**BI-LATERAL CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT**

This Agreement is effective as of the latter date of the signatures below and is made by and between Howard University Hospital Corp, 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 “HUHC”), and      , having an address at:       (the “Other Party”). Under this Agreement, the Party that discloses confidential information shall be referred to as “Disclosing Party and the Party that receives confidential information shall be referred to as “Receiving Party.” HUHC and       may also be referred to collectively as the “Parties”, and each respectively, as a “Party,” the “other Party,” as appropriate.

**PREMISES**

**WHEREAS**, the Parties intend to enter into confidential discussions related to       (the “Project”); and

 **WHEREAS**, pursuant to the terms of this Agreement, HUHC and       may exchange, orally, in writing, by electronic means, or by inspection, certain information, business plans and processes, technology, data, material and documents regarding the Parties’ security infrastructure and plans, businesses, assets, liabilities, financial conditions, operations, identity of personnel, confidential personal information of students and employees, intellectual property (including “trade secrets), and other related information, all of which relating to the Project (collectively and individually referred to as “Proprietary Information”).

 **NOW THEREFORE**, in consideration of the Premises and Covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**COVENANTS**

**1.0 PROPRIETARY INFORMATION.**

**1.1 Access and Use.** Except as provided in paragraph 1.2, the existence of this Agreement, the provisions contained herein, discussions between the Parties pursuant to this Agreement, and all Proprietary Information hereafter furnished by the Disclosing Party, or on its behalf, to the Receiving Party, shall be deemed confidential and shall be kept in confidence under appropriate safeguards at least as stringent as those used by the Receiving Party to protect its own information of like nature, but in no event shall the Receiving Party use less than reasonable safeguards to protect such Proprietary Information.

**1.1.2 Purpose**. The purpose of the this Agreement is to allow the Parties the opportunity to evaluate each other’s Proprietary Information, for the sole purpose of determining whether to enter into a Project.

**1.2** **Exceptions**. Without the Disclosing Party’s prior written consent, the Receiving Party shall not directly or indirectly:

(a) disclose or reveal the information described in paragraph 1.1 or any Proprietary Information to any person, firm or entity, except to a limited group of Receiving Party’s directors, officers, employees, attorneys, professional advisors or representatives (including agents, accountants, financing sources and financial advisors) who are actively and directly participating in discussions regarding the Project (collectively, “Receiving Party Representatives”), each of whom shall be informed by Receiving Party of the confidential nature of the Proprietary Information and legally bound by the Receiving Party to adhere to the Receiving Party’s obligations hereunder;

(b) use the Proprietary Information in any way detrimental to the Disclosing Party, or for any purpose other than in connection with discussions regarding the Project; or

(c) disclose to any person (other than Receiving Party Representatives) the terms, conditions or other facts with respect to these discussions (including, without limitation, the existence and status thereof or the fact that discussions between the Parties are either taking place or have terminated), or that Proprietary Information has been made available to the Receiving Party.

**1.3** **Rights**. Other than the limited right of access to and use of the Proprietary Information for the purposes provided for herein, no title, license, interest, or right shall be granted, either expressly, by implication, by estoppel or otherwise, to the Receiving Party under any patent, trademark, copyright, trade secret or other proprietary right now or hereafter owned or controlled by the Disclosing Party. In the event that discussions between the parties directly or indirectly result in the Disclosing Party and/or the Receiving Party solely or jointly developing a modification or improvement on the Disclosing Party’s intellectual property, the Receiving Party hereby expressly waives any rights in such modification or improvement in favor of the Disclosing Party; and to the extent that such interests cannot be waived, the Receiving Party agrees to assign all rights in said modification or improvement to the Disclosing Party without further consideration. The Receiving Party shall assist the Disclosing Party to obtain and enforce any and all propriety rights relating to any and all intellectual property developed under this agreement.

**1.4 Notification of Disclosure.** The Receiving Party shall promptly notify the Disclosing Party, in writing, if the Receiving Party becomes aware of any unauthorized use, disclosure, or theft of the Disclosing Party’s Proprietary Information, shall implement and describe to the Disclosing Party the Receiving Party’s actions to prevent any further unauthorized use, disclosure, or theft of such Proprietary Information, and shall take such action independently and in support of the Disclosing Party as may be useful in limiting the damage resulting from such unauthorized use or disclosure..

**1.5 Permitted Disclosure**. The Receiving Party shall not be liable hereunder for the disclosure or use of information if such information was:

(a) in the public domain at the time of disclosure;

(b) can be shown by the Receiving Party to have been already known or independently developed by the Receiving Party prior to receipt from the Disclosing Party;

(c) publicly known or publicly available through no breach of this Agreement by the receiving party;

(d) disclosed by the Receiving Party in response to a valid subpoena, court order or other legal process, and not subject to a protective order; provided that, if disclosure is so required, the Receiving Party shall promptly notify the Disclosing Party, in writing, of such subpoena, order or other legal process; or

(e) obtained from a third party and was disclosed based on the reasonable belief of the Receiving Party that the third party had a valid right of disclosure.

 **1.6 Injunctive Relief**. Each party acknowledges that in the event that either Party breaches its nondisclosure obligations hereunder, the other Party will not have an adequate remedy at law and, therefore, the non-breaching Party shall be entitled to seek immediately an injunction against such breach or further breach from any court of competent jurisdiction. The right to obtain such injunctive relief shall not limit the non-breaching Party’s right to seek other remedies.

**1.7 Obligation Survives Agreement.** Each party’s nondisclosure obligations and prohibitions against unauthorized use under this Agreement shall survive for five (5) years after termination or expiration of the Agreement.

**2.0 TERMINATION OR EXPIRATION**

Upon the termination or expiration of this Agreement or upon request by either Party, both Parties shall cease all use of the Proprietary Information and return or destroy Proprietary Information and any copies thereof, as may be directed by the other Party.

**3.0 REMEDIES.**

All remedies available to either party for breach of this Agreement by the other party are and shall be deemed cumulative and may be exercised separately or concurrently. The exercise of a remedy shall not be an election of such remedy to the exclusion of other remedies available at law or in equity.

**4.0 ASSIGNMENT**

Neither party shall assign or otherwise transfer this Agreement, or any right or obligation under this Agreement, without the prior written consent of the other party. The obligations of either party hereunder shall not terminate upon any assignment attempted without such prior written consent.

**5.0 WAIVER**

Any delay or failure by either party to insist upon strict performance of any obligation hereunder, or exercise any right or remedy provided hereunder, shall not be a waiver of such party’s right to demand strict compliance with the provisions of this Agreement by the other Party, irrespective of the length of time for which such delay or failure continues. No term or condition of this Agreement shall be waived and no breach excused unless such waiver or excuse of a breach has been put in writing and signed by the party claimed to have waived or excused. No consent or waiver to or of any right, remedy or breach shall constitute a consent or waiver to or of any other right, remedy or breach in the performance of the same or any other obligation hereunder.

**6.0 INDEPENDENT PARTIES**

This Agreement shall not be construed to create, give effect to, or otherwise imply a joint venture, partnership, or business association of any kind. Both Parties are independent parties and neither shall act as an agent for or partner of the other party for any purpose.

**7.0 SEVERABILITY**

If any term or condition of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Agreement shall not be affected thereby, and each remaining term or condition hereof shall be valid and enforced to the fullest extent permitted by law. In the event such determination prevents the accomplishment of the purpose of this Agreement, the invalid provision shall be restated to conform with applicable law and to reflect as nearly as possible the original intention of the parties.

**8.0 HEADINGS**

The headings used in this Agreement are merely for reference and impose no obligation nor have any substantive significance.

**9.0 THIRD PARTIES**

This Agreement does not limit or restrain in any way either Party’s right to execute similar agreements with other parties.

**10.0 ENTIRE AGREEMENT**

This Agreement constitutes the entire understanding and agreement between the parties and shall supersede any prior agreement, written or oral, not incorporated herein. The terms and conditions of this Agreement shall not be amended except by written agreement signed by both parties.

**11.0 No Follow-on Rights**

No disclosure made pursuant to this Agreement shall result in any obligation on the part of either Party to enter into any further agreement or discussion relating to the Project or any other matter.

**12.0 TERM**

This Agreement shall expire on the first anniversary of the effective date, unless sooner terminated at the election of either Party upon the provision of 10 days written notification to the other Party. However, the obligations prohibiting unauthorized disclosure or use of Proprietary Information shall survive the termination of this Agreement, as provided in subsection 1.7.

**13.0 COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which shall be effective only upon delivery and thereafter shall be deemed an original, and all of which shall be taken to be one and the same instrument, for the same effect as if all parties hereto had signed the same signature page. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more additional signature pages.

**14.0 SUBSEQUENT AGREEMENTS**

 If the Parties wish to enter into negotiations for a subsequent agreement involving any confidential information disclosed under this Agreement, the terms and conditions of any resulting agreement shall govern the rights, duties, and privileges of the parties concerning such confidential information. The terms and conditions of this Agreement would be superseded and replaced by any such agreement entered into by the Parties.

**IN WITNESS WHEREOF**, the Parties, intending to be legally bound thereby, hereby execute this Confidentiality and Nondisclosure Agreement.

**FOR OTHER PARTY**

 By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name:

Title:

 Date:

**FOR HUHC**

 By:

Name:

Title:

Date: