**TEAMING AGREEMENT**

 This Teaming AGREEMENT (“AGREEMENT”) is effective as of the latter date of the signature appearing below and is made by and between Howard University, an institution of higher education incorporated by an Act of Congress, with business offices at 2400 6th Street, N.W., Washington, D.C. 20059, (hereinafter referred to as “Howard”), and       having offices at      , (hereinafter referred to as “Teammate”).

**PREMISES**

 **WHEREAS**, Howard and Teammate (hereinafter collectively referred to as the “Parties”), because of their diverse capabilities, have determined that they would benefit from joining together in a teaming arrangement for the purpose of developing the best management, technical, and cost approach to be included in a proposal (the “Proposal”) that will be submitted in response to Request for Proposal (“RFP”) issued by the      (“Agency”) for       (the “Program”);

 **WHEREAS**, the Parties intend that the Proposal will identify       as the prime contractor (hereinafter referred to as the “Prime”) and       as a Subcontractor (hereinafter referred to as “Subcontractor”) for certain work identified herein;

 **WHEREAS**, this AGREEMENT is entered into to enable each Party to enjoy the benefits of the other Party’s capabilities in areas of work that are not independently available within each respective Party;

 **WHEREAS**, it is desirable to set forth this division and understanding in writing; and

 **WHEREAS**, the Parties desire to define their mutual rights and responsibilities in connection with the Proposal and, if accepted, the work to be performed thereunder.

 **NOW THEREFORE**, in consideration of the Premises, Covenants and representations made therein, and intending to be legally bound thereby, the Parties agree as follows:

1.0 **APPLICABILITY**

1.1 The Prime will submit the Proposal for performance of the work described in the RFP and will identify       as a subcontractor for that portion of the work described in Exhibit A, incorporated herein by reference. If the terms of Exhibit A conflict with this Agreement, this Agreement shall control. If Exhibit A adds additional terms to this Agreement unrelated to the Program, those additional terms shall have no force or effect.

1.2 Each Party will exert its best efforts to assist in the preparation of a Proposal that will cause the selection of the Prime as the prime contractor for the Program and the acceptance of the Subcontractor by Agency. Each Party will continue to exert its best efforts toward this objective throughout any and all negotiations concerning the award of contract or subcontracts pursuant to the proposal.

1.3 It is understood that the Prime will, in the Proposal and in all discussions with respect thereto, identify the Subcontractor as such, and will state in such Proposal or discussions the relationship of the Parties as hereinafter set forth, and the spheres of endeavor and responsibility of the Subcontractor as set forth in Exhibit A.

1.4 The Subcontractor will furnish, for incorporation into the Proposal, all proposal material pertinent to the work assigned to the Subcontractor as defined in the attached Exhibit A, including but not limited to manuscripts, art work, technical, management, and scheduling data, information, resumes cost and/or pricing data, as may be reasonably required. The Subcontractor will also furnish qualified personnel who will cooperate together with the Prime in drafting relevant portions of the proposal.

1.5 Each Party shall furnish to the other such cooperation and assistance as may be reasonably required hereunder; provided, however, that the Parties, as between themselves, shall be deemed to be independent contractors, and the employees of one shall not be deemed to be the employees of another.

1.6 The Subcontractor will assure availability of personnel, including management and technical personnel, to assist the Prime in any discussions and negotiations with Agency directed toward obtaining the award of a contract.

1.7 The Prime shall retain control over and manage all proposal efforts as well as any negotiations that may be conducted with Agency regarding the award of any contract pursuant to the Proposal and the RFP. The Prime alone shall determine the final content of the Proposal, provided that, the Subcontractor shall have the right to review that portion of the final Proposal, and any modification thereto, that pertains to the work described in Exhibit A prior to the time of its submission to Agency. Subject to such right of review, the Prime will have the sole right to decide the form and content of all documents submitted to Agency.

1.8 Unless expressly authorized by the Prime, all communications with Agency pertaining to the RFP or the Proposal shall be made through the Prime. In the event Agency communicates with the Subcontractor concerning such RFP or Proposal, the Subcontractor shall promptly notify the Prime.

2.0 **AWARD OF SUBCONTRACT**

2.1 If, during the term of this AGREEMENT, a contract is awarded to the Prime as a result of its Proposal, the Prime will, to the extent permitted by Government rules, regulations and applicable law, enter into negotiations with the Subcontractor for a subcontract wherein the Prime will exert best efforts to subcontract to the Subcontractor that portion of the work set forth in Exhibit A. The Parties shall exert their best efforts to reach a subcontract agreement within a reasonable period of time not to exceed 90 days from the award of the contract to the Prime, unless a further extension is mutually agreed to by the Parties. The terms and conditions of the Subcontract will be consistent with the terms and conditions in the Prime contract. It is agreed that the Subcontract terms and conditions will not conflict with Government rules, regulations and applicable law.

3.0 **PUBLICITY**

 Any news releases, public announcement, advertisement or publicity concerning this AGREEMENT, or the Proposal, or any resulting contracts or subcontract to be carried out hereunder, will be subject to the prior mutual consent of the Parties.

4.0 **SOLICITATION OF EMPLOYEES**

Each Party agrees that during the term of this AGREEMENT and any resulting Prime contract and Subcontract, it shall not specifically solicit or recruit the employees of the other Party. This undertaking shall not preclude any employee of a Party from pursuing and securing employment opportunities with the other Party on such employee’s own initiative.

5.0 **CONFIDENTIALITY AND PROPRIETARY INFORMATION**

5.1 During the term of this AGREEMENT, the Parties, to the extent of their right to do so, and as is required for each to perform its obligation hereunder, may exchange proprietary and confidential information.

(a) Proprietary and confidential information is defined as, but not limited to, performance, revenue, financial, cost, contractual, and special marketing information, ideas, technical data and concepts originated by the disclosing Party, not previously published or otherwise disclosed to the general public, not previously available to the receiving Party or others without restriction, not normally furnished to others without compensation, which the disclosing Party desires to protect against unrestricted disclosure or competitive use, and which is furnished pursuant to this AGREEMENT and appropriately identified as being proprietary or confidential when furnished.

(b) The receiving Party of proprietary or confidential information agrees to hold such information in confidence, subject to the provision of paragraph 5.1(i).

(c) Each Party will designate, in writing, one or more individuals within their own organization as the only person(s) for receiving proprietary or confidential information exchanged between the Parties pursuant to this AGREEMENT.

(d) All proprietary or confidential information received from a Party will be in writing, clearly identified as proprietary or confidential, marked in accordance with 48 CFR 52.215-12 or similar marking and addressed to the individual designated to receive proprietary or confidential information. Where properly identified proprietary information is provided orally, it should be reduced to writing with 15 days of its disclosure, with appropriate legends affixed.

(e) Each Party is authorized to incorporate such proprietary or confidential information in the Proposal contemplated by this AGREEMENT for submittal to the Agency provided that, such Proposal bears a restrictive legend similar to that provided for in 48 CFR 52.215-12, or other appropriate procurement regulations.

(f) Proprietary or confidential information which is exchanged may be used by the receiving Party only in connection with the purposes of the AGREEMENT, or in the performance of any resultant contract and subcontract contemplated thereunder in which the disclosing Party participates.

(g) It is further agreed that each Party will require that all of its agents or representatives, if any, having a need for and receiving proprietary or confidential information, protect the same in accordance with the provisions contained herein.

(h) The standard of care for protecting such information, imposed on the Party receiving such information, will be that degree of care the receiving Party uses to prevent disclosure, publication or dissemination of its own proprietary or confidential information, but in no event less than a reasonable standard of care.

(i) The obligations of nondisclosure and nonuse of proprietary or confidential information imposed in this section 5.0 shall terminate four years after receipt of such information, unless the disclosing Party enters into a definitive subcontract, in which case, the rights and obligations of the Parties shall be governed by that Subcontract.

5.2 The obligation with respect to the protection and handling of proprietary or confidential information, as set forth in this AGREEMENT, is not applicable to the following:

(a) Information which becomes lawfully known or available to the receiving Party from a source other than the disclosing Party, including the Government, and without breach of this AGREEMENT by the recipient;

(b) Information developed independently by the receiving Party;

(c) Information which is within, or later falls within, the public domain without breach of this AGREEMENT by the recipient; or

(d) Information compelled for disclosure by a government agency or court with jurisdiction.

5.3 The disclosing and receiving of proprietary information between the Parties hereto is governed solely by the terms and conditions of this AGREEMENT and shall not be deemed to establish a confidential relationship between the Parties regardless of any markings of any information to the contrary.

5.4 No license to a Party under any trademark, patent or copyright, or applications which are now or may thereafter be owned by such Party, is either granted or implied by the conveying of information by that Party to another Party. None of the information which may be submitted or exchanged by the Parties shall constitute any representation, warranty, assurance, guarantee or inducement by a Party to another with respect to the infringement of trademarks, patents, copyrights or any right of privacy, or other rights of third persons.

6.0 **TERMINATION**

6.1 Except as provided for in paragraph 62, this AGREEMENT shall terminate upon the occurrence of any one of the following events:

(a) An official Agency announcement that an award will not be made based on the RFP or that the RFP or Program has been canceled;

(b) Upon the award of a contract pursuant to the subject RFP to a contractor(s) other than the Prime and the Prime elects not to challenge such award by protest or through the filing of an action in a court of competent jurisdiction;

(c) The Agency objects to this AGREEMENT or the selection of the Subcontractor for the performance of the work described in Exhibit A, or the Subcontractor is otherwise found to be an ineligible or non-responsible source;

(d) A Party becomes insolvent or subject to a petition in bankruptcy or is placed under the control of a receiver, liquidator, or committee of creditors;

(e) A Party commits a material breach of a term or condition of this AGREEMENT and the non-breaching Party elects to terminate;

(f) Mutual consent of both Parties expressed through the execution of a recession agreement;

(g) Pursuant to paragraph 2.1, within 90 days after the award of a prime contract to the Prime if no subcontract agreement has been executed between the Parties prior to the expiration of such 90 day period;

(h) Upon the award by the Prime a subcontract to the Subcontractor to perform the work described in Exhibit A; or

(i) Upon the date of:      .

6.2 The termination of this AGREEMENT shall not supersede the obligation of the Parties with respect to the protection of proprietary or confidential information, as set forth in Section 5.0.

7.0 **EXCLUSIVITY**

7.1 Unless and until this AGREEMENT terminates as provided herein, the Parties shall not participate in any effort to prepare or execute a Proposal in response to the RFP outside of the terms of this AGREEMENT. However, it is understood that nothing contained herein shall be deemed to restrict any Party from quoting, offering to sell, or selling to others any items or services that it may regularly offer for sale, even though such items or services may be included in this Proposal.

7.2 The Parties further agree that they will not participate in other team efforts that are competitive to this Teaming AGREEMENT nor compete independently for work covered by the RFP during the term of this AGREEMENT. The term “participate,” as used herein, includes the exchange of technical data with competitors.

8.0 **RELATIONSHIP OF THE PARTIES**

 This AGREEMENT is not intended by the Parties to constitute or create a joint venture, partnership, or formal business organization of any kind, other than a contractor team arrangement as set forth in 48 CFR Subpart 9.6. The rights and obligations of the Parties shall be only those expressly set forth herein. No Party shall have authority to bind another Party except to the extent authorized herein. The Parties shall remain as independent contractors at all times and no Party shall act as an agent for another. Each Party shall bear its own respective costs, expenses, risks and liabilities arising out of performance hereunder.

9.0 **LIMITATION ON LIABILITY; INDEMNIFICATION**

 In the event of any breach by either Party of its obligations under this AGREEMENT, such Party shall be liable for direct damages suffered by the other Party which are caused by such breach in accordance with applicable law. In no event shall either Party be liable for special or consequential damages of any kind or nature whether alleged to be attributed to such breach of AGREEMENT, to tort or negligence, or otherwise caused. In no event shall either Party be liable to the other for lost profits resulting from alleged breach of this AGREEMENT even if, under applicable law, such lost profits would not be considered consequential or special damages.

10.0 **ASSIGNMENT; SUBCONTRACTING**

The duties and responsibilities under this AGREEMENT may not be assigned, subcontracted, or otherwise transferred by a Party, in whole or in part, without the expressed prior written consent of the other Party.

11.0 **WAIVERS**

 Any waiver by a Party to any term or condition of this AGREEMENT by the other Party shall not affect or impair the waiving Party’s right with respect to any subsequent act or omission of the same type, nor shall it be deemed to waive any other right under this AGREEMENT; nor shall any delay or omission of a Party to exercise any right arising under this AGREEMENT affect or impair such Party’s rights as to the same or any future delay or omission; nor shall the failure of a Party to this AGREEMENT to require or exact full and complete compliance with any one or more of the provisions of this AGREEMENT be construed as in any manner changing such provision or provisions.

12.0 **ENTIRE AGREEMENT; MODIFICATIONS**

 This writing contains the entire AGREEMENT of the Parties. No representations were made or relied upon by any Party other than those expressly set forth herein. No agent, employee or representative of a Party is empowered to alter or modify any of the terms in this AGREEMENT unless such modification is done in writing and signed by the signatories below or other authorized representatives designated in writing by the signatories below.

13.0 **SEVERABILITY**

 Any provision of this AGREEMENT that is invalid, illegal or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability, without affecting in any way the remaining provisions hereof in such jurisdiction or rendering that or any other provision of this AGREEMENT invalid, illegal or unenforceable in any other jurisdiction.

14.0 **AUTHORITY TO ACT**

 The Parties hereto warrant and represent that they have the power and authority to enter into this AGREEMENT and to consummate the transactions contemplated hereby and have been duly authorized to execute this AGREEMENT.

15.0 **DISPUTE RESOLUTION; CONTROLLING LAW**

If any dispute arises under this AGREEMENT, that is not settled promptly in the ordinary course of business, the Parties shall seek to resolve such dispute between them, first, by negotiating promptly with each other in good faith in face-to-face negotiations. If the Parties are unable to resolve the dispute within 10 business days, or such period as the Parties shall otherwise agree, through these face-to-face negotiations, then any such dispute shall be resolved pursuant to the following principles and in the following manner.

(a) This AGREEMENT shall be interpreted, controlled, and enforced in accordance with the substantive laws of the District of Columbia without reference to its Conflict of Laws Rule.

(b) All disputes under this AGREEMENT (including a dispute as to whether a particular issue falls within the scope of this AGREEMENT) shall be settled by binding arbitration between the disputing Parties hereto in accordance with the commercial arbitration rules of the American Arbitration Association. Such arbitration shall take place in Washington, D.C. and shall be conducted by three neutral arbitrators who shall be selected by the American Arbitration Association.

(c) Each Party shall bear its own expenses in any arbitration conducted under this section, regardless of the outcome of the arbitration. The costs incurred for the services of the neutral arbitrators selected pursuant to (b) shall be shared equally by the disputing Parties.

(d) Judgment upon any arbitral award issued hereunder may be entered in accordance with the applicable law in any court in the District of Columbia having jurisdiction thereof. All Parties to this Agreement hereby submit to personal jurisdiction in the District of Columbia for such purposes and/or the purposes of enforcing arbitration hereunder.

(e) In the event such litigation is commenced, each Party agrees that service of process may be made, and personal jurisdiction over each obtained, by service of a copy of the summons, complaint, and other pleadings required by applicable law to commence such litigation upon the Party’s appointed agent of service of process in the District of Columbia. In the event a Party fails to appoint such agent pursuant to the laws of the District of Columbia, or if such appointment should lapse for any reason, each Party hereby alternatively designates its signatory to this AGREEMENT as its appointed agent for the service of process in the District of Columbia, regardless of the place of residency of such signatory.

 **IN WITNESS WHEREOF**, each of the parties hereto has caused this AGREEMENT to be executed by its duly authorized representatives as of the date and year above written.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ HOWARD UNIVERSITY

By:

Name: Name: Title: Title: Date: Date: