



TEAMING AGREEMENT

THIS TEAMING AGREEMENT is made and entered into between The Board of Trustees of The University of Alabama, for and on behalf of The University of Alabama in Huntsville, an entity of the State of Alabama, (hereinafter referred to as "Prime") and _____ (hereinafter referred to as "_____").

RECITALS

WHEREAS, Prime has special experience and unique capabilities in the field of _____ and _____ of _____, and;

WHEREAS, _____ has special experience and unique capabilities in the _____ and _____, and;

WHEREAS, the parties are interested in teaming in response to the _____ (hereinafter the "Customer") Request for Proposal (RFP) for _____ (hereinafter the "Program"), and;

WHEREAS, this Agreement will enable each party to complement the unique capabilities of the other and will provide the Customer with the best combination of capabilities to achieve the Customer's objective, and;

WHEREAS, Prime intends to submit a proposal in pursuit of the Program and desires _____ to participate with Prime in connection with the work described in Exhibit A which is attached hereto and by this reference made a part hereof (hereinafter called "EXHIBIT A").

NOW, THEREFORE, in consideration of the foregoing and mutual promises contained herein, and pursuant to the provisions of Federal Acquisition Regulation ("FAR") Subpart 9.6 (Contractor Team Arrangements), and intending to be legally bound, the parties have agreed as follows:

ARTICLE 1 - PROPOSAL ACTIVITIES

1.1 During the term of this Agreement, Prime shall use its good faith efforts to secure prime contracts for the Program, and _____ shall exercise good faith efforts to assist Prime in achieving this result through its endeavors in the field of EXHIBIT A work. Any modifications to EXHIBIT A shall be in writing signed by both parties.

1.2 _____ shall work with and at the direction of Prime using its good faith efforts to assure an appropriate interface between its work and that of Prime, and will cooperate from time to time in supporting marketing and proposal efforts on the Program as requested by Prime. At least 14 days prior to the date on which Prime's proposal is to be submitted, _____ will submit to Prime a proposal for the EXHIBIT A work. As part of any proposal, the _____ shall incorporate all material required to be responsive to the Customer's proposal request including any material pertinent to the work assigned to it as defined in EXHIBIT A, manuscripts, art work, Work Breakdown Structure (WBS), technical descriptions, and element cost and/or pricing data, as appropriate. Such proposal shall contain or be accompanied by accurate, current and complete pricing information in sufficient detail to permit costing of the prime contract and negotiation of the subcontract for the EXHIBIT A work.

1.3 Each party shall bear all costs, risks and liabilities incurred by it arising out of its performance of this Agreement. The Prime shall be responsible for the graphic arts, printing, binding and delivery costs of the proposal. Neither party shall have any right to any reimbursement, payment or compensation of any kind from the other during the period up to the award of a prime contract unless otherwise specifically agreed in writing by the parties.

ARTICLE 2 - AWARD OF CONTRACT

2.1 In the event Prime obtains a prime contract under the Program, the Prime shall, subject to any approval required by the Customer and Article 7, offer a subcontract to the _____ for that portion of the work set forth in EXHIBIT A.

2.2 Any subcontract hereunder shall consist of (a) the scope of work as described in Section 2.1, (b) a flow-down of clauses that the Customer requires the Prime to include in all of its (c) and conditions that are mutually acceptable to the parties.

2.3 The parties shall exert good faith efforts to negotiate a subcontract prior to prime contract award, including negotiating changes to material aspects of the subcontract which are required as a result of the Prime's definitized contract.

2.4 The Prime may be directed by the Customer to place some or all of the work contemplated as the _____ responsibility in EXHIBIT A to another source, or direct that such work be bid on a competitive basis. In either of such cases, the Prime, in consultation and cooperation with the _____, shall make good faith efforts to determine the cause for the Customer's direction and to use good faith efforts to convince the Customer to accept the _____ for the work in Exhibit A. If such efforts are unsuccessful, it is agreed that the Prime shall comply with the Customer's direction and shall notify the Sub in writing (see Article 7.1(c)(ii) and (iii)).

ARTICLE 3 - INTERFACE WITH THE CUSTOMER

3.1 The Prime shall be the primary contact with the Customer concerning the Program. If it becomes desirable for the _____ to contact the Customer concerning the Program, such contact must be approved by the Prime to ensure coordination of efforts and understanding of commitments prior to such contact. Nothing herein is intended to affect the rights of the Customer to negotiate directly with either party on any basis the Customer may desire. _____ shall advise Prime of any direct contacts by the Customer regarding the Program.

3.2 The _____ shall, as reasonably requested, assure the availability of management and technical personnel to assist the Prime in discussions and negotiations with the Customer.

3.3 If the Prime should be requested or is presented the opportunity to make presentations, whether orally or by written communications to the Customer concerning the _____ area of work on the Program, the _____ shall support such presentations as reasonably requested by the Prime.

ARTICLE 4 - PUBLICITY AND NEWS RELEASES

No news release, public announcement, advertisement or publicity concerning this Agreement, any proposals, any resulting contracts, or any subcontracts to be carried out hereunder, shall be released by either party without the prior written approval of the other party, which shall not be unreasonably withheld or delayed.

ARTICLE 5 - PROPRIETARY INFORMATION

The Proprietary Information Agreement executed by the parties on _____ and attached hereto as Exhibit B is hereby incorporated by reference.

ARTICLE 6 - INTELLECTUAL PROPERTY

6.1 For purposes of this Agreement, the term Intellectual Property shall mean patented and unpatented inventions, mask works, copyrighted works, trade secrets, know-how and proprietary information of either party (hereinafter "Intellectual Property"). It is mutually understood and agreed that neither party shall acquire, directly or by implication, any rights in any Intellectual Property of the other party owned, controlled, acquired, developed, authored, conceived or reduced to practice prior to the date of this Agreement, including but not limited to, inventions described and claimed in applications for U.S. Letters Patent filed prior to the date of this Agreement, except as expressly provided herein or in any resulting subcontract between the parties.

6.2 Each party hereto, insofar as it is free to do so without obligation to others, hereby authorizes the other party to use its Intellectual Property solely as necessary for the performance of each party's respective obligations under this Agreement. Similarly, and only to the extent that a party is free to do so without obligation to others, any subcontract between the parties resulting from this Agreement shall contain appropriate royalty-free cross licenses between the parties so as to enable each such party to use Intellectual Property of the other party to perform its obligations under said subcontract and the associated prime contract with the Government.

6.3 Subject to any rights of the Government, each party shall retain title to any Intellectual Property if developed, authored, conceived or reduced to practice independently and solely by that party during the performance of this Agreement without the other party's Intellectual Property. In such event, no license, express or implied, shall inure to the benefit of the other participating party to prepare copies and derivative works of such copyrighted works or to make, use, sell and export/import products or processes incorporating such Intellectual Property, except as expressly provided herein or in any resulting subcontract between the parties.

6.4 In the event Intellectual Property is developed by one party during the performance of this Agreement, which invention or copyrighted work necessarily derives from and incorporates Intellectual Property disclosed by the other party, such invention and/or copyrighted works shall be and remain the property of the inventing party; provided, however, that the inventing party shall and does hereby grant to the other party hereto a nonexclusive, worldwide, royalty-free, irrevocable right and license to make copies and derivative works of such Intellectual Property, and to make, have made, use, sell and have sold for any purpose such invention, products or processes incorporating such Intellectual Property.

6.5 In the event Intellectual Property is developed jointly by the parties during the performance of this Agreement, unless expressly provided otherwise in any subsequent subcontract between the parties resulting from this Agreement, such Intellectual Property shall be owned jointly by the parties unless one of the parties elects not to participate in such joint ownership. Neither party shall take action with respect thereto which will adversely affect the rights of the other party without the prior written consent thereof. As to all such jointly owned Intellectual Property, each owning party shall be free to use, practice and license non-exclusively such jointly owned Intellectual Property, without in any way accounting to the other owning party, except that each owning party agrees to use reasonable efforts to maintain such jointly owned Intellectual Property as confidential and proprietary in the same manner it treats its own Intellectual Property of a similar character. Procedures for seeking and maintaining protection such as patents or copyrights for jointly owned Intellectual Property shall be mutually agreed in good faith by the owning parties. Any party which does not bear its proportionate share of expenses in securing and maintaining patent protection on jointly owned Intellectual Property in any particular country or countries shall surrender its joint ownership under any resulting patents in such country or countries.

ARTICLE 7 -TERMINATION

7.1 This Agreement shall terminate and all rights and duties hereunder, except those in Articles 5, 6, 12, 15, and 16, shall cease upon the first to occur of the following:

- a. Official announcement by the Customer that the Program has been canceled or an award will not be made for the Program;
- b. Award of a prime contract to a contractor(s) other than Prime;
- c. Award of a prime contract to Prime under the Program which includes EXHIBIT A work and funding therefore, and
 - (i) execution by the parties of a subcontract under such prime contract in accordance with this Agreement.

- (ii) disapproval by the Customer of such a subcontract to _____,
- (iii) direction by the Customer to utilize a subcontract source other than _____ for a substantial portion of the EXHIBIT A work, or failure of Prime and _____, after negotiation in good faith, to reach agreement after a reasonable time on the terms of a subcontract offered by the Prime under this Agreement.
- d. Mutual consent of the parties in writing;
- e. Eight months after the effective date of this Agreement;
- f. Notification to _____ of the good faith decision by Prime not to submit a proposal under the Program.

7.2 If this Agreement is terminated, either party shall be free to pursue its individual technical approach in association with the successful contractor or a third party for work that is the subject of this Agreement, subject to the provisions that survive termination (Articles 5, 6, 12, 15, and 16).

ARTICLE 8 - NOTICES

All notices, certificates, acknowledgments and other reports sent by a party hereunder, shall be in writing and may be delivered to the other party by hand delivery, by certified mail (return receipt requested), by nationally recognized air courier (Federal Express, UPS, DHL or Airborne Express), by fax or by electronic mail at its address as follows, or to such other address as either party may, by written notice, designate to the other. If either party so requests in connection with a hand-delivered notice, the other shall promptly execute a hand delivery confirmation sheet. If either party so requests, the other party shall promptly confirm receipt of notices sent to it by electronic mail or fax by return e-mail or fax confirmation. Notices shall be deemed to have been delivered on the time and date shown in the hand delivery confirmation, in records supplied by nationally recognized air couriers on their websites or otherwise, or at the date and time shown in confirming fax or e-mail messages.

THE UNIVERSITY OF ALABAMA IN
HUNTSVILLE
301 Sparkman Drive,

Huntsville, AL 35899

ATTN: _____

Tel: (256) _____

Fax: (256) _____

E-mail _____

ATTN: _____

Tel: _____

Fax: _____

E-mail _____

ARTICLE 9 - RELATIONSHIP

This Agreement is not intended by the parties to constitute or create a joint venture, pooling arrangement, partnership, or formal business organization of any kind, other than a prime/subcontractor arrangement, and the rights and obligations of the parties shall be only those expressly set forth herein. Neither party shall have authority to bind the other except to the extent expressly authorized herein. The Prime and Sub shall remain as independent contractors at all times and neither party shall act as an agent for the other.

ARTICLE 10 - ASSIGNMENT

Neither party may assign or transfer its interest hereunder or delegate its duties without the prior written consent of the other party, which consent shall not be unreasonably withheld.

ARTICLE 11 - MODIFICATIONS, WAIVERS

This Agreement shall not be amended or modified, nor shall any waiver of any right hereunder be effective unless set forth in a document executed by duly authorized representatives of both the Prime and the Sub. The waiver of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same.

ARTICLE 12 - SEVERABILITY

If any part, term, or provision of this Agreement shall be held void, illegal, unenforceable, or in conflict with any law of a Federal, State, or local Government having jurisdiction over this Agreement, the validity of the remaining portions of provisions shall not be affected thereby. In the event that any part, term or provision of this Agreement is held void, illegal, unenforceable, or in conflict with any law of the Federal, State, or local Government having jurisdiction over this Agreement, the parties agree, to the extent possible, to include a replacement provision, construed to accomplish its originally intended effect, that does not violate such law or regulation.

ARTICLE 13 - LIMITATION OF LIABILITY

EXCEPT FOR LIABILITY ARISING FROM A BREACH OF ARTICLES 5 OR 6 (PROPRIETARY INFORMATION AND INTELLECTUAL PROPERTY, NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL (INCLUDING MULTIPLE OR PUNITIVE) OR OTHER INDIRECT DAMAGES THAT ARE CLAIMED TO BE INCURRED BY THE OTHER PARTY WHETHER SUCH CLAIM ARISES UNDER CONTRACT, TORT (INCLUDING STRICT LIABILITY) OR OTHER THEORY OF LAW.

ARTICLE 14 - CLASSIFIED INFORMATION

To the extent the obligations of the parties involve access to security information classified U.S. Customer "Confidential" or higher, the provisions of applicable Customer regulations shall apply.

ARTICLE 15 - GOVERNING LAW

This Agreement shall be enforced and interpreted under federal contract law, as set forth in the Federal Acquisition Regulation and agency supplements thereto and in the decisions of the federal courts and boards of contract appeals. To the extent that federal contract law does not address one or more issues, this Agreement shall be enforced and interpreted under the laws of the State of Alabama.

ARTICLE 16 - ENTIRE AGREEMENT

This is the entire Agreement between the parties relative to the Program and the exchange of proprietary information concerning the Program; it supersedes and replaces any and all previous understandings, commitments or agreements, oral or written, related to the award of a contract under the Program.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed in duplicate originals by their duly authorized representatives effective as of the day and year last below written.

UNIVERSITY OF ALABAMA IN HUNTSVILLE

BY: _____
NAME: Kenya S. Cole, MBA, CRA
TITLE: Director, Sponsored Programs
DATE: _____

BY: _____
NAME: _____
TITLE: _____
DATE: _____

EXHIBIT A – SUBCONTRACTOR’S SCOPE OF WORK

TBD

EXHIBIT B -- Proprietary Information Agreement

PROPRIETARY INFORMATION NON-DISCLOSURE AGREEMENT