

PROFESSIONAL SERVICES AGREEMENT

between

Tuskegee University and _____

This Professional Services Agreement ("Agreement") is made and entered into by and between **Tuskegee University**, located at 1200 W. Montgomery Road, Tuskegee, AL 36088 (hereinafter "TU") and _____, with an address located at _____ (hereinafter the "Consultant"). TU and the Consultant shall be referred to herein individually as a "Party" or collectively as the "Parties," where the context so requires. In consideration of those mutual undertakings and covenants, the Parties agree as follows:

Section 1. Duties of Consultant. Consultant shall provide the professional services specifically described in Exhibit A to this Agreement ("Services"), which exhibit is incorporated into and made a part of this Agreement.

Section 2. Term. The term of this Agreement shall commence on _____ ("Effective Date") and shall expire on _____. The Parties may renew or extend this Agreement but only upon mutually agreed-upon terms captured in writing and signed by the parties.

Section 3. Compensation and Payment Terms. In consideration for Consultant's satisfactory performance of the Services (as determined solely by TU), TU agrees to pay Consultant a sum **not to exceed** _____ Dollars (\$_____) ("Fee") during the Term of this Agreement. TU will pay invoices within thirty (30) days following receipt, with adequate supporting documentation. TU may audit, upon reasonable prior written notice, and at its expense, Consultant's records, which substantiate invoicing for Services.

[Optional: Add this section if payment is to be made in installments]: Said Fee shall be paid to Consultant in installments equal to _____ and 00/100 Dollars (\$_____) payable each month, upon TU's receipt from Consultant of an invoice and adequate supporting documentation.

Section 4. Travel and Other Reimbursable Expenses. *Subject to TU's prior written approval*, unless expressly included in the scope of work Consultant shall NOT be entitled to reimbursement of expenses for travel, lodging and other related expenses incurred in connection with Consultant's provision of the Services provided under this Agreement. If travel is authorized in writing in the scope of work it will be reimbursed, **provided Consultant submits copies of receipts for all actual travel expenses incurred on TU's behalf**. Consultant further agrees to comply with TU's policies, procedures and expenses thresholds concerning travel and travel-related expenses. Expenses not supported by copies of receipts will not be reimbursed. TU shall not reimburse Consultant for hourly fees incurred for actual travel time.

Section 5. Compliance with Laws. Consultant shall comply with all applicable federal, state, and local laws, rules, regulations and ordinances in the delivery of the Services.

Section 6. General Indemnity. It is expressly agreed that TU will not assume liability for any injury (including death) to any persons or damage to any property arising out of the acts or omissions of the above-named Consultant. Further, to the extent permitted by law, Consultant will defend, indemnify and hold TU harmless from any and all demands, claims, suits, actions and legal proceedings brought against TU, its board of trustee members, officers, employees or agents arising out of alleged acts or omissions by Consultant in the course of performing the Services identified in this Agreement. The foregoing provisions shall include, but not be limited to, any judgments, awards, settlements, reasonable attorney fees, and costs and expenses incurred by TU in connection with the defense of any actual or threatened action, proceeding or claim. This indemnification shall survive the expiration or termination of this Agreement.

Section 7. Intellectual Property Indemnification. Consultant warrants that any goods or services furnished hereunder do not infringe or violate any United States or Canadian patent, trademark, copyright, trade secret or other proprietary right of any third party; that it shall defend all suits that may arise with respect thereto; and that it shall indemnify, defend, save and hold harmless TU, its officials, employees, agents from and against all liability, suits, claims, costs or expenses, including, without limitation, attorney and expert witness fees, for or by reason of any actual or alleged claim of infringement. This indemnification shall survive the expiration or termination of this Agreement.

Section 8. Works for Hire; License (if applicable). Consultant agrees that any work, invention, idea or report that it produces or that results from or is suggested by the work the Consultant does on behalf of TU or any of the TU's representatives is "work for hire" (hereinafter referred to as "Work") and will be the sole property of TU. Consultant agrees to sign any documents, during or after the Term of this Agreement, that TU deems necessary to confirm TU's ownership of the Work, and Consultant agrees to cooperate with TU to allow TU to take advantage of its ownership of such Work. Consultant shall have a non-exclusive, revocable, royalty-free, non-assignable license to use the Work with TU's prior written consent.

Section 9. Independent Contractor. During the performance of this Agreement, no one party or the employees of one party will be considered employees of the other party within the meaning of any federal, state or local laws or regulations including, but not limited to, laws or regulations covering unemployment insurance, old age benefits, workers compensation, industrial accident, labor or taxes of any kind nor within the meaning or application of the other party's employee fringe benefit programs for purposes of vacations, holidays, pension, group life insurance, accidental death, medical, hospitalization and surgical benefits. TU employees who perform the obligations of TU hereunder shall be under the employment and ultimate control, management and supervision of TU. The Consultant's employees (if applicable) who are to perform the services to be completed by the Consultant hereunder shall be under the employment and ultimate control, management and supervision of the Consultant. Nothing contained herein shall be construed to imply a joint venture, partnership or principal-agent relationship between TU and Consultant, and neither party shall have the right, power or authority to obligate or bind the other in any manner whatsoever, except as otherwise agreed to in writing. Consultant shall be responsible for all taxes and related payments and liabilities under State and Federal laws with respect to any compensation received. TU shall not withhold any taxes from Consultant's Fee.

Section 10. Rights in Data. "Data" means recorded information, regardless of form or the media on which it may be recorded. TU shall have unlimited rights in and to the data collected by Consultant in the performance of this Agreement. Except as otherwise specifically provided for in this Agreement, the Consultant shall not use for purposes other than the performance of this contract, nor shall the Consultant release, reproduce, distribute, or publish any data first produced in the performance of this Agreement, nor authorize others to do so, without written permission of TU. Consultant is prohibited from disseminating personally identifiable information such that the disclosure thereof would violate the right of privacy or publicity of the individual to whom the information relates. The Consultant agrees that the Services are deemed works made for hire and that all work products thereby created by the Consultant for TU's use pursuant to this Agreement shall vest solely in TU. Notwithstanding, all copyrights and other intellectual property rights existing prior to the Effective Date of this Agreement will belong to the party that owned such rights immediately prior to the Effective Date. Neither party will gain by virtue of this Agreement any rights of ownership of copyrights, patents, trade secrets, trademarks or any other intellectual property rights owned by the other party prior to the Effective Date of this Agreement.

Section 11. Termination. Either party may terminate this Agreement for any reason upon fourteen (14) days' prior written notice given to the other party. Upon termination of this Agreement pursuant to this paragraph, within fourteen (14) days of the effective termination date, Consultant must return all documentation, equipment or other materials provided to it by TU during the term of this Agreement. Consultant shall be compensated, on a prorated basis, for all satisfactory and authorized Services completed prior to the effective date of termination. TU will not be liable for payment of Services performed by Consultant or Consultant's representatives after the effective date of termination.

Section 12. General Warranties.

- a) The Parties warrant and agree that this Agreement is entered into voluntarily.
- b) Consultant warrants and agrees that if compensation paid hereunder is paid with federal funds, the Consultant shall abide by any and all applicable federal regulations, procedures, and laws, including the signing of any documents necessary to ensure that the agreement between the parties is consistent with all federal requirements. Consultant further represents and warrants that it will not accept any compensation for the Services during the time Consultant is being compensated by other federal monies.
- c) Consultant warrants that the Services to be provided under this Agreement shall be performed in a professional manner conforming to generally accepted industry standards and practices.
- d) Consultant warrants that Consultant has not reasonably relied on any other representation or statement that is not contained in this Agreement or made by a person or entity other than TU.
- e) Consultant represents and warrants that Consultant is not debarred, suspended or otherwise excluded from participation in federal programs or from receiving compensation with federal funds.

Section 13. Records and Audits. The Consultant shall, in accordance with generally accepted accounting principles, make and keep full and complete books, documents, accounting records and other evidence that specifically relate to this Agreement. The Consultant shall retain such records, and shall make same available to TU, upon reasonable request, during the term of this Agreement, and for a minimum period of three (3) full years after completion of the contract obligations or from the date of final payment under this Agreement, whichever is later. In the event any litigation, claim or audit is instituted prior to the expiration of the required three-year retention period, such records shall be retained until such litigation, claim or audit finding has been resolved. Copies of said records shall be furnished to TU upon request. Upon reasonable notice, the Consultant shall permit TU, any other governmental entity, any agency participating in the funding of this Agreement, or any of their duly authorized representatives, to enter the Consultant's offices, during regular business hours, to interview employees and to inspect and/or copy said records and books of accounts together with any and all documents pertaining hereto that may be kept, maintained or possessed by the Consultant. Reviews may also be accomplished at meetings that are arranged at mutually agreeable times and places.

Section 14. Notice. All communications between the Parties with respect to any of the provisions of this Agreement shall be in writing. Whenever any notice, statement or other communication is required under this Agreement, it shall be sent to the following addresses by email or other commercial means of rapid delivery, postage or costs of transmission and delivery prepaid, to the Parties at the following addresses:

For TU:

[Name], [Title]
Tuskegee University
1200 W. Montgomery Road
[Building, Room]
Tuskegee, AL 36088
[Email Address]

Copy to:

Office of the General Counsel
Tuskegee University
1200 W. Montgomery Road
Kresege Center, Room 327
Tuskegee, AL 36088
contracts@tuskegee.edu

For Consultant:

[Name], [Title]
Consultant
[Street Address]
[City, State, Zip Code]
[Email Address]
[Phone Number]

Section 15. Non-Discrimination. To the extent applicable, Consultant agrees, warrants and assures compliance with Title VI and VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 503/504 of the Rehabilitation Act of 1973, Americans with Disabilities Act of 1990, Executive Order 11,246 and 38 USC Section 4212, along with the related regulations and reporting requirements of each. Consultant shall not discriminate against any individual including, but not limited to, employees or applicants for employment and/or students, beTUse of race, religion, creed, color, sex, age, disability, national origin, or status as a disabled or Vietnam era veteran. Further, to the extent applicable, the Consultant agrees to take affirmative action to ensure that applicants are employed and that employees are treated during their employment without regard to their race, religion, creed, color, sex, age, disability, national origin, or status as a disabled or Vietnam Era veteran.

Section 16. Confidentiality. It is understood and agreed that as a part of this Agreement, TU may disclose to Consultant and Consultant's employees (if applicable) various confidential and proprietary information relating to TU's business, facilities and plans, student information and records, employee data, as well as information relating to third parties with whom TU may do business or procure products, and that the data, findings and conclusions will be valuable confidential information belonging to TU. Accordingly, Consultant agrees that all persons employed by Consultant and its subcontractors will keep in strictest confidence all such information relating to TU or third parties and all such information relating to Services, and to TUse any of Consultant's employees, agents or subcontractors to be bound by the same obligation of confidentiality to which the Consultant is bound. Consultant shall not communicate TU's confidential information in any form to any third party without TU's prior written consent. Upon termination of this Agreement, Consultant and its employees and agents: (i) will continue to hold all such information in strictest confidence; and (ii) will promptly return to TU any and all confidential information and documents belonging to TU that TU requests to be returned (including any copies, extracts, summaries and/or statements of such confidential information which may have been made).

Section 17. Conflict of Interest. Consultant shall disclose in writing any financial or beneficial interests that it, or its principals or officers, has in services, products, or companies recommended to TU in the performance of this Agreement if not offered in the name of Consultant. Failure to disclose any such interests shall be deemed a material breach of this Agreement and will result in the forfeiture of all monies previously paid by TU to Consultant pursuant to this Agreement.

Section 18. Governing Law; Venue. This Agreement shall be construed in accordance with and governed by the laws of the State of Alabama, without regard to its conflicts of law provisions. A suit to enforce this Agreement, if any, must be brought in an appropriate court of jurisdiction in Montgomery County, Alabama.

Section 19. Severability. If any portion of this Agreement is adjudicated by a court of competent jurisdiction to be void, invalid or otherwise unenforceable, in whole or in part, the remaining portions of the Agreement shall remain in effect.

Section 20. Modification; Amendments. No modifications to or amendments of this Agreement shall be binding unless executed in writing by duly authorized representatives of both Parties. Any terms and conditions that are intended to supersede this Agreement must be included in an amendment to the Agreement prepared and reviewed by TU's Law Department.

Section 21. DEBARMENT & SUSPENSION. The Contractor certifies by entering into this Contract that neither it nor its principals nor any of its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency, or political subdivision of the State of Alabama. The term "principal" for purposes of this Contract means an officer, director, owner, partner, key employee or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Contractor.

Section 22. DEBARMENT & SUSPENSION OF SUBCONTRACTORS. The Contractor certifies that it has verified the state and federal suspension and debarment status for all subcontractors receiving funds under this Contract and shall be solely responsible for any recoupment, penalties or costs that might arise from use of a suspended or debarred subcontractor. The Contractor shall immediately notify the University if any subcontractor becomes debarred or suspended, and shall at the University's request, take all steps required by the University to terminate its contractual relationship with the subcontractor for work to be performed under this Contract.

Section 23. No Waiver. The failure of any party to enforce any right granted it under this Agreement, or to require the performance by the other party of any provision of this Agreement, or the waiver by any party of any breach of this Agreement, shall not prevent a subsequent exercise or enforcement of such provisions or be deemed a waiver of any subsequent breach of this Agreement. All provisions of this Agreement which by their own terms take effect upon the termination of this Agreement or by their nature survive termination (including, without limitation, the provisions of paragraphs 7, 8, 10, 15 and 19) shall survive such termination

Section 24. Attorneys' Fees. Should either party employ attorneys to enforce any of the provisions of this Agreement, Consultant and TU agree to bear its own attorneys' fees and costs expended or incurred in connection therewith.

Section 25. Assignment. The Consultant may not assign this Agreement or any of its rights or obligations hereunder, in whole or in part, without the prior written consent of TU.

Section 26. Entire Agreement; Contract Interpretation. This Agreement, together with other documents that may be executed pursuant to this Agreement and incorporated herein, constitute the entire agreement between the Parties and shall supersede and replace any and all prior agreements, communications (oral and written) and understandings between the Parties with respect to the subject matter hereof. For purposes of contract interpretation, including resolution of any ambiguity, the Parties acknowledge that this Agreement was negotiated and prepared jointly by the Parties or their respective attorneys, and therefore the terms of the Agreement should not be construed against either Party as the drafting Party.

In witness whereof, the Parties, through their authorized representatives, have affixed their signatures below.



Tuskegee University

By: _____

Name: _____

Title: _____

Date: _____

Name:

Title: _____

Date: _____

EXHIBIT A

SCOPE OF SERVICES