

**ADDENDUM TO COOPERATION AUPING – VWS WITH RESPECT TO THE
PRODUCTION AND SUPPLY OF MASKS**

BETWEEN:

(1) **Koninklijke Auping B.V.**, a company organized and existing under the laws of the Netherlands, having its registered office at Maagdenburgstraat 26 (7421 ZC) Deventer, the Netherlands, referred to hereinafter as: “**Auping**”;

and,

(2) **[VWS]** (“**VWS**”).

Each party hereinafter referred to as a “**Party**” and together referred to as “**Parties**”,

WHEREAS:

- (A) As a result of the COVID-19 outbreak and the shortage of mouth masks available in the health care sector, to be used by healthcare professionals in treatment of COVID-19 patients, VWS has requested Auping to produce mouth masks, which assignment Auping is willing to fulfil;
- (B) Parties have concluded their agreement in the following document(s): **[•]**;
- (C) In addition to the documents referred to above under B, Parties have agreed upon the following conditions with respect to certification of the masks to be produced by Auping, (product) liability as well as intellectual property rights (including patent infringements),

IT IS AGREED as follows:

1. CERTIFICATION (PROCEDURES) WITH RESPECT TO THE MASKS

- 1.1 Auping will produce the masks as described in the attachment titled “CPM-001-20_TF_1.3” (the “**Masks**”), which document is attached as **Annex A**. The Masks will comply with the technical specifications as included in the aforementioned document. The Masks will be produced with the aim of being used by healthcare professionals in treatment of COVID-19 patients.
- 1.2 The Masks do fall within the scope of the Commission Recommendation EC 2020/403 of 13 March 2020 on conformity assessment and market surveillance procedures within the context of the COVID-19 threat (the “**Recommendation EC 2020/403**”).
- 1.3 In accordance with Recommendation EC 2020/403 and certification requirements, samples of the Masks have been tested by the following two notified bodies: DEKRA and BSI.
- 1.4 As a result of the testing procedure, DEKRA has submitted its approval of the Masks being in accordance with the framework of Recommendation EC 2020/403 (the “**DEKRA certificate**”). This evaluation of conformity is valid from 8 April 2020 until 7 April 2021. A copy of the DEKRA certificate is attached as **Annex B**.

- 1.5 Apart from the DEKRA testing and certification procedure, Auping has provided samples of the Masks to BSI for testing purposes. At the date of signature of the agreement on the production of the Masks between Auping and VWS, this BSI-procedure is still pending. The outcome of the BSI testing and certification procedure is expected to be released approximately on 20 April 2020. After BSI's approval, the Mask will be equipped with CE/PPE certification ("**CE/PPE certificate**").
- 1.6 Due to the high demand of the Masks by VWS and the urgency to fulfil the need for production of the Masks, Parties have agreed that Auping will start production of the Masks on 20 April 2020. As described above, Parties are, however, aware that the situation might occur that on 20 April 2020 the CE/PPE certificate procedure at BSI is not completed or the requested is not provided (yet). If this situation occurs, Parties shall now for then agree that the DEKRA certificate is sufficient for the purposes of the agreement. The CE/PPE certificate shall not qualify as a requirement for the performance of the agreement. In case the CE/PPE certificate is not obtained with respect to the Masks, this does not constitute any liability whatsoever of Auping towards VWS or any third parties nor shall this have the effect of releasing VWS from any of its obligations, including but not limited to, its purchase and payment obligations. Nevertheless, Auping will put its best reasonable efforts to require the CE/PPE certificate to be provided by BSI as soon as possible.

2. (PRODUCT) LIABILITY

- 2.1 The Masks will be produced by Auping in conformity with its internal production and quality control system. This system is originally meant to be used for the production of Auping 's core business related to the production of beds, mattresses and related goods. Auping will put its best reasonable efforts in the production of the Masks and will reasonably investigate in the expansion of its machinery.
- 2.2 As the production of the Masks is a result of the urgent request of VWS and Auping wishes to assist in the production process with the aim to help the healthcare sector (and the Dutch society in general), Auping concludes the agreement. However, due to the normal business of Auping and the high time pressure, VWS is aware that this new (production) process and related business activities with respect to medical devices and/or personal protection does not fall within the scope of the coverage of Auping's insurances.
- 2.3 As a result of the above and in deviation of Articles 6:185 up to and including 6:193 of the Dutch Civil Code ("*Burgerlijk Wetboek*"), Auping shall not be liable for any damage caused, directly or indirectly, which relates to or arises out of or in connection with, in any way whatsoever to the production of or any defect in the Masks, by any title whatsoever.
- 2.4 Auping solely guarantees that the Masks are produced, supplied, and delivered in conformity with the specifications set out in Annex A. In case the Masks do not comply with the specifications set out in Annex A, Auping's liability is limited to either repairing or replacing the Masks concerned, upon its sole discretion. In no event shall Auping be under any further obligation, including obligations to reimburse any other costs, or pay damages and/or interest.
- 2.5 VWS shall indemnify and hold harmless Auping, its directors and employees, against any third-party claims, by any title whatsoever, which may be asserted against or suffered by Auping, its directors and employees and which relate to or arise out of or in connection with,

in any way whatsoever, the manufacture of or any defect in the Masks. Furthermore, VWS shall indemnify and hold harmless Auping against all third-party claims resulting from product liability.

- 2.6 If Auping, irrespectively of the foregoing, however, would be liable to VWS, Auping's liability will in any event be limited to the purchase price of the Mask(s) concerned (taken into account the open book calculation model) and shall not exceed the actual damages caused directly by the damage-causing event.
- 2.7 In no event shall Auping have any liability for any damage due to delays, lost profits, opportunity loss or damage to reputation, or for any indirect, immaterial, special, punitive, or consequential damage however caused and under any theory of liability.

3. INTELLECTUAL PROPERTY RIGHTS (INCLUDING PATENT INFRINGEMENTS)

- 3.1 Due to the time pressure and scope of the request of VWS as formulated, Auping has executed a quick scan by a patent attorney to investigate potential patent infringement of the Mask design, materials and production. As a result of the timelines and starting date of the production of the Masks on 20 April 2020 any other, additional and/or more extensively investigation is not possible. Auping makes no representation or warranty with respect to any intellectual property rights.
- 3.2 VWS shall provide Auping prompt written notification as soon as any actual or threatened intellectual property claim with respect to or arising from the production, sale or use of the Masks comes to its attention and it will provide Auping with all cooperation which Auping deems necessary.
- 3.3 VWS shall defend, indemnify and hold harmless Auping, its directors and employees, against all claims, suits, (judicial) proceedings, actions, liabilities, damages, losses, expenses and costs (including legal fees and reasonable attorney fees) arising out of any actual or alleged infringement of any patent, copyright and/or other intellectual property rights by Auping or arising out of the production, sale or use of the Masks.

4. MISCELLANEOUS

- 4.1 No other deviating agreements whatsoever shall apply with respect to certification, (product) liability and intellectual property rights (including patent infringements) as recorded in this addendum with respect to the Masks to be produced by Auping.
- 4.2 In the event of any conflict or inconsistency in the terms of the agreement, the general terms and conditions and this addendum the order of precedence is: (1) this addendum, including all of its annexes, and (2) the agreement, including all of its annexes and (3) the general terms and conditions.
- 4.3 This addendum is solely governed by and construed in accordance with the laws of the Netherlands,

*** [Signature page follows] ***

Signed for and on behalf of

Koninklijke Auping B.V.

Signed for and on behalf of

VWS

Name: [•]

Title: [•]

Date: [•]

Name: [•]

Title: [•]

Date: [•]