

AMENDED AND RESTATED LICENSE AGREEMENT

This **AMENDED AND RESTATED LICENSE AGREEMENT** (this “Agreement”) is made and entered into to be effective as of the 1st day of January, 2019 (the “Effective Date”), by and between **KATBO, LLC**, a South Carolina limited liability company (“Licensor”), and **CLEMSON UNIVERSITY** (“University”), and acknowledged by William Swinney, individually (“Coach”).

RECITALS:

WHEREAS, pursuant to that certain Amended and Restated Employment Agreement by and between the University and Coach effective as of January 1, 2019 (the “Employment Agreement”), Coach serves as the head coach of the University’s football program (“Team”);

WHEREAS, Licensor is the exclusive licensee of any common law and/or statutory rights in Coach’s name, nicknames, pseudonyms, assumed names, voice, signature, photograph, image, likeness, distinctive appearance, gestures, mannerisms that make him identifiable as the University’s head football coach (“Proprietary Rights”), together with trademarks and service marks (“Marks”) that utilize or incorporate such Proprietary Rights, whether now in existence or created and/or registered after the Effective Date (said Proprietary Rights and Marks individually or in the aggregate, being the “Property”);

WHEREAS, the Employment Agreement allows Coach, or such entity as may hold Coach’s Property, under certain terms and conditions, to enter into business relationships outside of his Employment Agreement, including advertising, endorsements, and other licensing transactions (“Outside Licensing Opportunities”);

WHEREAS, in addition to its rights under the Employment Agreement, the University desires the right to use the Property, and to allow others to use the Property, in order to enhance its licensing and endorsement activities including sublicensing the Property for use in commercial advertising such as but not limited to print media and recorded radio, television, and internet advertisements and successor technologies, and on certain products such as but not limited to leisure apparel and other consumer goods, in connection with benefitting, promoting or endorsing the University’s interests and fundraising efforts (collectively, “University Interests”), and to incorporate the Property on products and services that it licenses, manufactures, markets, distributes, sells, publishes or otherwise disseminates in furtherance of the University’s interest (collectively or individually, the “Licensed Products”);

WHEREAS, Licensor is willing to grant a sublicense to the University pursuant to which it shall have the exclusive right to use the Property, and to manufacture, market, distribute,

publish or otherwise disseminate the Licensed Products, in relation to the University's Interests, subject to and in accordance with the terms hereof; and

WHEREAS, this Agreement amends, restates and supersedes the Licensing Agreement between the parties dated and effective as of January 1, 2014, as amended by a First Amendment effective as of April 13, 2016 and a Second Amendment effective as of January 1, 2017 (the "Current Agreement").

AGREEMENT:

NOW, THEREFORE, in consideration of the mutual covenants, agreements, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, agree that the foregoing recitals are incorporated herein by reference and as follows:

1. **License Grant.**

1.1 **Grant:**

1.1.1 During the term of this Agreement, Licensor hereby grants to the University the exclusive right and sublicense to use the Property, but only in the Field of Use (as defined herein). Said grant shall include (a) the right to manufacture, market, distribute, sell, publish or otherwise disseminate the Licensed Products, as well as on packaging, promotional, and advertising material associated therewith, and (b) to use the names, nicknames, likeness, image, signatures, pictures, interviews, recordings, philosophies and methods of or attributable to Coach and all derivations thereof.

1.1.2 As used in this Agreement, "Field of Use" shall mean any current and future uses in furtherance of the University's Interests. For avoidance of doubt in determining what is within the Field of Use, the parties agree that the grant of rights of this Section 1.1 shall allow the University to benefit from Outside License Opportunities and includes University agreements with third parties for advertising, promotions, endorsements, sponsorship, branding, licensing, and other related types of transactions where the University is required to provide or where the third party has a reasonable expectation that University will provide rights to use the Property in conjunction with that agreement (all such rights collectively called "Required Rights").

1.1.3 The Parties shall regularly consult with and update each other on Outside Licensing Opportunities covered under the grant of this Section 1.1 to determine the most effective commercialization path for each opportunity. For specific Outside Licensing Opportunities, the University shall have the initial opportunity

to negotiate and enter into that licensing/endorsement agreement for the Property within the Field of Use, taking into consideration the reasonable requests of Licensor. For Outside Licensing Opportunities identified by Licensor or opportunities where Licensor develops and/or assists University in developing and executing marketing plans parties shall make reasonable efforts to enter into co-branding agreements as defined in Section 1.11.

1.2 **Sublicensing:** Excepting for Outside Licensing Opportunities which require a sublicense under this Agreement, University shall have no right to sublicense, transfer, or assign to any other party all or any part of the License without the prior written consent of Licensor, which consent may not be unreasonably withheld; provided however that notwithstanding anything contained in this License Agreement to the contrary, the license and the rights thereunder which are licensed to University under this Agreement may be exploited, used, assigned, or sublicensed by University to (a) IPTAY and any successor corporations without any additional consideration paid by University or IPTAY, (b) third parties to the extent necessary for the University to comply with existing or future agreements to which it is or becomes a party, including without limitation Required Rights agreements.

1.3 **Term:** University's rights under this Agreement terminate when Coach's employment agreement with University ends provided however that it is specifically agreed and understood that the License provided by this Agreement includes a license of all likenesses, images, pictures, quotes, phrases, audio, video, multimedia, interviews, and records of or relating to Coach, written, produced, obtained, made, given, taken, or created, at any time while Coach is serving as head coach of the Team and for any commemorative items created during or after the conclusion of Coach's term, and that the right of University to use such intellectual property delineated in this Section 1.3 will be perpetual without any additional consideration and will not end at such time as Coach is no longer serving as head coach of the Team for the University.

1.4 **Objection to a Use:** In order to provide Licensor and Coach an opportunity to comment on future uses of the subject matter of this License, University agrees to provide Licensor with reasonable advance notice of an intended use with sufficient detail for Licensor or Coach to provide comment and input on the proposed intended use. If any current or future use of the subject matter of this License by the University, or any permitted sublicensee or assignee of the University is deemed by Coach or Licensor to be in poor taste or to reflect negatively upon Coach, his family, or the football program, Licensor may provide written notice of that concern to the University's Athletic Director or its designee. Upon receipt of such notice, the Athletic Director or its designee will review the concern, and if the Athletic Director or its designee determines that the concern is reasonable and cannot be addressed in any other manner, the Athletic Director or its designee will work with the University, or the sublicensee or assignee (as applicable) to modify or discontinue the use of the licensed rights at a time and in a manner deemed appropriate by the Athletic Director or its designee to address the concern. In the consideration of Licensor and Coach's comment and input, the review of the concern, and the

determination of the manner in which to address the concern, the Athletic Director or its designee shall exercise reasonable judgment and provide due consideration to the concerns of Licensor or Coach.

1.5 **Quality:** University acknowledges Coach and Licensor's desire that the Licensed Products be of a high quality and conform to commercially reasonable standards typically found in this industry.

1.6 **Appropriation:** Coach acknowledges that in connection with the grant of the rights under this Agreement, he consents to the University's appropriation of his privacy rights, if any, provided that the University's use of the Property does not present Coach and/or his family in a false light, wrongfully intrude on coach and/or his family's private affairs or cause unwarranted intentional infliction of emotional distress or otherwise result in a breach of this Agreement.

1.7 **Cost of Products:** The University shall be solely responsible for the manufacture, production, distribution, publication, dissemination and sale of the Licensed Products, and shall bear all costs associated therewith.

1.8 **Marks.** Licensor shall be responsible for registration of Licensor's Marks with federal or other authorities, as applicable, at its sole cost, however, University may assume responsibility for obtaining the same with the written consent of Licensor. To the extent the Marks do not incorporate or derive from University Owned Intellectual Property as defined herein, University acknowledges and agrees that its first use in commerce of any of the Marks shall inure to the benefit of Licensor and vest ownership rights in the same to Licensor.

1.9 **Works.** Notwithstanding anything herein to the contrary, Licensor shall not own or make any claim to copyright in any pictures, photographs, audio, video, and any other multimedia work of any sort, of Coach created or commissioned by the University during the term of this Agreement, and all such rights are hereby assigned by Coach to University, provided, however, that the University's use of the same is consistent with the terms of this Agreement.

1.10 **University Owned Intellectual Property.** Notwithstanding anything herein to the contrary, Licensor and Coach acknowledge that if and to the extent that some or all of the Marks incorporate, or are derivatives of trademarks, service marks, trade dress, the University's colors, copyrighted material or other intellectual property owned by the University (the "University Owned Intellectual Property"), the University makes no grant or transfer of any kind to Licensor or Coach of any rights to University Owned Intellectual Property and neither Licensor nor Coach shall use any such University Owned Intellectual Property except with the prior written consent of the University (which consent may be withheld or, once given, revoked

at the discretion of the University upon reasonable notice to Licensor) or in accordance with fair use principles (descriptive or nominative) under applicable trademark laws.

1.11 **Co-branding Agreements.** Subject to the provisions of Sections 1.1 and 1.10 herein, for licensing and related opportunities outside of the Field of Use the parties may collectively negotiate joint licensing agreements with a division of royalty or other income between the two parties to be negotiated on a case by case basis. Such agreements as contemplated under this Section 1.11 would exclude any Required Rights agreements, as Required Rights agreements are encompassed by the grant of rights of Section 1.1. This Section 1.11 does not create an obligation on either party to enter into such co-branding type agreements.

2. **Non-Competition**

(a) Licensor shall not engage in any activities or enter into any contractual relationships which conflict with or would be detrimental to Coach's duties as head coach of the Team, or be competitive with or otherwise detrimental to the University's interests, or conflict with the terms of any other Agreement to which the University is a party and of which Coach and/or Licensor has been notified.

(b) Without limiting the generality of Section 2(a), during the Term, neither Licensor nor Coach shall, without prior written approval of the Director of Athletics, enter into or maintain any endorsement, promotional, consulting, or similar agreement (i) with any person or entity that licenses, manufactures, brands, or sells athletic products similar to those of the Manufacturer (as defined in the Employment Agreement), whether through retail locations, exclusively on-line, by direct mail, television shopping networks, or otherwise; (ii) that would prohibit or otherwise restrict the Manufacturer's use of Coach's Proprietary Rights as provided in this Agreement, or subject such use to a third party's approval, or (iii) that would otherwise cause the University to violate its agreement(s) with the Manufacturer.

(c) The Parties anticipate that Licensor or Coach may enter into contractual relationships with apparel manufacturers, other business entities, and individuals (collectively "Third Party Relationships"), as long as such Third Party Relationships do not conflict with Licensor or Coach's obligations under this License Agreement or Coach's Employment Agreement with University. To ensure a conflict does not exist, Licensor and Coach shall: (1) provide prior reasonable notice to, and obtain the written permission from, the Athletics Director, prior to Licensor, Coach, or persons acting on their behalf, entering into negotiations with any prospective Third Party Relationship; and (2) provide prior reasonable notice to, including detailed terms, and obtain the written permission from, the Athletics Director, prior to Licensor, Coach, or persons acting on their behalf, executing a contract for a Third Party Relationship. The Athletics Director's permission for such Third Party Relationships shall not be unreasonably withheld.

3. **Term.** The parties intend that this Agreement shall have a term identical to the Employment Agreement and that this Agreement shall be extended or terminated if and when the Employment Agreement is extended or terminated, as applicable. In this respect, this Agreement shall commence on the Effective Date and shall continue thereafter until December 31, 2028 unless terminated earlier as specifically provided in Section 4 hereof. This Agreement shall automatically extend if and when the term of the Employment Agreement is extended and such extension shall be for the same length of time as the Employment Agreement is extended. Provided, always, nothing herein shall preclude the parties from agreeing in writing to extend the term of this Agreement after the termination of the Employment Agreement, and to continue the grant of rights under this Agreement on the terms and conditions set forth in such extension.

4. **Termination.** This Agreement shall terminate immediately upon the termination or expiration of the Employment Agreement and/or Coach's employment with the University for any reason. Upon the termination of this Agreement, Licensor shall be entitled to receive all Royalties (as defined in Section 5 hereof) that have accrued under this Agreement through the termination date. The Royalties shall cease to accrue as of the end of the day on the termination date. Such amounts of accrued, but unpaid, Royalties shall be due and payable to Licensor within sixty (60) days following the termination date.

5. **Royalties.** In consideration of Licensor granting rights provided for herein to the University under this Agreement, the University shall pay Licensor the sum of two million five hundred thousand dollars (\$2,500,000) annually during the term of this Agreement, payable in equal monthly installments ("Royalty"). The parties agree that the payments of said Royalties shall be paid to Licensor without any federal, state, or local wage withholding and that Licensor and/or Coach shall be solely responsible for the payment of all appropriate income tax and other withholding obligations due upon receipt of the Royalties, holding University harmless therefrom. The parties acknowledge that for a portion of 2019, by agreement of the parties, Royalties were paid at the rate heretofore in effect under the Current Agreement, and agree that Royalty payments shall be adjusted so that as of May 31, 2019, Licensor shall have received Royalties at the rate specified above through that date. From and after June 1, 2019, Royalties shall be paid at the rate specified above.

6. **Warranty.** Licensor represents and warrants to University that (a) it has and will maintain for the term of this Agreement the rights necessary to enter into this Agreement and to perform all obligations and provide all licenses granted herein including the right to cause Coach to perform and act as required in this Agreement; and (b) it has not granted licenses thereunder to any other entity that would restrict rights granted hereunder.

7. **Indemnification.** Licensor and Coach jointly and severally agree to defend, hold harmless and indemnify University, its affiliates, and all officers, directors, trustees, employees, or agents of the foregoing from and against any and all liabilities, claims, demands, expenses,

finances, penalties, suits, proceedings, actions and causes of action of any and every kind and nature (collectively "Costs") arising out of or in any way connected with any controversy involving in any way the Royalty paid pursuant to this Agreement (including without limitation Costs resulting from the Royalty being recast as income to Coach by the appropriate local, state, Federal, or foreign governmental taxing authorities) or to the extent arising out of the actual or alleged infringement upon or misappropriation of any third party's intellectual property right by reason of the License provided by this Agreement or the use or exercise of the rights licensed under this Agreement by any of the indemnified parties.

8. **Infringement.**

(a) Outside the Field of Use: The right to prosecute claims and lawsuits against third party infringers of the Property outside the Field of Use shall first lie with the Licensor. If such third party infringement has a negative effect on the Property inside the Field of Use, and the Licensor does not institute an infringement suit within ninety (90) days after written request from the University, the University may prosecute such infringement.

(b) Inside the Field of Use: The right to prosecute claims and lawsuits against third party infringers of the Property inside the Field of Use shall first lie with the University. If the University does not institute an infringement suit within ninety (90) days after written request from the Licensor, the Licensor may prosecute such infringement.

(c) Any such lawsuit brought shall be prosecuted solely at the cost and expense of the instituting party and all sums recovered in any such lawsuits, whether by judgment, settlement, or otherwise, in excess of the amount of attorneys' fees and other out of pocket expenses of such suit, shall be divided equitably between University and Licensor based on their respective rights under this Agreement.

(d) Upon request of the party bringing a lawsuit for infringement, the other party shall execute all papers, testify on all matters, and otherwise cooperate in every way necessary and desirable for the prosecution of any such lawsuit. The party bringing suit shall reimburse the other party to this Agreement for the expenses incurred as a result of such cooperation.

9. **Independent Contractor.** Each party shall act at all times herein as an independent contractor of the other party, and nothing contained herein shall be construed to create the relationship of principal and agent, employer and employee, or a partnership or joint venture between Licensor and the University. Further, nothing contained herein shall be construed to provide either party with the right, power, or authority, whether express or implied, to bind or create any duty or obligation on behalf of the other party, unless expressly authorized herein.

10. **Survival.** All of the covenants, agreements, indemnification obligations, and other terms in this Agreement shall survive the expiration or earlier termination of this Agreement in perpetuity.

11. **Disclaimer.** Licensor or Coach makes no representations or warranties of any kind expressed, or implied regarding his trademarks and Intellectual Property except as provided for in Section 6 of this Agreement.

12. **Miscellaneous Provisions.**

12.1 **Entire Agreement, Amendments, and Waivers.** This Agreement contains the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, whether written or oral, relating to such subject matter (including without limitation the Current Agreement). This Agreement may not be amended, modified, or discharged nor may any of its terms be waived except by an instrument in writing signed by the party to be bound thereby.

12.2 **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by the parties hereto, and their respective successors and permitted assigns.

12.3 **Captions.** The headings and captions herein are inserted for convenient reference only and the same shall not limit or construe the sections, paragraphs, or provisions to which they apply or otherwise affect the interpretation hereof.

12.4 **Construction of Agreement.** Notwithstanding the fact that this Agreement may have been drafted or prepared by one of the parties, all of the parties confirm that they and their respective counsel have reviewed, negotiated, and adopted this Agreement as the joint agreement and understanding of the parties. Accordingly, this Agreement is to be construed as a whole and any presumption that ambiguities are to be resolved against the primary drafting party shall not apply.

12.5 **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute one (1) Agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission, by electronic mail in "portable document format" (".pdf") form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, or by combination of such means, shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by the foregoing means shall be deemed to be their original signatures for all purposes.

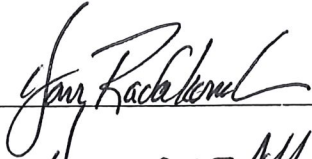
12.6 **Governing Law and Venue.** This Agreement shall be deemed to have been entered into and to be performed in the State of South Carolina, and shall be governed, construed, and enforced in accordance with the laws of the State of South Carolina. **EACH PARTY HERETO AGREES AND SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE COURTS LOCATED IN PICKENS COUNTY, SOUTH CAROLINA FOR RESOLUTION OF ANY DISPUTES ARISING HEREUNDER.**

12.7 **Severability.** If any provision of this Agreement is or shall be deemed to be illegal, invalid, or unenforceable, the remaining provisions hereof shall remain in full force and effect and interpreted as if such illegal, invalid, or unenforceable provision did not exist herein.

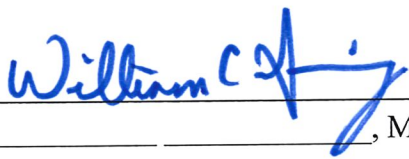
IN WITNESS WHEREOF, this License Agreement has been executed and delivered by the parties hereto to be effective as of the day and date set forth herein above.

[Signatures Appear On Next Page]

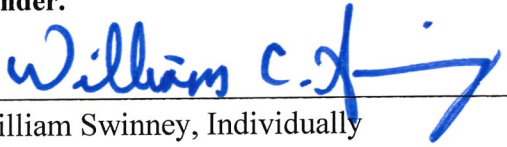
CLEMSON UNIVERSITY:

By: 
Its: DIRECTOR OF ATHLETICS

KATBO, LLC

By: , Member

By his signature below, Coach acknowledges the foregoing License Agreement, and agrees to comply with those obligations attributable to him thereunder.


William Swinney, Individually