Any adjustment must be confirmed in writing by Licensor.

### 13. RECORDS AND RIGHT TO AUDIT

- a. Licensee shall keep, maintain and preserve at its principal place of business during the Term, any renewal periods and at least three (3) years following termination or expiration, complete and accurate books, accounts, records and other materials covering all transactions related to this Agreement in a manner such that the information contained in the statements referred to in Section 6 can be readily determined including, without limitation, customer records, invoices, correspondence and banking, financial and other records in Licensee's possession or under its control. Licensor and/or its authorized representatives shall have the right to inspect and audit all materials related to this Agreement, which right to inspect and audit shall include the conduct of normal audit tests of additional Licensee records including those covering "non-licensed" sales to verify that they are not sales covered by this Agreement. In addition to the materials required by normal accounting practices, Licensee must retain detail of Licensed Article sales to the invoice number level for audit purposes.
- b. Such materials shall be available for inspection and audit (including photocopying) at any time during the Term, any renewal periods and at least three (3) years following termination or expiration during reasonable business hours and upon at least five (5) days notice by Licensor and/or its representatives. Licensee will cooperate and will not cause or permit any interference with Licensor and/or its representatives in the performance of their duties of inspection and audit. Licensor and/or its representatives shall have free and full access to said materials for inspection and audit purposes. Licensee shall pay Licensor the amount of any additional costs beyond the cost of the originally scheduled audit incurred by Licensor (i) due to a change in a scheduled audit date, which change is made at Licensee's request and approved by Licensor, or (ii) if Licensee's books and records are not organized and/or available for audit.
- c. Following the conduct of the audit, Licensee shall take immediate steps to timely resolve all issues raised therein, including payment of any monies owing and due. Should an audit indicate either
  - (i) an underpayment of five percent (5%) or more, or (ii) an underpayment of \$5,000 or more, of the monies due Licensor, the cost of the audit shall be paid by Licensee. Payment of any audit costs is in addition to the full amount of any underpayment including late payment charges as provided in Section 7(b). Without prejudice to the rights set forth in Section 16 below, Licensee must cure any contract breaches discovered during the audit, provide amended reports if required, and submit the amount of any underpayment including late payment charges and, if applicable, the cost of the audit and/or cancellation fees within fifteen (15) days from the date Licensee is notified of the audit result.

### 14. DEFAULT; CORRECTIVE ACTIONS; TERMINATION

- a. Licensee's failure to fully comply with each provision of the Agreement, including but not limited to Licensee's failure to perform as required or breach of any provision, shall be deemed a default under the Agreement. Upon default, Licensor may require the Licensee to take action to correct such default. In the event that Licensee is required to take corrective action, Licensor

shall determine the corrective action that Licensee will be required to take for such failure to perform or breach commensurate with the scope and history of Licensee's past performance. Such action may include, without limitation, requiring Licensee to adopt remedial accounting and reporting measures; requiring Licensee to conduct an internal audit; requiring Licensee to train its personnel or permitting Licensor to assist therein at Licensee's expense; and requiring Licensee to discontinue the manufacture, advertising, distribution and sale of certain products bearing the Licensed Indicia.

- b. In addition to the right to require corrective action for default as set forth in Section 14(a), Licensor shall have the right to terminate this Agreement without prejudice to any other rights under this Agreement, in law, in equity or otherwise, upon written notice to Licensee at any time should any of the following occur, which shall also be deemed defaults under the Agreement:

(1) Licensee has not begun the bona fide manufacture, distribution, and sale of Licensed Articles within one (1) month of the date of approval of the samples of Licensed Articles.

(2) Licensee fails to continue the bona fide manufacture, distribution, and sale of Licensed Articles during the Term. If, during any calendar quarter of the Term, Licensee fails to sell any of the Licensed Articles, Licensor may terminate this Agreement with respect to said Licensed Article.

(3) Licensee fails to make any payment due or fails to deliver any required statement.

(4) The amounts stated in the periodic statements furnished pursuant to Section 6 are significantly or consistently understated.

(5) Licensee fails to generate royalties during the Term or any renewal period that meet or exceed the amount of any Minimum Guarantee amounts, if any, as provided Appendix A.

(6) Licensee fails to make available its premises, records or other business information for any audit or to resolve any issue raised in connection with any audit, as required in Section 13.

(7) Licensee fails to pay its liabilities when due, or makes any assignment for the benefit of creditors, or files any petition under any federal or state bankruptcy statute, or is adjudicated bankrupt or insolvent, or if any receiver is appointed for its business or property, or if any trustee in bankruptcy shall be appointed under the laws of the United States government or the several states.

(8) Licensee attempts to grant or grants a sublicense or attempts to assign or assigns any right or duty under this Agreement to any person or entity without the prior written authorization of Licensor.

(9) Licensee distributes or sells any Licensed Articles outside the authorized Distribution Channels for such Licensed Articles, or distributes or sells any Licensed Articles to any third party that Licensee knows or should reasonably know intends to distribute or sell such Licensed Articles outside the authorized Distribution Channels for such Licensed Articles.

(10) Licensee distributes or sells any Licensed Articles outside the Territory or distributes or sells any Licensed Articles to a third party that Licensee knows or should reasonably know intends to distribute or sell such Licensed Articles outside the Territory

(11) If an entity acquires in a single transaction or through a series of transactions more than fifty percent (50%) ownership or controlling interest in Licensee.

(12) Licensee or any related entity manufactures, distributes or sells any product infringing or diluting the trademark, property or any other right of Licensor or any other party.

(13) Licensee fails to deliver to Licensor and maintain in full force and effect the insurance referred to in Section 12(b).

(14) Licensor or any governmental agency or court of competent jurisdiction finds that the Licensed Articles are defective in any way, manner or form.

(15) Licensee commits any act or omission that damages or reflects unfavorably, embarrasses or otherwise detracts from the good reputation of Licensor.

(16) Licensee manufactures, distributes or sells Licensed Articles of quality lower than the samples approved, or manufactures, distributes, sells or uses Licensed Articles or Licensed Indicia in a manner not approved or disapproved by Licensor.

(17) Licensee commits a default under any other provision of this Agreement, and fails to cure such default within fifteen (15) days of written notice from Licensor.

- c. The entire unpaid balance of all Royalty Payments and other amounts owing and due under this Agreement shall immediately become due and payable upon termination.

## 15. EFFECT OF EXPIRATION OR TERMINATION; DISPOSAL OF INVENTORY

- a. After expiration or termination of this Agreement for any reason, Licensee shall immediately discontinue the manufacture, advertising, use, distribution and sale of all Licensed Articles and Advertising Materials, the use of all Licensed Indicia, and all similar marks, except as provided in Section 15(b), or unless expressly authorized in writing by Licensor. Until payment to Licensor of any monies due it, Licensor shall have a lien on any units of Licensed Articles not then disposed of by Licensee and on any monies due Licensee from any jobber, wholesaler, distributor, or other third parties with respect to sales of Licensed Articles.
- b. After expiration or termination of this Agreement for any reason, Licensee shall have no further right to manufacture, advertise, use, distribute or sell Licensed Articles or Advertising Materials utilizing the Licensed Indicia, but may continue to distribute its remaining inventory of Licensed Articles in existence at the time of expiration or termination for a period of sixty (60) days; provided, however, that Licensee has delivered all statements (including Final Statement) and payments then due, that during the disposal period Licensee shall deliver all statements and payments due in accordance with Section 6, that Licensed Articles are sold at

Licensee's regular Net Sales price and within the Distribution Channels, and that Licensee shall comply with all other terms and conditions of this Agreement. Notwithstanding the foregoing, Licensee shall not manufacture, advertise, use, distribute or sell any Licensed Articles or Advertising Materials after the expiration or termination of this Agreement because of: (i) departure of Licensee from the quality and style approved by Licensor under this Agreement, (ii) failure of Licensee to obtain product or design approval, or (iii) a default under Section 14.

#### 16. FINAL STATEMENT

Upon expiration or termination of this Agreement for any reason, or at any other time upon request by Licensor, Licensee shall furnish to Licensor a statement showing the number and description of Licensed Articles on hand or in process. Following such expiration or termination, including inventory disposal period, if allowed, Licensor may request Licensee to either (i) surrender unsold Licensed Articles and Advertising Materials, as well as dies, molds and screens used to manufacture such Licensed Articles, or (ii) destroy all such remaining unsold materials, certifying their destruction to Licensor and specifying the number of each destroyed. Licensor and/or its authorized representatives reserve the right to conduct physical inventories to ascertain or verify Licensee's compliance with the foregoing.

#### 17. CONFIDENTIALITY

The terms of this Agreement shall remain confidential. Licensee agrees that any royalty statements/reports to Licensor, and any information provided by Licensor to Licensee, will be kept confidential by Licensee, except with the specific prior written consent of Licensor or as expressly otherwise permitted by the terms hereof.

#### 18. SURVIVAL OF RIGHTS

The terms and conditions of this Agreement necessary to protect the rights and interests of Licensor and Licensor, including, without limitation, Licensee's obligations under Sections 7, 11, 12, 13 and 17, shall survive the termination or expiration of this Agreement. The terms and conditions of this Agreement providing for any other activity following the effective date of termination or expiration of this Agreement shall survive until such time as those terms and conditions have been fulfilled or satisfied.

#### 19. NOTICES

Unless otherwise provided in the Agreement, all notices shall be sent by certified mail, return receipt requested; email, confirmed by email receipt confirmation notice; or nationally recognized overnight delivery service that provides evidence of delivery, and shall be deemed to have been given at the time they are sent. Such notices and statements shall be sent to:

If to Licensee:

**[INSERT CONTACT INFO]**

If to Licensor: Casey Charboneau, General  
Counsel

161 Ashley Avenue

E-mail: edwardsr@musc.edu

## 20. CONFORMITY TO LAW AND POLICY

- a. Licensee shall comply with such guidelines, policies, and requirements as Licensor may give written notice from time-to-time.
- b. Licensee undertakes and agrees to obtain and maintain all applicable permits and licenses at Licensee's expense.
- c. Licensee shall pay all federal, state and local taxes due on or by reason of the manufacture, distribution or sale of the Licensed Articles.

## 21. SEVERABILITY

The determination that any provision of this Agreement is invalid or unenforceable shall not invalidate this Agreement, and the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

## 22. NON-ASSIGNABILITY

This Agreement is personal to Licensee. Neither this Agreement nor any of Licensee's rights shall be sold, transferred or assigned by Licensee without Licensor's prior written approval, and no rights shall devolve by operation of law or otherwise upon any assignee, receiver, liquidator, trustee or other party. Subject to the foregoing, this Agreement shall be binding upon any approved assignee or successor of Licensee and shall inure to the benefit of Licensor, its successors and assigns.

## 23. ENTIRE AGREEMENT / NO WAIVER

Unless otherwise specified herein, this Agreement or any renewal, including appendices, constitutes the entire agreement and understanding between the parties and cancels, terminates, and supersedes any prior agreement or understanding, written or oral, relating to the subject matter hereof between Licensee and Licensor. There are no representations, promises, agreements, warranties, covenants or understandings other than those contained herein. None of the provisions of this Agreement may be waived or modified, except expressly in writing signed by both parties. However, failure of either party to require the performance of any term in this Agreement or the waiver by either party of any breach shall not prevent subsequent enforcement of such term nor be deemed a waiver of any subsequent breach.

## 24. MISCELLANEOUS

When necessary for appropriate meaning, a plural shall be deemed to be the singular and singular shall be deemed to be the plural. The attached appendices are an integral part of this Agreement. Section headings are for convenience only and shall not add to or detract from any of the terms or provisions of this Agreement. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of South Carolina as it applies to a contract made and performed in such state. Venue for any lawsuit arising out of this Agreement shall be in the state or federal courts located in Columbia, South Carolina.

IN WITNESS WHEREOF, the parties hereto have executed, or caused their duly authorized agents to execute, this Agreement the day and year first written above.

LICENSEE:

By: \_\_\_\_\_

(Signature of officer, partner, or person  
duly authorized to sign)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Medical University of South Carolina

By: \_\_\_\_\_

(Signature of person duly authorized to sign)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## **APPENDIX A – Royalty Payments / Fees**

**Royalty Payments:** Licensee shall pay Licensor a royalty of 5% of Net Sales for all Licensed Articles bearing Licensed Indicia sold during the contract period beginning on the effective date of this Agreement.

**Advance Payments:** Upon execution of this Agreement by Licensee, and upon any renewal, Licensee shall pay Licensor, as an advance payment the amount of \$2500.00.

**APPENDIX B – Licensed Indicia**



## **APPENDIX C – Licensed Articles**

Licensed Articles: [INSERT DESCRIPTION OF ARTICLES UNDER LICENSE, E.G., T-SHIRTS, MUGS, ETC. AND ANY OTHER RELEVANT DESCRIPTION/QUALITIES/ETC.]

**APPENDIX D – Distribution Channels**

Distribution Channels: Licensee shall distribute the Licensed Articles only through the following distribution channels or retail outlets: [INSERT CHANNELS, E.G. WHOLESALE, RETAIL STORES, INTERNET, MUSC BOOKSTORE, INTERNAL CUSTOMERS]

**EXHIBIT II: MUSC MERCHANDISE LICENSURE PROGRAM**

<b>MUSC Merchandise Licensure Program</b>			
<b>Vendor:</b>			<b>Date: 11/15/2019</b>
<b>Please describe how the items will be ordered (via phone, website, online catalogue, etc.):</b>			

## SERVICE PROVIDER SECURITY ASSESSMENT QUESTIONNAIRE

Instructions: (1) Attach additional pages or documents as appropriate and make sure answers cross reference to the questions below. (2) As used in this Questionnaire, the phrase “government information” shall have the meaning defined in the clause titled “Information Security.” (3) This Questionnaire must be read in conjunction with both of the following two clauses (a) Service Provider Security Assessment Questionnaire – Required, and (b) Service Provider Security Representation.

1. Describe your policies and procedures that ensure access to government information is limited to only those of your employees and contractors who require access to perform your proposed services.
2. Describe your disaster recovery and business continuity plans.
3. What safeguards and practices do you have in place to vet your employees and contractors who will have access to government information?
4. Describe and explain your security policies and procedures as they relate to your use of your contractors and next-tier sub -contractors.
5. List any reports or certifications that you have from properly accredited third-parties that demonstrate that adequate security controls and assurance requirements are in place to adequately provide for the confidentiality, integrity, and availability of the information systems used to process, store, transmit, and access all government information. (For example, an ISO/IEC 27001 compliance certificate, an AICPA SOC 2 (Type 2) report, or perhaps an AICPA SOC 3 report (i.e., a SysTrust or WebTrust seal)). For each certification, describe the scope of the assessment performed. Will these reports / certifications remain in place for the duration of the contract? Will you provide the state with most recent and future versions of the applicable compliance certificate / audit report?
6. Describe the policies, procedures and practices you have in place to provide for the physical security of your data centers and other sites where government information will be hosted, accessed or maintained.
7. Will government information be encrypted at rest? Will government information be encrypted when transmitted? Will government information be encrypted during data backups, and on backup media? Please elaborate.
8. Describe safeguards that are in place to prevent unauthorized use, reuse, distribution, transmission, manipulation, copying, modification, access or disclosure of government information.
9. What controls are in place to detect security breaches? What system and network activity do you log? How long do you maintain these audit logs?

10. How will government information be managed after contract termination? Will government information provided to the Contractor be deleted or destroyed? When will this occur?

11. Describe your incident response policies and practices.

12. Identify any third party which will host or have access to government information.

Offeror's response to this questionnaire includes any other information submitted with its offer regarding information or data security.

**SIGNATURE OF PERSON AUTHORIZED TO REPRESENT THE ACCURACY OF THIS INFORMATION ON BEHALF OF CONTRACTOR:**

By: \_\_\_\_\_ (authorized signature)

Its: \_\_\_\_\_ (printed name of person signing above)

\_\_\_\_\_ (title of person signing above)

Date: \_\_\_\_\_

SPSAQ (JAN 2015) [09-9025-1