

**AFFILIATION AGREEMENT**  
**Between**  
**SIMMONS COLLEGE OF KENTUCKY**  
**And**  
**TIBER HEALTH, PUBLIC BENEFIT CORPORATION**

This Affiliation Agreement (this “Agreement”) is made by and between SIMMONS COLLEGE OF KENTUCKY, a private historically black college located in Louisville, Kentucky (“College”), and TIBER HEALTH, PUBLIC BENEFIT CORPORATION, D/B/A PONCE HEALTH SCIENCES UNIVERSITY, a private university in the Commonwealth of Puerto Rico located at 388 Zona Industrial Reparada 2, Ponce, Puerto Rico, 00716 (“PHSU”), effective as of the date of the last signature hereto (the “Effective Date”). College and PHSU are sometimes referred to herein individually as a “party” and collectively as “parties.”

WHEREAS, College is an accredited institution of higher education that offers various postsecondary academic programs and courses, and is interested in offering a Master of Science in Medical Sciences program (“MSMS”);

WHEREAS, PHSU is an accredited institution of higher education that offers various postsecondary academic programs and courses, including an MSMS degree program comprised of MSMS academic courses (the “MSMS Courses”); and

WHEREAS, College desires to license from PHSU, and PHSU desires to license to College, the MSMS Courses in support of College’s own MSMS degree program (the “College MSMS Program”).

NOW, THEREFORE, in consideration of the mutual promises set forth herein, the receipt and sufficiency of which is hereby acknowledged, PHSU and College agree as follows.

**ARTICLE I**  
**RESPONSIBILITIES OF PHSU**

1.1 **Intellectual Property.** During the term of this Agreement and subject to the terms and conditions of this Agreement and any additional terms provided in connection with any software or services provided as part of the MSMS Course Content, PHSU hereby grants to College a non-sublicensable, non-transferrable, personal license to the MSMS Course Content (as defined in Section 1.1.2 below) offered at PHSU campuses. The MSMS Course Content shall meet the specifications set forth on Exhibit A attached hereto. The license granted in this Section 1.1 will terminate upon the termination of this Agreement or as otherwise expressly agreed to by the parties.

1.1.1. For the avoidance of doubt, College shall have no right to license or use any MSMS Course Content, except as otherwise provided in this Section 1.1. All other rights in and to the MSMS Course and the MSMS Course Content are expressly reserved by PHSU. PHSU and its licensors are, and shall be, the sole and exclusive owner of all right, title, and interest in and to the MSMS Course Content, including all Intellectual Property Rights therein, at all times. To the extent that College or its personnel obtain any rights in or to the MSMS Course Content, College hereby irrevocably

assigns, and shall cause College personnel to irrevocably assign, to PHSU, in each case without additional consideration, all right, title, and interest throughout the world in and to the MSMS Course Content, including all Intellectual Property Rights therein. Upon the request of PHSU, College shall, and shall cause College personnel to, promptly take such further actions, including execution and delivery of all appropriate instruments of conveyance, as may be necessary to assist PHSU to prosecute, register, perfect or record its rights in or to any MSMS Course Content.

1.1.2. “MSMS Course Content” means any content, lectures, course material, curriculum, text, software, services, artwork, documents, syllabi, grading criteria, course descriptions and objectives, assessment methodology, and other content, information, data, and materials related to or used in connection with the MSMS Courses. “Intellectual Property Rights” means any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

1.1.3. PHSU reserves all right, title, and interest (including all Intellectual Property Rights) in all aggregated or statistical data derived from the performance of this Agreement that does not reveal the identity, whether directly or indirectly, of any individual or specific student including, without limitation, the number of students enrolled, student body characteristics, participation trends, and performance results.

1.2. **PHSU Liaison.** PHSU shall designate a qualified member of its staff as a “PHSU Liaison” to communicate/work directly with the College Liaison (as defined in Section 2.3) on all programmatic issues, and the Account Administrator (as defined in Section 2.3) on all Canvas Learning Management System (“Canvas LMS”) matters.

1.3. **Materials.** PHSU shall provide to the College Liaison the description of the MSMS Courses, which shall include the objectives to be achieved, instruction, assessment criteria, and essential learning experiences. PHSU’s designated faculty will provide College and all students with a course syllabus with instructor availability on-line each day and a means of contacting them clearly listed. All lectures, videos and materials generated in connection with this Agreement, shall be the sole property of PHSU and shall be subject to the obligations of Section 3.10.

1.4. **In-Class Sessions.** PHSU shall provide broadcasted live in-classroom sessions (“ICS”) to College with qualified faculty from the PHSU campuses for all MSMS Courses. PHSU faculty shall provide advisement to enrolled students on their MSMS Course progress. PHSU shall institute and maintain reasonable controls to ensure the integrity and security of its student data bases and data transmission systems in accordance with this Agreement and applicable law. University will take all necessary measures to protect PHSU’s Intellectual Property Rights (as defined in Section 1.1.2), including those established in this Agreement.

1.5. **Technology.** PHSU shall provide all videos, applications and technology required to participate in and earn academic credit in the MSMS Courses but excluding the technology to be provided by University pursuant to Section 2.2, below, all subject to the terms of and conditions of this Agreement and any additional terms provided in connection with the applications and

technology. PHSU uses Canvas LMS as the learning portal for the MSMS Courses and will work with Canvas to create a portal for the University MSMS Program that is complementary or streamlined with University's learning management system, at PHSU's cost.

1.6. **Assessment and Analytics.** PHSU will evaluate the academic performance of each participating student in accordance with mutually agreed upon criteria and report the results to University at the conclusion of each MSMS Course. PHSU shall also provide regular data, reporting and student dashboards as part of its analytics package.

1.7. **Use of College Name.** PHSU shall provide any written documents used to promote the College MSMS Program that show College's logo or its name, to the College Liaison for prior approval; not to be unreasonably withheld, conditioned or delayed by College.

1.8. **Medical School Interviews.** For each class of the College MSMS Program, PHSU will recommend for medical school application interviews at PHSU's School of Medicine qualified students who (i) adhere to PHSU admissions requirements, and (ii) are in the top 20% of the College MSMS Program's graduates, based on their grade point average in the College MSMS Program.

1.9. **Faculty.** College will hire the PHSU MSMS faculty as adjunct professors of the College according to standard College adjunct faculty hiring processes, and PHSU will pay the PHSU MSMS faculty to teach the MSMS Courses (forty-two credit hours) to the College's MSMS students.

## **ARTICLE II RESPONSIBILITIES OF COLLEGE**

2.0 **Accreditation.** College will immediately and expeditiously apply for and seek a substantive change to its academic accreditation from its accreditor, thus allowing College to offer the program and degree. College's ability to comply with its commitments under Article II is contingent upon its accreditor's approval, including any limitations and action steps the accreditor orders and requires. College will provide timely updates to inform all parties on the status of and progress toward such substantive change. Substantive change may be a condition precedent to any and all of College's action steps and commitments stated in Article II.

2.1. **Promotion.** College shall promote the College MSMS Program to eligible students to obtain the minimum number of participants according to the criteria established between PHSU and College. Student eligibility will be based on established College criteria for admission to a Masters-level program. Student admissions criteria to the College MSMS Program shall follow the pre-requisites of College.

2.2. **Facilities.** College shall provide a classroom and the equipment required for the students to view the live synchronous virtual classroom sessions broadcasted by PHSU. College will also coordinate with students regarding allocation of personal fees related to devices and applications used in the MSMS courses and virtual labs. These fees can be allocated between College and students as per College policy.

2.3. **College Liaison; Account Administrator.** College shall designate a staff member ("College Liaison") who will be responsible for working/communicating with PHSU in all programmatic areas. This College Liaison will be the primary contact for PHSU. In addition, College shall designate an "Account Administrator" to configure settings and integrations for

authentication, course creation and enrollments for Canvas LMS, who may be the same individual as the College Liaison.

2.4. **Student Support.** College shall coordinate and be responsible for enrollment and student support services for the College MSMS Program, including admission requirements, recruiting, enrollment decisions, financial aid, registration and the conferral of all College grades and degrees. PHSU's designated faculty will provide course results/grades to College for College to report to students through its Student Information System. College shall recognize the MSMS Courses taken, and examinations passed as its own and award College credits towards the satisfaction of its MSMS degree requirements in accordance with College policies and applicable requirements of College's accreditor and state and federal regulators.

2.5. **Professional Advisement.** College shall provide professional advisement services to the students as they progress through the College MSMS Program.

2.6. **Reporting.** College will work with PHSU to set up an automatic data feed in order to report application, admission, enrollment and graduation information to PHSU for MSMS students. This information shall include the data points set forth below, and shall be shared no less than weekly upon the start of each term's application period, or upon PHSU'S request:

- Inquiries
- Applications
- Acceptances
- Denials
- Enrollments
- Registrations
- Graduation/Alumni
- Employment

Feed will be operational before marketing for the College MSMS Program goes live. The College Liaison shall ensure that supporting information and data fields relating to the data points above are provided to PHSU as contemplated by this Section 2.6.

2.7. **Logistics.** College shall coordinate and be responsible for logistical aspects related to the MSMS Courses, including providing appropriate written material regarding College's policies and procedures to aid the enrolled students. College student policies will prevail in cases where there is a conflict between College and PHSU student policies.

2.8. **ICS Moderator.** College shall provide and compensate a qualified individual to moderate and assist enrolled students in the MSMS Courses during the ICS and coordinate with PHSU designated faculty during live broadcasts.

2.9. **Use of PHSU Name.** College shall provide any written documents used to promote the University MSMS Program that show the PHSU logo or name, to the PHSU Liaison for prior written approval; not to be unreasonably withheld, conditioned or delayed by PHSU.

2.10. **Competing Programs.** So as to not impact enrollments in the College MSMS Program, College shall not compete directly or indirectly with the College MSMS Program or develop a competing product or service.

2.11. **Academic Independence.** For the avoidance of doubt, College shall have sole and final authority with respect to all of its academic matters, including admissions and registration processes, tuition and fees (consistent with Section 4.1 herein), conferring of degrees, and maintenance of student records. College students participating in the MSMS Courses shall only be considered students at College and shall not be considered enrolled students of PHSU. College shall be solely responsible for disciplinary matters relating to its MSMS students, without regard to whether such disciplinary matters involve allegations of academic or non-academic misconduct.

### **ARTICLE III GENERAL TERMS AND CONDITIONS**

3.1. **Term.** The term of this Agreement shall commence on the Effective Date and last for a term of five (5) years from the College MSMS Program start date, unless earlier terminated in accordance with the terms herein. The parties may extend the term by a written agreement signed by the parties. The parties agree to review this Agreement annually and make amendments by mutual written agreement where appropriate.

3.2. **Termination.** Either party may terminate this Agreement, with or without cause, upon sixty (60) days' prior written notice to the other institution. Either party may terminate this Agreement, effective on written notice to the other party, if the other party materially breaches this Agreement, and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured thirty (30) days after the non-breaching party provides the breaching party with written notice of such breach. Following such written notice, no additional students will be enrolled in the College MSMS Program by College. Such termination shall be effective when all then-enrolled students in the College MSMS Program complete the same in the modality being administered, and all students undergoing their courses at the time of any such termination will have the opportunity to complete their College MSMS Program curriculum at the University. Any provisions of this Agreement, which by their nature extend beyond termination, including, without limitation, Sections 3, 4 and 5, shall survive such termination. College shall pay PHSU all unpaid amounts, including any amounts relating to enrolled students who are permitted to complete the College MSMS Program curriculum at College beyond the termination or expiration date, in accordance with this Agreement.

3.3. **Indemnification.** Each party (as "Indemnifying Party") shall indemnify and defend the other party and its officers, directors, employees, agents, affiliates, successors, and permitted assigns (collectively, "Indemnified Party") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including professional fees and reasonable attorneys' fees, that are incurred by Indemnified Party (collectively, "Losses"), arising out of any material breach or nonfulfillment of any representation, warranty or covenant under this Agreement, any negligent act or omission of the Indemnifying Party (including reckless or willful misconduct) in connection with the performance of its obligations under this Agreement.

3.4. **Limitation of Liability.** Neither party shall have any liability to the other for consequential, exemplary, special, incidental, or punitive damages, even if advised of the possibility of such damages, including without limitation lost profits and opportunity. In no event will PHSU's liability arising out of or related to this Agreement, whether arising out of or related to breach of contract, tort (including negligence) or otherwise, exceed the amounts paid to PHSU pursuant to this Agreement in the three-month period preceding the event giving rise to the claim.

3.5. **Insurance.** With respect to any activity conducted under this Agreement and/or any subsequently executed amendment hereto, each party will maintain, at its own cost and expense, appropriate and state required levels of cyber liability coverage, general public liability insurance, worker's compensation insurance, and property damage to cover each party's indemnity obligations under this Agreement. Evidence of such insurance shall be provided to the other party upon request.

3.6. **Independent Contractor Status.** The parties acknowledge and agree that they are dealing with each other as independent contractors and this Agreement does not create an agency, partnership, joint venture, or employment relationship.

3.7. **Non-Discrimination.** The parties agree to comply with Titles VI and VII of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Executive Order 11246, and the Americans with Disabilities Act of 1990 and the related regulations of each. Each party agrees that it will not unlawfully discriminate against any individual including, but not limited to employees or applicants for employment and/or students because of race, religion, creed, color, sex, sexual orientation, gender identity or expression, age, disability, veteran status, or national origin.

3.8. **Compliance.** Implementation and interpretation of this Agreement will be consistent with and subject to all applicable accreditor standards and the laws and regulations of any governmental authority that has jurisdiction over the conduct of the activities contemplated hereby, including, specifically, the U.S. Department of Education's incentive compensation regulation, which is set forth at 20 U.S.C. § 1094(a)(20) and implemented at 34 C.F.R. § 668.14(b)(22). The parties have set forth the terms, conditions, and responsibilities in this Agreement in the good faith belief that they are in compliance with all such standards, laws and regulations. In the event that either party reasonably determines that the performance of any particular responsibilities by College or PHSU is in violation of any such standards, laws, or regulations, then the parties agree that such responsibilities shall be promptly modified to the extent reasonably necessary to secure continued compliance with such standards, laws or regulations. Upon such a determination, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible and in a mutually acceptable manner so that the transactions contemplated by this Agreement are consummated as originally contemplated to the greatest extent possible and to achieve, overall, the same economic, financial, and business arrangement originally contemplated hereunder, to ensure that the parties realize and achieve the benefit of their bargain as set forth in this Agreement.

3.9. **Warranty; Disclaimer.** By submitting personal information, student records, or other data or information ("College Data") to PHSU, College expressly grants, and represents and warrants that College has all rights necessary to grant, to PHSU a non-exclusive, royalty-free, worldwide license during the term of the Agreement to use, transmit, distribute, modify, reproduce, display, and store College Data for the purposes of performing its obligations and enforcing its rights under the Agreement. College will indemnify and defend PHSU in connection with any losses or claim relating to (i) a breach of the foregoing warranty; or (ii) disputes between a student and University. PHSU HEREBY DISCLAIMS ALL WARRANTIES, EITHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE UNDER THIS AGREEMENT, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. This Section is not subject to any limitations on the types or amounts of damages under this Agreement.

3.10. **Confidential Information.** "Confidential Information" means all written or oral information, disclosed by one party to the other that has been identified as confidential or that by

its nature ought reasonably to be considered confidential, including the terms and conditions and existence of this Agreement. During this Agreement, each party will have access to certain Confidential Information of the other party. Each party agrees: (a) not to disclose the Confidential Information of the other party to anyone except its employees, contractors and advisors on a strict need to know basis and subject to a written duty of confidence, (b) to use the Confidential Information strictly for the performance or receipt of this Agreement, and (c) to use commercially reasonable efforts to protect the confidentiality of the other party's Confidential Information. This Section will not apply to Confidential Information that (i) is or becomes publicly available through no fault of the recipient, (ii) is already in the recipient's possession at the time of its disclosure without any duty of confidence, or (iii) is independently developed by the recipient without use of the disclosing party's Confidential Information. Each party may disclose Confidential Information to the extent required to comply with (x) a court or governmental order, (y) regulatory requirements, or (z) applicable law.

3.11. **Student Data.** As College will be sharing student data with PHSU, PHSU will keep said data confidential in a manner and to the extent to be compliant with applicable federal regulations (both in the United States and in the European Union), including the Family Educational Rights and Privacy Act of 1974 (as amended, "FERPA") (34 C.F.R. § 99; see 20 U.S.C. §1232g). All student records created by PHSU related to the College MSMS Program shall be the sole property of College. All student records created by PHSU faculty and staff shall be transferred to College at the conclusion of each individual MSMS Course and only disclosed by PHSU designated faculty and staff in accordance with FERPA. This obligation of confidentiality with respect to student records shall survive in perpetuity.

3.12. **Third-Party Servicer.** The parties acknowledge and agree that neither party shall assist the other in the administration of any portion of the other parties' participation in the federal financial aid programs overseen by the U.S. Department of Education, and that neither party shall act or be considered a "Third Party Servicer" to the other party, as that term is defined at 34 C.F.R. § 668.2.

## **ARTICLE IV PAYMENTS**

### **4.1. Payments.**

(a) For students originally identified and recruited by College, College shall make payment to PHSU for courses taught by instructors affiliated with PHSU (including PHSU faculty who may be designated by College as adjunct professors or visiting professors): Fifty percent (50%) of student tuition for students enrolled in the MSMS Courses and any fees charged by University that are specifically related to the MSMS Courses.

(b) Such fees shall not include those fees charged by College to students for general academic services, registration, distance learning, and general instruction (e.g., academic facilities fees, student services fees, activities fees, athletics fees, late fees, and the like, collectively "College Fees"). College shall retain 100% of all College Fees. College shall be responsible for collecting/setting tuition for the MSMS Courses in accordance with its normal registration and tuition collection/setting processes. The total of tuition and fees charged for the MSMS Courses will not be less than the tuition per credit hour for a College Masters-level program as of the execution date of this Agreement, unless otherwise mutually agreed upon in writing. College will not offer the MSMS Courses for free, for non-monetary consideration, as a loss-leader, or otherwise for a reduced or discounted or deferred or delayed fee where such reduction,

discount, deferral or delay is not applicable in at least the same amount and proportion to all of the other courses being provided to students, without the prior written approval of PHSU, which approval may be granted or withheld by PHSU as it determines in its sole and absolute discretion. College will provide or provide access to all records relating to the fees above and financial information regarding per credit hour charges to PHSU in writing no later than 30 days after (i) the execution of this Agreement; and (ii) PHSU's request thereafter.

4.2. **Manner of Payment.** The "Refund Date" is the date each semester upon which, pursuant to University's policies, College is no longer required to provide any refund to a student who withdraws from the College MSMS Program. Each semester, on the Refund Date, PHSU shall invoice College for the appropriate fees due to PHSU based on the number of students who enrolled in the College MSMS Program for that semester. For purposes of this Article IV, a student is "enrolled" in the College MSMS Program if the student remains in the College MSMS Program beyond the Refund Date. All invoices are due and payable thirty (30) days after receipt and will exclude all sales, value added, and other taxes. Interest will accrue on late payments at one and one-half percent (1.5%) per month or the maximum rate permitted by applicable law, whichever is less, from the due date until paid.

4.3. **Number of Starts.** The parties agree to offer three (3) new program starts, in Fall, Spring and Summer, for each academic year. The parties agree to work collaboratively, establish parameters, and provide the resources required to enroll enough students in these starts to meet the enrollment requirements listed in Section 4.4. University agrees that, during the admissions process, every effort will be made to recruit for and enroll students in the next upcoming new program start.

4.4. **Enrollment Requirements.** The parties shall use their reasonable best efforts to facilitate enrollments in the College MSMS Program during the term of this Agreement.

## **ARTICLE V MISCELLANEOUS**

5.1. **Entire Agreement.** This Agreement represents the entire understanding of the parties with respect to the subject matter hereto and supersedes all prior agreements and understandings. The parties hold that they have not made representations of any kind in relation to this Agreement that do not appear in this document. No alteration or modification of this Agreement shall be valid unless in writing and executed by both parties.

5.2. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same document. Signatures of the parties transmitted by facsimile or other electronic means will be deemed to be their original signatures for any purpose whatsoever.

5.3. **Injunctive Relief.** Each party agrees that any actual or threatened breach of Section 1.1, Section 2.10 or Section 3.10 will constitute immediate, irreparable harm to the other party, for which monetary damages would be an inadequate remedy, and that injunctive relief is an appropriate remedy for such breach.

5.4. **No Third-Party Beneficiaries.** This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or will confer upon any other person (including students) or entity any legal



or equitable right, benefit, or remedy of any nature whatsoever, under or by reason of this Agreement.

5.5. **Return of Materials.** Upon the expiration or termination of this Agreement or upon the written request of the disclosing party, subject to the terms of this Agreement, the receiving party shall destroy or return to the disclosing party all originals or copies of proprietary information of the disclosing party and all derivatives thereof and, in the case of destruction, certify such destruction in writing.

5.6. **Severability.** If any provision of this Agreement is held to be invalid, illegal or unenforceable, whole or in part, such invalidity shall not affect any otherwise valid provision, and all other valid provisions shall remain in full force and effect.

5.7. **Authority.** The person executing this Agreement on behalf of each party hereby represents and warrants that his/her respective organization is a duly formed, validly existing entity, that the organization has full power and authority to enter into this Agreement, and that he/she is authorized to execute this Agreement on behalf of the organization.

5.8. **Governing Law; Forum.** In the event of a dispute, the parties shall firstly attempt to settle it by good faith negotiation within thirty (30) days before any other action is taken. If the parties are unable to settle the dispute after thirty (30) days of good faith negotiation, then the parties shall submit the dispute to a mutually agreed mediation service for mediation by providing to the mediation service a joint, written request for mediation, setting forth the subject of the dispute and the relief requested. The parties shall cooperate with one another in selecting a mediation service and shall cooperate with the mediation service and with one another in selecting a neutral mediator and in scheduling the mediation proceedings. The parties covenant that they will use commercially reasonable efforts in participating in the mediation. The parties agree that the mediator's fees and expenses and the costs incidental to the mediation will be shared equally between the parties. This Agreement shall be governed by Delaware law. Any legal suit, action or proceeding arising out of or related to this Agreement or the services provided hereunder shall be instituted exclusively in the federal courts of the United States or the courts of the State of Delaware in each case located in the city of Wilmington and County of New Castle, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of process, summons, notice or other document by mail to such party's address set forth herein shall be effective service of process for any suit, action or other proceeding brought in any such court.

5.9. **Assignment.** This Agreement shall not be assigned or transferred by either party without the prior written consent of the other party; provided, that, upon prior written notice to University, PHSU may assign the Agreement to (1) a successor of all or substantially all of the assets of PHSU through merger, reorganization, consolidation, acquisition, sale, or otherwise, or (2) any affiliate, subsidiary or parent entity of PHSU. Any attempted assignment, transfer or other conveyance in violation of the foregoing shall be null and void.

5.10. **Notices.** Any and all notices required to be given hereunder shall be sent registered or certified mail, postage prepaid, return receipt requested to the address as follows:

*For College:*

Dr. Javan Reed  
VP for Academic Affairs  
Simmons College of Kentucky  
1000 S. 4th Street  
Louisville, KY 40203

*For PHSU:*

Dr. David Lenihan  
President & CEO  
Ponce Health Sciences University  
388 Zona Ind Rep 2  
Ponce, PR 00716

5.11. **Force Majeure Default.** Except for payment defaults, the delay or failure of performance by either party due to an event of force majeure beyond its reasonable control (each, a “Force Majeure Event”) shall not constitute a breach of this Agreement, nor shall it give rise to any claims against either party for damages. The sole remedy for breach of this Agreement due to a Force Majeure Event shall be immediate termination of this Agreement after a party has failed to perform a material obligation for thirty consecutive days due to a Force Majeure Event. For the avoidance of doubt, payments arising under Article IV hereunder prior to a Force Majeure Event shall be due and payable in accordance with the terms of Section 4.2.

5.12. **No Waiver and Reservation of Rights.** Neither party waives its right to enforce any and all provisions of the Agreement at any time during the term of this Agreement. Each party specifically reserves any and all rights, remedies, and claims they have hereunder. Either party’s failure to enforce any provision shall not prejudice such party from later enforcing or exercising the same or any other provision of the Agreement.

5.13. **Waiver of Jury Trial.** Each party acknowledges that any controversy that may arise under this Agreement, including exhibits, schedules, attachments, and appendices attached to this Agreement, is likely to involve complicated issues and, therefore, each such party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement, including any exhibits, schedules, attachments or appendices attached to this Agreement, or the transactions contemplated hereby.

5.14. **Further Assurances.** Each of the parties hereto shall use commercially reasonable efforts to, from time to time at the request of the other party, without any additional consideration, furnish the other party such further information or assurances, execute and deliver such additional documents, instruments and conveyances, and take such other actions and do such other things, as may be necessary to carry out the provisions of this Agreement and give effect to the transactions contemplated hereby.

[Signatures on following page]

IN WITNESS WHEREOF, the parties hereby execute this Agreement as of the dates set forth below.

**TIBER HEALTH, Public Benefit Corp.,  
d/b/a PONCE HEALTH SCIENCES  
UNIVERSITY**

DocuSigned by:  
*Dr. David Lenihan*

Signature: \_\_\_\_\_

Printed Name: Dr. David Lenihan

Title: President and CEO

Date: 4/27/2023

Phone: 314-614-5005

e-mail: dlenihan@psm.edu

**SIMMONS COLLEGE OF KENTUCKY**

DocuSigned by:  
*Dr. Frank Smith*

Signature: \_\_\_\_\_

Printed Name: Dr. Frank Smith

Title: Senior Vice President and COO

Date: 4/26/2023

Phone: 502-776-1443, ext. 5116

e-mail: fsmith@simmonscollegeky.edu

**EXHIBIT A****MSMS Courses**

Gross Anatomy, Embryology & Imaging I	9
Medical Biochemistry I	5
Medical Biochemistry II	5
Physiology I	4
Physiology II	4
Histology and Cell Biology	4
Neuroscience	5
Microbiology	4
Interprofessional Perspectives in Health Disparities	1
Medical Ethics	1
Total Credits:	42

**Degree Award.** Students participating in the College MSMS Program are expected to complete a total of approximately forty-two (42) University course credits. The expected study period for each student is one (1) academic year consisting of three (3) semesters.