TUSKEGEE UNIVERSITY
CONTRACT ADDENDUM – General Terms & Conditions

These General Terms and Conditions (“General Terms”) shall apply to any and all Agreements, defined below, whereby Tuskegee University contracts with a Service Provider, defined below, for the provision of services to Tuskegee University.

Tuskegee University. The term “Tuskegee University” shall refer to the Tuskegee University, Inc. as well as each of its respective parents, subsidiaries, or affiliated entities, along with all directors, officers, managers, employees, attorneys, trustees and agents.

Agreement. The term “Agreement” shall refer to any and all agreements, contracts or other written instruments whereby Tuskegee University contracts with a Service Provider to provide services received by Tuskegee University whereby these General Terms and Conditions are expressly incorporated and/or referenced. This term shall be broadly construed, and these General Terms are incorporated herein to any and all Agreements.

Service Provider. The term “Service Provider” shall refer to any person or organization engaged for the purpose of providing professional services on an independent contractor basis. The term “Service Provider” shall be construed as synonymous with any designation of the contracting party used in any Agreement to describe the independent contractor.

Independent Contractor Status. Service Provider is furnishing services to Tuskegee University as an independent contractor. These General Terms and any Agreement shall not be construed as constituting, an employee, representative or agency relationship, partnership or joint venture between Service Provider and Tuskegee University. Service Provider is not entitled to receive from Tuskegee University any insurance coverage, pension, profit sharing, paid vacation, sick leave, disability or other benefits normally provided by Tuskegee University to its officers or employees.

Control. Service Provider will have sole control over the detailed method of performance of the services, and the days and hours worked, to the extent that Service Provider is not hired for a scheduled event.

Other Ventures. Service Provider warrants and represents that these General Terms and any Agreement do not interfere with Service Provider’s right and ability to engage in or pursue other business ventures and/or provide the same or similar services to other entities and/or members of the general public. Tuskegee University agrees that, Service Provider will be not precluded from providing the same or similar services to other persons and/or entities in the community.

Reporting. Service Provider shall prepare reports and/or findings to appropriate University personnel as requested.

Taxes. The fees, expenses and costs payable under this Contract shall include all applicable tax. Service Provider shall bear all responsibility for payment and remission of taxes as required under the Internal Revenue Code.

Price Warranty. Service Provider hereby certifies that the prices charged herein are not greater than those charged its most favored customer for the like services under like market conditions. Tuskegee University or its authorized representative(s) shall have the right to examine the records of the Service Provider as it deems necessary to assure itself that the prices charged to Tuskegee University under the Agreement do not exceed those charged by Service Provider to any other customer obtaining the same service in a like or
comparable manner.

Limitation on Benefits. Service Provider hereby acknowledges and agrees that it, nor its employees, as applicable, are not entitled to any benefits provided to or protections provided for Tuskegee University employees and will not make claims related to such benefits and protections including, but not limited to, health and welfare benefits, workers’ compensation and/or unemployment insurance.

Service Provider further agrees to not make any filings with or to any governmental agency inconsistent with its status as an independent contractor.

Confidentiality. These General Terms and any Agreement create a relationship of trust and confidence between Tuskegee University and Service Provider. During the provision of services, and for a period of two (2) years thereafter, Service Provider will not, for or on behalf of anyone else, use or disclose any Confidential Information relating Tuskegee University, except as may be authorized in advance in writing by Tuskegee University. “Confidential Information” includes any confidential information, data or materials provided to the Service Provider by Tuskegee University that is not generally known to the public or that which Service Provider has reason to know Tuskegee University would like to treat as confidential for any purpose. Service Provider understands that Confidential Information may be disclosed orally or in writing by Tuskegee University to Service Provider. These restrictions, however, will not apply to Confidential Information that (i) becomes known to the public generally through no fault or breach of Service Provider; (ii) Tuskegee University regularly gives to third parties without restriction on disclosure; (iii) shall rightfully be received by Service Provider from a third-party that shall have been in lawful possession of the Confidential Information and without breach of the confidentiality obligations under these General Terms and any Agreement; (iv) was in Service Provider’s possession prior to disclosure under these General Terms and any Agreement as demonstrated by written records; or (v) was independently developed by Service Provider without access to the Confidential Information as demonstrated by written records.

Disclosure under Legal Compulsion. If Service Provider receives any requests, including a legal request to disclose Confidential Information, Service Provider will immediately notify the Office of General Counsel of Tuskegee University. In the event that Service Provider becomes legally compelled (by deposition, interrogatory, request for documents, subpoena, civil investigating demand or similar process or by law) to disclose any Confidential Information, Service Provider shall provide the University with prompt prior written notice of such requirement so that the University may seek a protective order or other appropriate remedy, at the University’s expense, and waive compliance with the terms of this Agreement. In the event that such protective order or other remedy is not obtained, or the University waives compliance with the provisions of the Agreement, Service Provider agrees to furnish only that portion of the Confidential Information that Service Provider is legally required to furnish by court order, deposition, interrogatories, request for documents, subpoena, civil investigative demand or similar process or by law and to exercise reasonable efforts to obtain assurance that confidential treatment will be accorded to the Confidential Information provided.

Injunctive Relief. Service Provider acknowledges that Tuskegee University would be irreparably harmed by any improper use of Confidential Information by Service Provider and would suffer injuries for which damages at law would be inadequate. Service Provider hereby agrees Tuskegee University shall have the right to petition for injunctive or other equitable relief from a court of competent jurisdiction to prevent such unauthorized use. Service Provider shall not assert in any such proceeding that damages at law would be adequate.

Indemnity and Insurance. Service Provider agrees to indemnify, save, defend and hold harmless Tuskegee University and its trustees, officers, directors, agents or representatives harmless from and against any and all liability, direct or indirect, claims and damages (including, without limitation, reasonable attorney’s fees) resulting from a Service Provider’s breach of any of the provisions contained herein or any Agreement, or any negligent or intentional tortious conduct of Service Provider. This indemnity shall survive completion of the contract or termination of the Agreement. To the extent that the Service Provider maintains commercial and/or general liability policies, Tuskegee University shall be deemed an additional insured under any such policies. Upon request, Service Provider shall promptly provide a Certificate of Insurance. Tuskegee University reserves the right to require that Service Provider obtain any necessary insurance coverages and Service Provider shall cooperate fully in securing any necessary insurance coverages.
APPENDIX D

To the fullest extent permitted by the applicable law, Service Provider waives all rights against Tuskegee University for recovery of damages to the extent these damages are covered by any insurance coverages maintained by the Service Provider. To the extent that the Service Provider is obligated to obtain Workers’ Compensation insurance under the applicable laws, Service Provider’s Workers’ Compensation policy must have the Waiver of Our Right to Recover from Others Endorsement with Tuskegee University identified on the schedule of its policies.

Limitation on Liability. The Parties agree that Tuskegee University's liability to Service Provider shall be limited to payment of the compensation provided in the Agreement. In no event shall Tuskegee University be liable for consequential, special, indirect, incidental, punitive or exemplary damages in any way relating to this Agreement. Service Provider expressly agrees that no director, officer, employee or agent of the College shall incur any financial responsibility or liability in connection with this Agreement. The limitation on liability shall survive the completion of the performance or termination of any Agreement.

Alternative Dispute Resolution. Any and all disputes arising between Tuskegee University and Service Provider arising out of or related to the General Terms or any Agreement, including without limitation, any dispute involving the interpretation, application, or compliance with the terms and conditions of the General Terms or any Agreement shall be settled in binding arbitration in Atlanta, Georgia. The arbitrator shall be shall be conducted in accordance with the American Arbitration Association Commercial Arbitration Rules and Mediation Procedures, which are available, upon request, from the Office of General Counsel or at www.adr.org. The final decision of the arbitrator may be enforced by any court of law having jurisdiction over the matter.

Binding Effect. These General Terms and Conditions and the Agreement shall insure to the benefit of and shall be binding upon the Service Provider and the respective heirs, personal representatives, successors and assigns; provided, however, that Service Provider shall not be entitled to assign or delegate any of the Service Provider's rights or obligations under this Agreement without the prior written consent of Tuskegee University.

Compliance with Laws. Service Provider warrants and represents that he/she will perform all services hereunder in compliance with any and all applicable laws, statutes, rules and regulations with respect to the provision of services hereunder.

Severability. In the event that one or more of the provisions of these General Terms or any Agreement or any portion thereof shall be deemed to be illegal or unenforceable for any reason, such provision or portion shall be modified or deleted in such a manner so as to make this Agreement as modified legal and enforceable to the fullest extent permitted under applicable laws.

No Waiver. Failure or delay by Tuskegee University in exercising any right, power or privilege under these General Terms and any Agreement shall not operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise of any right, power, or privilege under these General Terms or any Agreement. A waiver by either Party of one or more terms, conditions, rights, duties, or breaches shall not constitute a waiver of any other.

Survival. The provisions in these General Terms and any Agreement shall survive the termination or expiration of any Agreement, notwithstanding a breach of the Agreement or these General Terms by either party.

Publicity. Neither the Service Provider, nor any agents shall make any release to the news media or the general public or publish any publication or writing concerning the terms of these General Terms and any Agreement, the Parties, the relationship between the Parties, or the services being performed hereunder without the prior express written approval of Tuskegee University.

College Marks. Except as otherwise agreed to by Tuskegee University in writing, Service Provider has no rights to use any Tuskegee University related mark, emblem, designation, theme, or logo or any designation that implies a relationship with Tuskegee University without written permission from Tuskegee University.
Copyright. All promotional materials, curriculum, brochures and other materials provided to the Service Provider by the University for the purpose of these General Terms and any Agreement are protected under copyright of the College or a third party. No copyright is transferred or licensed to the Service Provider hereunder.

Notice. Any and all notices required to be given hereunder shall be sent by registered or certified mail, postage prepaid, return receipt requested to the addresses designated in the Agreement, which may be changed by submitting written notice from time to time.

Entire Agreement, Modification, Assignment and Waiver. These General Terms and any Agreement contain the entire understanding between the Parties and supersede all prior and contemporaneous agreements, oral or written between them related to the subject matter contained herein. Any Agreement may not be amended, modified or waived, in any respect, except by written agreement signed by the Parties; however, Tuskegee University expressly reserve the right to modify, alter or amend these General Terms, which the most up-to-date version shall be available, upon request, from the Office of General Counsel. All reasonable efforts will be made to provide Service Provider with modifications and amendments to these General Terms. Any conflicting terms contained in standard forms provided by the Service Provider (i.e. purchase orders, acknowledgments of orders and/or invoices) shall be deemed null and void and the terms of the Agreement and these General Terms shall be governing documents. These General Terms and any Agreement may not be assigned by either Party without the written consent of the other. Consent for one assignment does not waive the consent required for any subsequent assignment.

Governing Law. This Agreement and any Accompanying Agreements shall be governed by and interpreted and enforced in accordance with the laws of the State of Alabama without respect to its conflict of laws principles.

Attorney’s Fees. In the event of any litigation by any party to enforce or defend itself under this Agreement, the prevailing party, in addition to all other relief shall be entitled to reasonable attorney’s fees. The prevailing party shall be designated by the fact-finder. In the event that the fact finder does not designate a prevailing party, the party recovering the majority of the relief sought by that party shall be deemed the prevailing party.

Force Majeure. Neither party will be liable for any delay or non-performance of its obligations resulting from a “Force Majeure Event.” “Force Majeure Event” shall include any event that is: (1) beyond the reasonable control of the party claiming a Force Majeure Event; (2) not reasonably foreseeable; (3) not due to the fault or negligence of the party claiming a Force Majeure Event; and (4) not capable of being overcome without unreasonable expense. The party claiming a Force Majeure Event will notify the other party immediately upon learning of the likelihood or existence of the Force Majeure Event. The party claiming a Force Majeure Event must exercise commercially reasonable efforts to mitigate the effect of the Force Majeure Event. A party impacted by a Force Majeure Event will be entitled to an equitable adjustment in the performance of its obligations that were excused by the Force Majeure Event.

Work Made for Hire. To the extent applicable, Service Provider agrees that all written, audio or digital compilations, proofs, scientific and technical data, specification, notebooks, computer databases, software reports, artwork, drawings, sketches, designs, text or other copyrightable material generated or developed pursuant to the Agreement shall be “works made for hire” as that phrase is defined in Section 101 of the United States Copyright Act (17 U.S.C. § 101 and used in 17 U.S.C. § 201), and that such material shall, upon creation, be owned exclusively by Tuskegee University. To the extent that any material is held not to constitute a “work made for hire,” Service Provider agrees to assign the material to Tuskegee University upon the completion thereof.

Patent Rights. For any invention, improvement, discovery or innovation (whether patentable or not) made, conceived, or actually reduced to practice by Service Provider in the course of the work under the Agreement (“Subject Invention”), Tuskegee University shall have the sole and exclusive power to determine whether or not and where patent applications shall be filed covering Subject Invention and to determine the disposition of the title to and rights under any application or patent that may result. Service Provider shall accept the judgment of Tuskegee University on these matters as final and shall execute all documents and things necessary or proper to carry out the judgment of Tuskegee University. Service Provider shall furnish promptly to Tuskegee University
complete and accurate information with regard to any Subject Invention.

Service Provider shall provide, at the conclusion of this Agreement, an affirmative statement as to whether or not any Subject Invention arose in the course of fulfilling the Agreement.

Conflict of Interest. Service Provider affirms that there exists no actual, potential or perceived conflict of interest between the Service Provider, including family, business and financial interests of the Service Provider, and the performance of services requested in the Agreement.

Best Efforts. Service Provider agrees at all times, to use its best efforts to perform the work specified in the Agreement and to inform the College of any deviation from the Agreement, or any because which renders the Service Provider unable to perform the work as required.

Audit and Retention. To the extent that the Agreement is wholly or partially funded by federal funds, all costs reimbursed for the performance of the Agreement will be subject to audit by the cognizant Federal audit agency and Service Provider agrees to allow auditors access to its records pertinent to this Agreement during normal business hours. Service Provider assumes sole responsibility for reimbursement to the applicable agency a sum of money equivalent to the amount of any expenditure disallowed should the applicable agency or an authorized agency rule through audit exception, or some other appropriate means, that expenditures from funds allocated to the Service Provider by Tuskegee University for direct and/or indirect costs were not made in compliance with the regulations of granting or funding agency of this Agreement. Service Provider's financial records for this Agreement shall be retained for a period of three (3) years. The retention period will begin from the date of the submission of the final invoice.

Disputes. The Parties agree to attempt to resolve any dispute arising under this Agreement including all documents incorporated herein by reference and attached hereto), under the following procedures:

Any dispute arising out of or relating to this Agreement, including the alleged breach, termination, validity, interpretation and performance thereof (“Dispute”) shall be resolved with the following procedures:

A. Negotiation
Upon written notice of any Dispute, the parties shall attempt to resolve it promptly by negotiation between executives who have authority to settle the Dispute and this process should be completed within 60 days (the “Negotiation”).

B. Mediation
If the dispute has not been resolved by negotiation in accordance with paragraph A, then the parties shall proceed to mediation “Notice of Mediation” shall be served, signifying that the Negotiation was not successful and to commence the mediation process. The parties shall agree on a mediator; however, if they cannot agree within 30 days then the presiding Judge of the Macon County Superior Court shall appoint a mediator. The mediation session shall be held within 60 days of the retention of the mediator, and last for at least one full mediation day, before any party has the option to withdraw from the process. The parties may agree to continue the mediation process beyond one day, until there is a settlement agreement, or one party [or the mediator] states that there is no reason to continue because of an impasse that cannot be overcome and sends a “notice of termination of mediation.” All reasonable efforts will be made to complete the mediation within 30 days of the first mediation session. During the course of the mediation, no party can assert the failure to fully comply with paragraph A, as a reason not to proceed or to delay the mediation. The service of the Notice of Mediation shall stay the running of any applicable statute of limitations regarding the Dispute until 30 days after the parties agree that the mediation is concluded or the mediator issues a Notice of Impasse. Each side shall bear an equal share of the mediation costs unless the parties agree otherwise.

All communications, both written and oral, during Phases A and B are confidential and shall be treated as settlement negotiations for purposes of applicable rules of evidence; however, documents generated in the ordinary course of business prior to the Dispute, that would otherwise be discoverable, do not become confidential simply because they are used in the Negotiation and/or Mediation process. The process shall be confidential based on terms acceptable to the mediator and/or mediation service provider.
C. Arbitration

Any Dispute not resolved through negotiation or mediation in accordance with paragraphs A and B shall be resolved by final and binding arbitration in accordance with the rules of the American Arbitration Association. The arbitration will be held in the State of Alabama using one arbitrator, unless the Dispute exceeds one million dollars (USA) in which case there shall be three neutral arbitrators, as a panel. The arbitrators may award costs and/or attorneys’ fees to the prevailing party. The parties understand that arbitration is final and binding and that they are waiving their rights to other resolution processes (such as court action or administrative proceeding).

Compliance with the Law. Service Provider will cause the work performed hereunder to conform with all requirements of all applicable federal, state and local laws, rules and regulations, as well as all the generally accepted standards applicable to such work.

Return of Materials/Equipment. Immediately following the expiration of the Term or termination of this Agreement, Service shall deliver to the College all properties and equipment of the College in his/her possession or under his/her control, including all materials containing or embodying Confidential Information, such as memoranda, notes, records, manuals or other documents, and copies of such materials (in whatever form, including electronic or magnetic storage) and all documentation prepared or produced in connection therewith. Service Provider shall not retain copies of such Confidential Information, in any form. Further the title to any real property, equipment and/or supplies acquired under the Agreement shall be transferred to Tuskegee University.

Entirety of Agreement. This Agreement (together with its Exhibits attached hereto) constitute the entire agreement between the Parties with respect to the subject matter hereof, superseding all prior understandings and agreements, and may not be modified or altered except by a written instrument duly executed by the Parties.

Headings. The section and paragraph headings contained in this the General Terms and any Agreement are for reference purposes only and shall not affect the meaning or interpretation of the Agreement.

Counterparts. These General Terms and any Agreement may be executed in two or more counterparts, each of which shall be evidence of the same Agreement, and shall be deemed fully executed as of the date of the last signature obtained.

TUSKEGEE UNIVERSITY

By: _______________________

Signed: ____________________

Title: _______________________

Date: _______________________

Service Provider

By: _______________________

Signed: ____________________

Title: _______________________

Date: _______________________

Date: ______________________