

Teaming Agreement

THIS TEAMING AGREEMENT (hereinafter "this Agreement") is made and entered into this ____ day of _____, 2000, by and between Norfolk State University (NSU), with a business address at 700 Park Avenue, Norfolk, Virginia 23504-3989 _____, a _____ corporation with offices located at _____.

WHEREAS, the above identified parties, because of their diverse capabilities, have determined that they would benefit from a team arrangement between their respective organizations in order to develop the best management and technical approach to the _____, hereinafter referred to as "the Program," in response to RFP No. TBD to be procured by the Government by the award of a contract in response to a proposal submitted by the team parties; and in the event of a contract award arising out of these premises, the parties agree that NSU shall be the Prime contractor, hereinafter referred to as "the Prime," and _____ shall be the subcontractor, hereinafter referred to as "the Sub," for the particular phases of such Program as identified herein; and

WHEREAS, the Prime and the Sub have agreed as set forth in the attached Exhibit A hereof to the responsibilities of work to be performed by the Sub on the Program; and

WHEREAS, 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;

NOW, THEREFORE, in consideration of the mutual promises hereinafter contained, the parties hereto agree as follows:

1. Each party will work with the other in good faith to produce a proposal or proposals which will cause the selection of the Prime as a prime contractor for the Program and the acceptance by the Government of the Sub as the subcontractor for the work assigned to the Sub herein, and each party will continue to exert reasonable, good faith efforts toward this objective throughout any and all negotiations concerning a proposed contract or subcontracts which may follow the submission of such proposal or proposals. This requirement includes the furnishing of qualified personnel who will cooperate together in drafting a proposal.
2. It is understood that the Prime will, in any proposal which the parties submit and in all discussions with respect thereto, identify the Sub as a team member, and will describe in such proposal or discussions the relationship of the parties. Any proposal shall identify the areas of endeavor, tasks, and responsibilities of the Sub, as set forth in the attached Exhibit A, "Statement of Work." Changes to Exhibit A will be made only as mutually agreed to by both parties in writing.
3. The Prime reserves the right, upon notification to the Sub, to add additional members to the Program team to assist in performing tasks. In the event that additional members are added, the Prime agrees to obtain adequate written protection of the Sub's proprietary information from the new team member(s).
4. The Sub will furnish, for incorporation into any proposal, all proposal material pertinent to the work assigned to the Sub as defined in the attached Exhibit A, including, but not limited to, manuscripts, art work, and cost and/or pricing data, as appropriate. The Sub shall provide the Prime, as part of the Sub's cost proposal, completed Government cost and pricing forms and certifications with detailed supporting schedules, including an estimate rationale and bid rates with source data for both, in sufficient detail to permit the Prime's evaluation of this data. The cost format and work breakdown structure in the Sub's proposal shall be as specified by the Prime.

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5. The Sub will assure the reasonable availability of management and technical personnel to assist the Prime in any discussions and negotiations with the Government directed toward obtaining the award of a contract, if requested to do so by the Prime.
6. Each party will bear all costs, risks and liabilities incurred by it arising out of its obligations and efforts under this Agreement during the preproposal and proposal periods, which are defined as the periods up to the award of a prime contract. Neither party shall have any right to any reimbursement, payment or compensation of any kind from the other during the period prior to the award of the subcontract contemplated by this Agreement.
7. The Prime will have the sole right to decide the form and content of all documents submitted to the Government. The Prime will make reasonable efforts to insure that the Sub's data is accurately and adequately portrayed, and identified as the Sub's portion. The Prime will afford the Sub the opportunity to review, prior to proposal submission, that portion of the proposal which includes the effort to be performed by the Sub.
8. If, during the period of this Agreement, a prime contract is awarded to the Prime as a result of the proposal, the Prime will, to the extent permitted by Government rules, regulations and applicable law, enter into good faith negotiations with the Sub for a subcontract. The Prime will make every reasonable effort to subcontract to the Sub that portion of the work set forth in the attached Exhibit A of this Agreement, said work to be performed by the Sub in accordance with the schedules and technical specifications, if any, and at a price to be mutually agreed upon between the parties, and subject to the stipulation that such 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 the prime contract. It is agreed that said terms and conditions will not conflict with Government rules, regulations and applicable law.
9. It is understood that the Prime may be directed by the Government to place the work contemplated as the Sub's responsibility, in the attached Exhibit A hereto, with another source, or to direct that such work be bid on a competitive basis. In either of such cases, it is agreed that the Prime shall comply with the Government's direction, and under such circumstances, the parties shall have no further obligations to one another hereunder, except for the non-disclosure provisions contained in Exhibit B.

In the case of the above event occurring, the Sub may, with the prior approval of the Prime, present to the appropriate Government agency its reasonable grounds for reversal of the decision.

10. It is agreed between the parties that the Prime shall be the sole contact with potential customers or interested Government agencies concerning the Program; provided however that, in the event it becomes desirable for the Sub to contact a potential customer or interested Government agency concerning the Program, such contact shall be approved by the Prime to insure coordination of efforts and understanding of commitments prior to such contact.
11. Although the Prime is contemplated as the sole interface with the Government, it is recognized that the Sub has continuing relations with the Government and may be the recipient of inquiries concerning the subject matter of this Agreement. Therefore, any communications invited by the Government directly with the Sub concerning any matter involving this Agreement shall not be deemed to be a breach of this Agreement, provided the Prime is notified in a timely manner thereof by the Sub.
12. In the event the Prime is afforded the opportunity to make presentations, whether orally or by written communications, to interested Government agencies concerning the Program, the content of such a presentation shall be made known to the Sub, subject to any prohibitions or restrictions which may be imposed by the Government upon such disclosure, and the Sub will support such presentations as directed by the Prime if such presentations relate to the Sub's area of work as defined in the attached Exhibit A.

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13. 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 hereunder, will be subject to prior approval of the other party, except that this Agreement and the terms thereof may be made known to the U.S. Government. Any such publicity shall give due credit to the contribution of each party.
14. The parties each will designate in writing one or more individuals within their respective organizations as their representative(s) responsible for directing performance of the parties' obligations under this Agreement.
15. In carrying out the terms of this Agreement, it may be necessary for the parties to provide proprietary information to one another. In such event, the disclosure and use of all proprietary information shall be in accordance with Exhibit B, "Non-Disclosure Agreement."
16. Nothing contained in this Agreement shall, by express grant, implication, estoppel or otherwise, create in either party any right, title, interest, or license in or to the inventions, patents, technical data, computer software, or software documentation of the other party.
17. This Agreement shall remain in effect until the first of the following shall occur:
 - a. A decision by the management of either party that it does not wish to participate in the Program, at any level, provided that such decision is communicated in writing to the other party at least 30 days prior to the due date of the proposal.
 - b. An official Government announcement that the Program has been canceled.
 - c. Upon the award of a prime contract for the subject RFP to a contractor or contractors other than the Prime.
 - d. Award of a prime contract to the Prime and a subcontract to the Sub.
 - e. The Prime is unable to obtain Government approval of the Sub as a subcontractor to the Prime, and the terms of the subcontract between the Prime and the Sub cannot reasonably be altered or changed to secure the Government's approval of the Sub.
 - f. Inability of the Prime and the Sub, after negotiating in good faith for a reasonable period of time, to reach agreement on the terms of a subcontract offered by the Prime, in accordance with this Agreement. If agreement has not been reached within 60 days from the initiation of negotiation it will be deemed that the parties were unable to reach agreement.
 - g. One year after effective date of this Agreement, or 1 year after the date upon which the last "best and final" offer is submitted by the Prime, whichever occurs later.
 - h. The insolvency, bankruptcy or reorganization under bankruptcy laws or assignment for the benefit of creditors of either party.
 - i. The suspension or debarment by the U.S. Government of the Prime or the Sub.
 - j. Evaluation of past performance data of the Subcontractor jeopardizes the probability of success for Prime contract award.
18. The termination or expiration of this Agreement shall not supersede the obligation of the parties with respect to the protection of proprietary information, as set forth in Exhibit B hereto.
19. In the event that this Agreement is terminated, either party shall be 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, subject to the provisions of Exhibit B.

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- 20. All notices, certificates, acknowledgments and other reports hereunder shall be in writing and shall be deemed properly delivered when duly mailed by registered letter to the other party at its address as follows, or to such other address as either party may, by written notice, designate to the other.

Prime	Sub
<u>NSU</u>	_____
<u>700 Park Avenue</u>	_____
<u>Norfolk, VA 23504</u>	_____
Attn: <u>Paula R. D. Shaw</u>	Attn: _____
Title: <u>Director of Office of Research</u>	Title: _____
Phone: <u>757-823-9053</u>	Phone: _____
Fax: <u>757-823-2823</u>	Fax: _____
E-mail Address: <u>pshaw@nsu.edu</u>	E-mail Address: _____

- 21. 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 contractor team arrangement as set forth in FAR Part 9.6, 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 authorized herein. Nothing in this Agreement shall be construed as providing for the sharing of profits or losses arising out of the efforts of either or both parties.
- 23. 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 shall not unreasonably be withheld. This consent requirement shall not apply in the event either party shall change its corporate name or merge with another corporation. This Agreement shall benefit and be binding upon the successors and assigns of the parties hereto.
- 24. This Agreement shall not be amended, modified or extended, 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 a breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition for any subsequent breach of the same.
- 25. Nothing herein is intended to affect the rights of the Government to negotiate directly with either party hereto on any basis the Government may desire.
- 26. This Agreement contains all of the agreements, representations and understandings of the parties hereto and supersedes and replaces any and all previous understandings, commitments or agreements, oral or written, related to the award of a prime contract and associated subcontracts under the Program set forth herein.
- 27. 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.

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- 28. To the extent the obligations of the parties hereunder involve access to information classified by the U.S. Government as "Confidential" or higher, the provisions of all applicable Federal regulations shall apply. The provisions of all applicable security and export control statutes and regulations shall also apply.
- 29. This Agreement shall be enforced and interpreted under the laws of the State of Virginia.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first stated above.

Norfolk State University

By: _____

By: _____

Name: Paula R. D. Shaw

Name: _____

Title: Director of Office for Research

Title: _____

EXHIBIT A

NORFOLK STATE UNIVERSITY
STATEMENT OF WORK (SOW)

Whereas Norfolk State University (NSU) is committed to pursuing the _____
_____ procurement with _____, this Exhibit A documents
the key principles of that agreement. During the course of the proposal timeframe, it is agreed
that a detailed Request for Proposal will be issued to _____ by NSU for bid in
accordance with this agreement. Upon award of a contract to NSU as the Prime contractor for
the _____ Program, NSU will enter into good-faith negotiations
with _____ resulting in the signing of a subcontract for Research and Development
Tasks in the following Domains: _____, to accommodate the
requirements of the final RFP and contract signed by NSU with the customer (_____
_____.

It is mutually agreed and understood that NSU and _____ will be team members under
the _____ Program and, as such, will work together to achieve a joint
Management, Technical and Cost Strategy that optimizes the competitiveness of the NSU team.
Specifically, _____ will be part of a core cross domain team designed to secure
external research funding and to aid in the insertion of new technology into other _____
_____ contract activities. The agreed to roles for the Pre-proposal, Proposal
and Contractual efforts shall be as follows:

1. Pre-Proposal Effort:

_____ will participate in the following pre-proposal activities:

- a) As requested and required, participate as an integral part of the proposal team in the preparation of current and past research summaries, capabilities and domain coverage.
- b) As appropriate, participate in joint contact with Government individuals at different levels of the _____ decision/management chain and exchange learned information with the proposal team.
- c) Appoint a technical and programmatic point of contact.

2. Proposal Effort:

_____ shall:

- a) As requested and required, participate in the development of selected components (documents, demonstrations, oral presentations, and joint NSU/_____ Independent Research and Development) for the _____ proposal consistent with _____ roles as a NSU team member. The Technical/Management Proposal will be principally developed in NSU's _____ in Norfolk, VA.
- b) Provide continuing post-proposal support to NSU, as required, to respond to Government pre-award activities.
- c) Work with NSU to develop a draft subcontract document prior to Prime Contract award to facilitate subcontract definitization upon Prime Contract award.

3. Contractual Effort:

NSU and _____ will work as team members under the resultant program as defined by the mutually negotiated subcontract agreement. Understanding the IDIQ nature of the contract, any potential work brought to the contract by _____ will be submitted through NSU to the Government Customer. If NSU is awarded a specific Delivery Order (DO) for such work, NSU will in turn award _____ a DO to perform DO requirements as reflected in the team members DO proposal. DO work received from the Government, but not specifically brought to the contract by any team member, will be apportioned by NSU to individual team members based on team member expertise in supporting DO requirements.

At this time, it is anticipated that the majority of the _____ Program performance will occur at NSU's facilities in Norfolk. Exceptions will be taken into consideration on a case-by-case basis. In addition, it is NSU's intent to conduct preliminary subcontract negotiations prior to award of the Prime contract. The purpose of preliminary subcontract negotiations is to ensure that all subcontracts are in place as close to contract award as possible, thereby reducing startup and schedule risk to the program.

EXHIBIT B

NORFOLK STATE UNIVERSITY
NON-DISCLOSURE, PROPRIETARY INFORMATION, AGREEMENT

During the preparation of the proposal contemplated by the foregoing Teaming Agreement, it may be necessary for either party to provide proprietary information to the other. With respect to such information, the parties agree as follows:

- (1) "Proprietary Information" shall include, but not be limited to, performance, sales, financial, 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 without restriction to the receiving party or others, nor normally furnished to others without compensation, and which the disclosing party desires to protect against unrestricted disclosure or competitive use, and which is furnished pursuant to this Non-Disclosure Agreement and appropriately identified as being proprietary when furnished.
- (2) In order for proprietary information disclosed by one party to the other to be protected in accordance with this Non-Disclosure Agreement, it must be: (a) in writing; (b) clearly identified as proprietary information at the time of its disclosure by each page thereof being marked with an appropriate legend indicating that the information is deemed proprietary by the disclosing party; and (c) delivered by letter of transmittal to the individual designated in Paragraph 3 below, or his designee. Where the proprietary information has not been or cannot be reduced to written form at the time of disclosure and such disclosure is made orally and with prior assertion of proprietary rights therein, such orally disclosed proprietary information shall only be protected in accordance with this Non-Disclosure Agreement provided that complete written summaries of all proprietary aspects of any such oral disclosures shall have been delivered to the individual identified in Paragraph 3 below, within 20 calendar days of said oral disclosures. Neither party shall identify information as proprietary which is not in good faith believed to be confidential, privileged, a trade secret, or otherwise entitled to such markings or proprietary claims.
- (3) In order for either party's proprietary information to be protected as described herein, it must be submitted in written form as discussed in Paragraph 2 above to:

Norfolk State University	_____
Name: Paula R. D. Shaw	Name: _____
Title: Director, Office for Research	Title: _____
Address: 700 Park Avenue	Address: _____
Norfolk, VA 23504	_____
Telephone No.: 757-823-9053	Telephone No.: _____
FAX No.: 757-823-2823	FAX No.: _____
E-mail Address: pshaw@nsu.edu	E-mail Address: _____

- (4) Each party covenants and agrees that it will, notwithstanding that this Non-Disclosure Agreement or the foregoing Teaming Agreement may have terminated or expired, keep in confidence, and prevent the disclosure to any person or persons outside its organization or to any unauthorized person or persons, any and all information which is received from the other under this Non-Disclosure Agreement and has been protected in accordance with paragraphs 2 and 3 hereof; provided however, that a receiving party shall not be liable for disclosure of any such information if the same:

A. Was in the public domain at the time it was disclosed, or

- B. Becomes part of the public domain without breach of this Agreement, or
- C. Is disclosed with the written approval of the other party, or
- D. Is disclosed after 3 years from receipt of the information, or
- E. Was independently developed by the receiving party, or
- F. Is or was disclosed by the disclosing party to a third party without restriction, or
- G. Is disclosed pursuant to the provisions of a court order.

As between the parties hereto, the provisions of this Paragraph 4 shall supersede the provisions of any inconsistent legend that may be affixed to said data by the disclosing party, and the inconsistent provisions of any such legend shall be without any force or effect.

Any protected information provided by one party to the other shall be used only in furtherance of the purposes described in the foregoing Teaming Agreement, and shall be, upon request at any time, returned to the disclosing party. If either party loses or makes unauthorized disclosure of the other party's protected information, it shall notify such other party immediately and take all steps reasonable and necessary to retrieve the lost or improperly disclosed information.

- (5) The standard of care for protecting Proprietary 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 information.
- (6) Neither party shall be liable for the inadvertent or accidental disclosure of Proprietary Information if such disclosure occurs despite the exercise of the same degree of care as such party normally takes to preserve its own such data or information.
- (7) In providing any information hereunder, each disclosing party makes no representations, either express or implied, as to the information's adequacy, sufficiency, or freedom from defect of any kind, including freedom from any patent infringement that may result from the use of such information, nor shall either party incur any liability or obligation whatsoever by reason of such information, except as provided under Paragraph 4, hereof.
- (8) Notwithstanding the termination or expiration of the foregoing Teaming Agreement, the obligations of the parties with respect to proprietary information shall continue to be governed by this Non-Disclosure Agreement.
- (9) This Non-Disclosure Agreement contains the entire agreement relative to the protection of information to be exchanged hereunder, and supersedes all prior or contemporaneous oral or written understandings and agreements regarding this issue. This Non-Disclosure Agreement shall not be modified or amended, except in a written instrument executed by the parties.
- (10) Nothing contained in this Non-Disclosure Agreement shall, by express grant, implication, estoppel or otherwise, create in either party any right, title, interest, or license in or to the inventions, patents, technical data, computer software, or software documentation of the other party.
- (11) Nothing contained in this Non-Disclosure Agreement shall grant to either party the right to make commitments of any kind for or on behalf of any other party without the prior written consent of that other party.
- (12) The effective date of this Non-Disclosure Agreement shall be the date stipulated at the beginning of the foregoing Teaming Agreement.
- (13) This Non-Disclosure Agreement shall be governed and construed in accordance with the laws of the State of California.

"DRAFT"

"Proprietary Information"

07/22/00
3:04 PM

Norfolk State University _____

Signature: _____

Name: _____

Title: _____

Date: _____

Signature: _____

Name: _____

Title: _____

Date: _____