

UNIVERSITY of HOUSTON



Teaming Agreement

This Agreement, made and entered into on _____, by and between _____ ("SBC"), with offices located at _____ and the University of Houston ("UH"), an agency of the State of Texas pursuant to Chapter 111, Texas Education Code, located at 4800 Calhoun St., Houston, Texas.

The above identified Parties, because of their diverse capabilities, have determined that they would benefit from a team arrangement between their respective organizations, to develop the best management and technical approach to create a STTR ("Small Business Technology Transfer Program") or a SBIR ("Small Business Innovation Research Program") (collectively "Program"), in response to RFP NO. _____, to be procured by the Government by the award of a contract in response to a proposal submitted by the team parties; and if a contract award arises out of these premises, Parties agree that SBC is the prime contractor, and UH is the subcontractor for the particular phases of Program as identified;

This Agreement is entered into to enable each Party to enjoy the benefits of the other Party's capabilities in areas of work which are not independently available within the respective companies; and

In consideration of the mutual promises contained, Parties agree as follows:

- Best Effort.** Each Party will exert its best efforts to produce a proposal or proposals which will cause the selection of SBC as a prime contractor for Program and the acceptance of UH as the subcontractor for the work assigned to SBC and each Party will continue to exert its best efforts toward this objective throughout any and all negotiations concerning a proposed contract or subcontract which may follow the submission of the proposal or proposals. This requirement includes the furnishing of qualified personnel who will cooperate together in drafting a proposal.
- Identification.** It is understood that SBC will, in any proposal which Parties submit and in all discussions, identify UH as a team member, and will state in the proposal or discussions the relationship of Parties as set forth and the areas of endeavor, tasks, and responsibility. Changes will be accomplished as mutually agreed to by both parties in writing.
- Additional Members.** UH reserves the right, upon notification to SBC, to add additional members to Program team to assist in performing tasks outside the capabilities and scope of SBC's tasks. If additional members are added, UH agrees to obtain adequate written protection of SBC's proprietary information from the new team member(s).
- Proposal Material.** UH will furnish, for incorporation into any proposal, all proposal material pertinent to the work assigned to SBC, including, but not limited to manuscripts, art work, and cost and/or pricing data, as appropriate. UH will provide SBC, as part of its cost proposal, completed Government cost and pricing forms and certifications with detailed supporting schedules, including estimate rationale and bid rates with source data for both, in sufficient detail to permit SBC's evaluation. Cost format and work breakdown structure will be as specified by UH.
- Personnel Availability.** UH will assure availability of management and technical personnel to assist SBC in any discussions and negotiations with the Government directed toward obtaining the award of a contract if requested to do so by SBC.
- Compensation.** Each Party will bear all costs, risks, and liabilities incurred by it arising out of its obligations and efforts under this Agreement during the Phase I of the proposal period; during Phase II some reimbursements may be negotiated. Neither Party has any right to any

payment or compensation of any kind from the other during the period before the award of the subcontract contemplated by this Agreement.

7. **Form and Content.** SBC will have the sole right to decide the form and content of all documents submitted to the Government. SBC will make reasonable efforts to insure that UH's data is adequately portrayed and identified as UH's portion. SBC will afford UH the opportunity to review that portion of the proposal which includes the effort to be performed by UH.
8. **Subcontract.** If, during the period of this Agreement, a prime contract is awarded to SBC as a result of the proposal, SBC will, to the extent permitted by Government rules, regulations, and applicable law, enter into good faith negotiations with UH for a subcontract. SBC will make every reasonable effort to subcontract to UH that portion of the work to be performed by UH under the schedule and technical specifications, if any, and at a price to be mutually agreed upon between Parties and subject to the stipulation that an agreement be reached within a reasonable period of time. The terms and conditions of the subcontract will be generally consistent with the terms and conditions in SBC's contract. It is agreed that the terms and conditions will not conflict with Government rules, regulations and applicable law.
9. **Government Option.** It is understood that SBC may be directed by the Government to place the work contemplated as UH's responsibility to another source, or to direct that the work be bid on a competitive basis. In either of the cases, it is agreed that SBC will provide written documentation of the notification from the government and will comply with the Government's direction. Under the circumstances, SBC has no further obligations to UH, except as regarding the protection of proprietary data as provided. In the case of the above event occurring, SBC may, with the prior approval of UH, present to the appropriate Government agency its reasonable grounds for reversal of the decision.
10. **Customer Contact.** It is agreed between Parties that SBC is the prime contact with potential customers or interested government agencies concerning Program. If it becomes desirable for UH to contact a potential customer or interested Government agency concerning Program, the contact must be approved by SBC to insure coordination of efforts and understanding of commitments before the contact.
11. **Government Interface.** Although SBC is contemplated as the prime interface with the Government, any cogent communications invited by the Government directly with UH concerning any matter involving this Agreement will not be deemed to be a breach of this Agreement, provided SBC is notified in a timely manner by UH.
12. **Presentations.** If SBC should be requested or is presented the opportunity to make presentations whether orally or by written communications to interested Government agencies concerning Program, the content of the presentation will be made immediately known to UH, subject to any prohibitions or restrictions which may be imposed and UH will support the presentations as directed by SBC if it relates to UH's area of work.
13. **Publicity.** Any news releases, public announcement, advertisement, or publicity released by either Party concerning this Agreement, or any proposals, or any resulting contracts or subcontracts to be carried out, will be subject to prior approval of the other Party, except that this Agreement and the terms may be made known to the U.S. Government, the State of Texas Higher Education Coordinating Board, and the University of Houston Board of Trustees.
14. **Internal Communication.** Correspondence or notification of an internal or intra-organizational nature is exempt from prior approval. Any publicity will give due credit to the contribution of each Party.
15. **Organization Representative(s).** Parties each will designate in writing one or more individuals within their own organization as their representative(s) responsible to direct technical performance and discussions. Additionally, representative(s) will be designated within each organization who will be responsible for matters of a fiscal and or contractual nature. The representative(s) will be responsible to effectuate the requirements and responsibilities of Parties under this Agreement.

16. **Confidentiality Clause.**

- a. Confidential Information. For the purposes of this Agreement “Confidential Information” means:
 - (1) the Licensor Products and the Distributor Products;
 - (2) any business or technical information of Licensor or Distributor, including but not limited to any information relating to Licensor’s or Distributor’s product plans, designs, costs, product prices and names, finances, marketing plans, business opportunities, personnel, research, development or know-how;
 - (3) any information that is designated by the disclosing Party as “confidential” or “proprietary” or, if orally disclosed, reduced to writing by the disclosing Party within thirty (30) days of the disclosure; and
 - (4) the terms and conditions of this Agreement.
- b. Exclusions. Confidential Information does not include information that:
 - (1) is developed by the receiving Party independently and without use of or concerning the disclosing Party’s Confidential Information;
 - (2) is obtained by the receiving Party from a third party without restriction on disclosure and without breach of a nondisclosure obligation;
 - (3) is in or enters the public domain other than through the fault or negligence of the receiving Party and without breach of this Agreement;
 - (4) the receiving Party possesses before first receiving it from the disclosing Party; or
 - (5) as legally required to be disclosed by law, at which point the disclosing Party will notify the other Party.
- c. Obligation. Except as required by law, each Party will maintain in strict confidence, and will not use or disclose, except as expressly permitted under this Agreement, any Confidential Information received from the other Party. Each Party further agrees to use the same degree of care to maintain the confidentiality of all Confidential Information received from the other Party that it uses to maintain the confidentiality of its own information of similar importance, but in no event will it use less than reasonable care.

17. **Patents.** If during the performance of this Agreement, patentable inventions result, the following apply:

- a. Project Intellectual Property (“Project Intellectual Property”) means the legal rights relating to inventions (including subject inventions as defined in 37 CFR 401), patent applications, patents, copyrights, trademarks, mask works, trade secrets, and any other legal protectable information, including computer software, first made or generated during the performance of this Project.
- b. Subject to the right of the Government under any ensuing contract, and except as otherwise provided, ownership of Project Intellectual Property vests in Party whose personnel conceived the subject matter or first actually reduced the subject matter to practice, and Party may perfect legal protection in its own name and at its own expense. Project Intellectual Property which is jointly made, generated, or for which UH and SBC have inseparable responsibility, is jointly owned by UH and SBC unless otherwise agreed to in writing. It is understood that the issue of jointly owned Project Intellectual Property will remain as an item for further negotiation, including the appropriate assignment of any revenues and profits resulting from a product, process or other innovation or invention based on the cooperative effort of UH and SBC, if a subcontract is issued by SBC to UH. Each Party will cooperate with the other to enable it to perfect its patent rights to this Agreement.

- c. Background Intellectual Property (“Background Intellectual Property”) means property and the legal right of either UH or SBC, or both, developed before or independent of this Agreement including inventions, patent applications, patents, copyrights, trademarks, mask works, trade secrets and any information embodying proprietary data as technical data and computer software. This Agreement does not imply that either Party has the right to use Background Intellectual Property of the other concerning the Agreement. It is understood that the issue of Background Intellectual Property will remain as an item for further negotiation if a subcontract is issued by SBC to UH.

18. **Termination.**

- a. This Agreement remains in effect until the first of the following occurs:
 - (1) A decision by the management of SBC that it does not wish to participate in the Program, at any level, provided that the decision is communicated in writing to the other Party at least thirty (30) days before the due date of the proposal.
 - (2) An official Government announcement that Program has been canceled.
 - (3) Upon the award of a prime contract for the subject RFP to a contractor(s) other than SBC.
 - (4) Award of a prime contract to SBC and a subcontract to UH.
 - (5) SBC is unable to obtain Government approval of UH as a subcontractor to SBC and the terms of the subcontract between UH and SBC cannot reasonably be altered or changed to effect approval by the Government. Notification from the Government will be provided in writing to SBC.
 - (6) Inability of UH and SBC, after negotiation in good faith for a reasonable period of time, to reach agreement on the terms of a subcontract offered by SBC, under this Agreement. If agreement has not been reached within sixty (60) days from the initiation of negotiation, it will be deemed Parties were unable to reach agreement.
 - (7) One year after effective date of this Agreement.
 - (8) The insolvency, bankruptcy or reorganization under bankruptcy laws, or assignment for the benefit of creditors of either Party.
 - (9) The suspension or debarment by the U.S. Government of UH or SBC.
- b. The termination of this Agreement does not supersede the obligation of Parties with respect to the protection of the proprietary information, as detailed in the Non-Disclosure Agreement.
- c. If this Agreement is terminated, parties are free to pursue its individual technical approaches in association with the successful contractor or a third party for work which is the subject of this Agreement.

19. **Non-Competition.** Since a joint proposal will require the full cooperation of Parties, all Parties agree that they will not actively participate in efforts that are competitive to this Agreement nor compete independently for Program during the duration of this Agreement. The term “active participation,” includes, but is not limited to, the participation in proposal efforts or the interchange of technical data with competitors; provided, however, that the foregoing does not limit or restrict the rights of Parties from offering to sell or selling to others, their standard products or related services. It is also understood that no division of markets is attempted by this Agreement.

20. **Notice.** All notices, certificates, acknowledgments and other reports, will be in writing and are deemed properly delivered when duly mailed by registered letter to the following:

UH
Research Contracts Officer
University of Houston
E. Cullen Building, Room 316
Houston, Texas 77204-2163

SBC

21. **Contractor Team Arrangement.** This Agreement is not intended by Parties to constitute or create a joint venture, pooling arrangement, partnership, or formal business organization of any kind, other than a contractor team arrangement as set forth in FAR part 9.6 and the rights and obligations of Parties are only those expressly set forth. No Party has authority to bind the other Party except to the extent authorized. Nothing in this Agreement provides for the sharing of profits or losses arising out of the efforts of any Party.

22. **Assignment.** This Agreement may not be assigned or otherwise transferred by either Party in whole or in part without the express prior written consent of the other Party, which consent will not unreasonably be withheld. The foregoing does not apply if either Party changes its corporate name or merges with another corporation.

23. **Modification and Waiver.** This Agreement cannot be amended, modified nor extended, nor is any waiver of any right effective unless set forth in a document executed by duly authorized representatives of both UH and SBC. The waiver of any breach of any term, covenant or condition is not a waiver of the term, covenant or condition for any subsequent breach of the same.

24. **Government Negotiation Rights.** Nothing is intended to affect the rights of the Government to negotiate directly with any Party on any basis the Government may desire.

25. **Entire Agreement.** This Agreement contains all of the agreements, representations, and understandings of Parties and supersedes and replaces any and all previous understandings, commitments, or agreements, oral or written, related to the award of a contract under Program set forth.

26. **Enforceability.** If any part, term, or provision of this Agreement is 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 are not affected.

27. **Security Information.** To the extent the obligations of Parties involve access to security information, classified U.S. Government "Confidential" or higher, the provisions of all applicable Federal regulations apply.

28. **Governing Law.** The laws of the State of Texas and the United States govern the validity and interpretation of this Agreement and the legal relation of Parties.

The Parties have caused this Agreement to be executed by their duly authorized representatives.

UNIVERSITY OF HOUSTON

SMALL BUSINESS CONCERN

Signature Date
Name: _____
Title: _____

Signature Date
Name: _____
Title: _____

Note: Modification of this Form requires approval of OGC