

## DONATION AGREEMENT

**THIS DONATION AGREEMENT** (the “Donation Agreement”) dated as of April \_\_, 2020, is hereby entered into by and between **AIRBUS AMERICAS, INC.**, a Delaware corporation (“Airbus”) and **BALDWIN COUNTY, ALABAMA**, a political subdivision of the State of Alabama (“County”) regarding the donation of face masks without a moisture barrier (the “Face Masks”), as more particularly described in Appendix 1 for the County’s use and distribution to address the COVID-19 pandemic.

The specific terms of this Donation Agreement are as follows:

**1. The Face Masks.** Subject to the terms and conditions of this Agreement, Airbus transfers all right, title, and ownership of the Face Masks to the County for the use of the County. Title to the Face Masks will vest in the County upon the physical receipt of the Face Masks by the County. There is no expectation of reversion of the Face Masks to Airbus under any circumstances.

**2. Charitable Donation.** Airbus and the County agree that the donation will be charitable on Airbus’s part with no consideration or monetary payment being made by the County. The donations made under the terms of this Donation Agreement shall for all purposes be treated as charitable donations to a political subdivision of the State of Alabama and it is the intent of Airbus and the County that donations be made and used in compliance with all applicable federal and state laws governing donations made to charitable organizations. Airbus and the County each acknowledge that it may be required by law to report information about the donations provided under this Agreement and will do so to comply with legal obligations.

**3. Resale of Face Masks.** County shall not sell, barter, or trade the Face Masks to consumers and/or other third parties for financial consideration.

**4. Restricted Use and Warranties.**

(a) The Face Masks are to be used only as face masks and shall not be used as a surgical mask or filtering facepiece respirator (FFR). The County acknowledges that the Face Masks shall be used in strict conformance with labeling provided with the Face Masks, notwithstanding any labeling on the packaging. The Face Masks are not approved by FDA for medical use or by NIOSH.

(b) Airbus transfers the Face Masks to the County “as is” with all faults. Airbus makes no warranty whatsoever, express or implied, with respect to the Face Masks, including any warranty of condition, quality, or suitability, warranty of merchantability or warranty of fitness for a particular purpose or use, whether express or implied by law, course of dealing, course of performance, usage of trade or otherwise.

**5. Indemnification.** To the fullest extent permitted under applicable law, County agrees to indemnify, hold harmless, and defend Airbus, its agents, officers, directors, shareholders, successors, licensees, assigns, and related entities from any and all claims, allegations, actions, suits, demands, liabilities, losses, expenses, fees, and costs and charges of any kind, including but not limited to, attorneys’ and investigation fees (collectively, “Costs”), relating in any way

whatsoever to, or arising from, either directly or indirectly, this Donation Agreement, the use or misuse of the Face Masks and/or the acts or omissions of the County or its affiliates, including, but not limited to, those Costs arising from (i) bodily injury to or death of any persons (including, but not limited to, agents, employees, or students of the County or its affiliates), or (ii) any direct, incidental, special, or consequential damages arising from this Agreement.

**6. Governing Law.** This Donation Agreement shall be construed, interpreted, and enforced under the laws of the State of Alabama.

**7. Severability.** If any term or provision of this Donation Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Donation Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, both parties shall negotiate in good faith to modify this Donation Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

**8. Forum.** Any dispute relating to any section of this agreement shall be litigated in Alabama state courts located in the County of Baldwin, State of Alabama. Both parties consent to the exclusive personal jurisdiction of the state courts located within the County of Baldwin, State of Alabama for matters relating to any section of this Agreement.

**9. Entire Agreement.** This Donation Agreement embodies the entire agreement between Airbus and County and there are no representations, inducements or provisions other than those expressed in this Donation Agreement. This Donation Agreement shall not be amended or modified except by a writing signed by both parties.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the date set forth above.

**AIRBUS AMERICAS, INC.**

**BALDWIN COUNTY, ALABAMA**

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

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

Its: \_\_\_\_\_

Its: \_\_\_\_\_

## **APPENDIX I**

### **Face Masks**