This Model Teaming Agreement (“Teaming Agreement”) is an example of a form agreement for use in connection with a teaming arrangement between a small business participating in the SBA’s SBIR Program (“SBIR Company”) and a prime contractor. This Teaming Agreement assumes that the SBIR Company will be the subcontractor for the prime contractor if a government contract is awarded to the prime contractor. Because this Teaming Agreement is only a form agreement, it must be adapted by the parties to meet their specific requirements and expectations. This Teaming Agreement does not in any way constitute legal advice from AMT. Each party to this agreement should seek the advice of professionals to assist in understanding the terms and conditions of the Teaming Agreement, determining how such terms and conditions may impact agreements into which the parties previously entered, and determining what changes are necessary to adapt it to their specific needs.

Model Teaming Agreement

This Teaming Agreement, entered into and made effective on this ____ day of __________, 200__, by and between Prime, Inc., with principal offices located at ________________________________, (“Prime Contractor”) and Subcontractor, Inc., with principal offices located at __________________ (“Subcontractor”) (each a “Party” and, collectively, the “Parties”), states the nature and extent of the agreement between the Parties to develop and submit a proposal to U.S. Department of [specify the name of the agency] (hereinafter referred to as the “Agency”) in response to Solicitation No. __________ (“Solicitation”) for the [briefly describe the services or product to be supplied] (“Program”).

WITNESSETH:

WHEREAS, Prime Contractor intends to submit a proposal in response to the Solicitation (“Proposal”) as Prime Contractor to the Agency
for the Program, and Subcontractor desires to participate with Prime Contractor as a Subcontractor in the Proposal submittal;

WHEREAS, Subcontractor has expertise and capabilities in regard to the Program which would be valuable to the Program within those areas separately identified and set forth in Exhibit A, Statement of Work (“Exhibit A”), which is attached hereto;

WHEREAS, Subcontractor desires to contribute its expertise to the development of the Proposal;

WHEREAS, Prime Contractor desires to engage Subcontractor under the anticipated Prime Contract (“Prime Contract”) for the Program, and Subcontractor intends to accept such engagement under a subcontract (“Subcontract”) if the Proposal for the Program is accepted by the Agency and a Prime Contract is awarded to Prime Contractor as a consequence of the Proposal;

NOW, THEREFORE, in consideration of the mutual promises set forth, Prime Contractor and Subcontractor agree as follows:

1. Proposal Activities. Prime Contractor shall be responsible for overall Proposal and Program management. Prime Contractor shall prepare and submit the Proposal, which incorporates a supporting contribution from Subcontractor responsive to the requirements of the Solicitation.

   a. Subcontractor shall prepare and provide to Prime Contractor a proposal (“Subcontract Proposal”) for inclusion in the Proposal that is consistent with the Statement of Work, compensation terms, and term
of Subcontract contained in Exhibit A, unless required to be changed by the Agency. Exhibit A is incorporated herein and made a part hereof.

b. Each Party shall bear all expenses which it incurs in connection with the Proposal and Subcontract Proposal, any negotiations which may follow, and all other efforts under this Teaming Agreement. Neither Party shall have any right to reimbursement or compensation of any kind from the other in connection with this Teaming Agreement and the activities pursued there under.

c. Each Party agrees to use its best efforts to cause a Prime Contract to be awarded to the Prime Contractor as a consequence of the Proposal.

d. Subcontractor agrees to provide to the Prime Contractor Proposal development support as outlined herein and further agrees that it will not support or otherwise participate in the development of a proposal of any other offeror with respect to the Solicitation.

e. Prime Contractor agrees not to use any other subcontractor for the work described in Exhibit A.

2. **Subcontractor's Proposal Review.** Prime Contractor shall allow Subcontractor to review and approve the Proposal prior to submission of the Agency. If approval is withheld, then Exhibit A, as supplemented by the Subcontract Proposal, shall be definitive of the Statement of Work for, compensation terms under, and term of the Subcontract. Prime Contractor shall also allow Subcontractor to review the Prime Contract, at a minimum
with respect to Prime Contractor's description of Subcontractor's Statement of Work under the Prime Contract compared to Subcontract Proposal as incorporated into the Proposal. Subcontractor shall not be liable for and need not assume any obligation for changes in its Subcontract Proposal it has not reviewed.

3. **Subcontractor's Cost, Price, Payment and Term of Subcontract.** Subcontractor's compensation shall be upon the terms set forth in Exhibit A, paragraph b.

4. **Award of Prime Contract and Subcontract.** If a Prime Contract is awarded to the Prime Contractor as a consequence of the Proposal submitted to the Agency, the Prime Contractor shall award the Subcontractor a Subcontract in accordance with this Agreement and Exhibit A,² which Subcontract shall contain such other terms and conditions as are mutually agreeable to the Parties, in addition to those set forth in Exhibit A.

In that regard, it is agreed that all applicable clauses required by the Prime Contract and applicable laws and regulations shall be included in any such Subcontract. If prior consent to or approval of the Subcontract is required by the Agency, the Prime Contractor shall exert its best efforts to secure such approval.

The Subcontract shall provide that the Prime Contractor shall direct, supervise and manage the activities of the Subcontractor, that the Subcontractor shall report to the Prime Contractor, and that the Subcontractor shall communicate with and deliver its performance to the

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² This Teaming Agreement is structured to insure enforceability by the Subcontractor.
Agency through the Prime Contractor. The Parties shall not share profits under the Subcontract which may result from this Agreement and the Subcontract shall so provide.

5. **Scope of Agreement.** This Teaming Agreement shall relate only to the Solicitation, and nothing herein shall be deemed to:

   a. Confer any right or impose any obligation or restriction on either Party with respect to any other program effort or marketing activity at any time undertaken by either Party which does not pertain to the Solicitation; or

   b. Preclude either Party from independently soliciting or accepting any prime contract or subcontract not resulting from the Solicitation; or

   c. Limit the rights of either Party to independently promote, market, sell, lease, license, or otherwise dispose of its standard products or services apart from the Solicitation.

6. **Confidential Information.** During the term of this Teaming Agreement, the Prime Contractor and Subcontractor may exchange Confidential Information as is required for each to perform its obligations hereunder. For purposes of this Agreement, “Confidential Information” means any information of a confidential nature to the disclosing Party that is marked or otherwise identified as confidential and released, provided or disclosed to the receiving Party. Confidential Information provided either orally or visually shall be identified as Confidential Information at the time
of disclosure and shall be promptly confirmed in writing as Confidential Information.

Neither Party shall use the other Party's Confidential Information for any purpose not connected with the response to the Solicitation. The receiving Party agrees to keep any Confidential Information in strict confidence and to prevent disclosure, publication or dissemination of such except as otherwise expressly permitted in the following paragraph.

Each Party designates the individuals within its organization and cited under paragraph 14 as the only person(s) who may receive Confidential Information from the disclosing Party pursuant to this Teaming Agreement. The receiving Party’s disclosure of Confidential Information shall be restricted to those employees of the receiving Party who are directly participating in the Proposal efforts and to the representative(s) of the Agency handling the Solicitation. Under no other circumstance shall the receiving Party release or disclose Confidential Information during the term of this Teaming Agreement, and for a period of six (6)\(^3\) years following the termination of this Teaming Agreement, unless the Parties enter into a Subcontract, in which case the rights and obligations of the Parties shall be governed by the Subcontract.

Each Party agrees that if it discloses or otherwise uses the Confidential Information of the other Party in violation of the terms of this Teaming Agreement, such other Party would suffer irreparable harm for

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\(^{3}\) Use six years for a five year contract, or a contract with a base year and four one year options. Extend period one year beyond the term of the prospective contract.
which monetary damages may be difficult to ascertain or an inadequate remedy. Such improper use of a Party's Confidential Information gives rise under this Teaming Agreement to equitable relief in the courts, including mandatory and prohibitory injunctive relief, and such other relief as a court may order. If this Proposal effort is unsuccessful, the receiving Party shall return the disclosing Party’s Confidential Information to the disclosing Party no later than within 60 days of the award notice or final result under any protest of the award, whichever is later, including continuation of the procurement process as a result of a protest.\(^4\) If this Teaming Agreement terminates for any other reason, the receiving Party shall return the disclosing Party’s Confidential Information to the disclosing Party no later than within sixty (60) days after the effective date of termination.

The obligation with respect to the protection and handling of Confidential Information, as set forth in this Agreement, is not applicable to the following:

a. Information, which the receiving Party lawfully receives from a source other than the disclosing Party, including the Government, and without breach of this Agreement by the receiving Party;

b. Information developed independently by the receiving Party without reference to the disclosing Party's Confidential Information;

c. Information which is within, or later falls within, the public domain without breach of this Agreement by the receiving Party; or

\(^4\) For programs involving advanced or high technologies, this paragraph may require further definition of Confidential Information, and more elaborate understandings.
d. Information publicly disclosed with the written approval of the other Party.

7. **Inventions, Patents, and Copyrights.** Except for such rights as may accrue to the Agency under the terms of the Solicitation, all know-how, inventions, trademarks, patents and copyrights (“Intellectual Property”) resulting solely from work of employees or contractors, as the case may be, of the Prime Contractor shall belong exclusively to the Prime Contractor, and all Intellectual Property resulting solely from work of employees or contractors, as the case may be, of the Subcontractor shall belong solely to Subcontractor. Except as provided in this paragraph or as set forth in paragraph 6 hereof, nothing contained in this Teaming Agreement shall be deemed, by implication, estoppel, or otherwise, to grant any right or license to Subcontractor in respect of any Intellectual Property owned by Prime Contractor, or to Prime Contractor in Intellectual Property owned by Subcontractor.\(^5\) Prime Contractor and Subcontractor shall jointly own Intellectual Property developed under the Prime Contract, consistent with the terms of the Solicitation and the Prime Contract.

8. **Relationship of the Parties.** This Teaming Agreement does not constitute, create, or give effect to a partnership, joint venture, affiliation, or any agency between the Parties. The rights and obligations of the Parties shall be limited to those expressly set forth herein. Neither Party is the agent of the other and neither may bind the other.

\(^5\) These rights may be negotiated differently, depending on the type of contact and other circumstances.
9. **Applicable Law.** Each Party shall comply with all applicable federal, state or local laws, regulations, or ordinances in effect or hereafter adopted. This Teaming Agreement shall be governed by and construed and interpreted in accordance with the substantive laws of the State of ________________.

10. **Assignment.** This Teaming Agreement or any interest herein shall not be transferred or assigned, in whole or in part, by either Party without the prior written consent of the other. For the purpose of this Teaming Agreement, any corporate merger, acquisition, or similar change shall not be considered an assignment.

11. **Term and Termination.** Except as expressly provided in paragraph 6 hereof, this Teaming Agreement and all rights, duties, and obligations provided for herein shall automatically terminate without any further action of either Party upon the earliest occurrence of any of the following:

   a. Written notice from the Agency that the Solicitation has been cancelled or, the award of a prime contract under the Solicitation to a Party other than the Prime Contractor;

   b. Written agreement of both Parties to terminate this Teaming Agreement;

   c. Execution of a Subcontract between the Parties;

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6 As earlier noted, this Teaming Agreement, as drafted, assumes that the parties desire its enforcement. To be enforceable, a Teaming Agreement should not provide for an "agreement to agree" later on essential terms, termination if the parties fail to agree within a specific time frame on a definitized Subcontract or termination if agreement to a definitized Subcontract is not reached after "good faith" negotiations. Inclusion of such terms is in the interest only of a party that desires to minimize chances of enforcement of the Teaming Agreement.
d. Refusal of the Agency to approve Subcontractor as a subcontractor to Prime Contractor for the Solicitation, provided that the Prime Contractor did nothing to effect such a result and made its best efforts to have the Subcontractor approved as a Subcontractor; or

e. Commencement, voluntary or involuntary, of proceedings in bankruptcy for one of the Parties, including filing under Chapter 11 of the U.S. Bankruptcy Code.

12. Severability. In the event any portion of this Teaming Agreement is deemed invalid or unenforceable for any reason by a court of competent jurisdiction, the remaining portions of this Teaming Agreement shall remain in full force and effect.

13. Changes. No modification or amendment to this Teaming Agreement shall be binding upon the Parties unless made in writing and signed by a duly authorized official of both Parties.

14. Notices. Any notice or other writing required or permitted by this Teaming Agreement shall be deemed to have been sufficiently given either when personally delivered or mailed by certified or registered United States mail with postage prepaid to the individual representatives and addresses of the Parties specified herein. The individuals designated below shall, unless and until otherwise specified in writing by another authorized representative of the Party, be the only individuals eligible to receive any and
all written notices under this Teaming Agreement:

For Prime Contractor: 
Name: __________________________
Address: _________________________
Telephone: ________________________

For Subcontractor:
Name: __________________________
Address: _________________________
Telephone: ________________________

15. **Disputes.** Disputes under this Teaming Agreement shall be first resolved by attempted negotiation at the highest executive levels between the Parties. In the event such executive negotiation is unsuccessful, the dispute or disputes may be resolved by resort to a court of competent jurisdiction applicable the Parties. Enforcement may include the remedies of injunctive relief, specific performance and monetary damages, in addition to such other relief as the court may order. The Subcontract may contain an arbitration clause in lieu of or in addition to the Disputes Clause contained in the Prime Contract.

16. **Entire Agreement.** This Teaming Agreement constitutes the entire, complete, final understanding and agreement between the Parties concerning the Solicitation and supersedes any previous understandings, commitments, or agreements, oral or written. Each Party covenants that there is no agreement between itself and any other person, firm, or corporation which would impair the full force and effect of this Teaming Agreement.
17. **Termination for Convenience.** Any termination for convenience in the Prime Contract will be amended, at a minimum, to apply only if the Prime Contract is terminated.

**IN WITNESS WHEREOF,** the Parties hereto have, through duly authorized representatives, executed this Teaming Agreement effective as of the day and year indicated in the preamble.

PRIME CONTRACTOR: 

SUBCONTRACTOR: 

By: Name, Title  

Date:  

By: Name, Title  

Date:  

Attachment: Exhibit A
EXHIBIT A

SUBCONTRACTOR'S STATEMENT OF WORK

The Subcontractor shall provide Prime Contractor the services described below in support of the Program as expressly set forth below:

a. [List specific tasks or areas of work to be performed by the Subcontractor, referencing specific provisions of the RFP or Solicitation. The Proposal of the Prime Contactor, as initially submitted and as revised, is specifically incorporated here in to interpret the specific Scope of Work of the Subcontractor. Do not use the phrase “To Be Determined,” do not merely state that the Subcontractor shall receive not less than or more than a set percentage of the work, without additionally stating the tasks to be performed from the Solicitation, RFP, or RFQ.]

b. Compensation of the Subcontractor shall be upon the terms set forth in this paragraph. [Note: State specifically the price cost to be paid to the Subcontractor under the definitized Subcontract, including labor rates, overhead to be agreed upon, General & Administrative Expenses (G&A) to be billed, fringe rates on labor, or fully loaded rates, materials, other direct costs, and all other aspects of the price and/or costs to be reimbursed to Subcontractor for performance under the definitized Subcontract. This description of price/cost should expressly describe how the

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7 The more specific the reference to the actual work to be performed, the higher likelihood of enforcement of the Teaming Agreement.
Subcontractor's profit will be determined under the Subcontract. The Subcontract Proposal provided to the Prime Contractor, and the Prime Contractor's Proposal to the Government, are specifically incorporated by reference to further describe the price/cost/profit to be paid to the Subcontractor. In the event that Subcontractor's costs are submitted directly to the Government, the Parties should express as best they can their understanding of price/costs/profit to be paid to the Subcontractor in summary terms. This provision should also set forth the payment terms (net thirty days, f.o.b., electronic invoicing, form of invoice required, and so forth) required by the Prime Contractor of the Subcontractor.]8

c. The term of the Subcontract shall be commensurate with the duration and term of the Prime Contract. In the event the Agency exercises options under the Prime Contract, the Prime Contractor shall exercise options for continuation of the Subcontract for the same period of time. Nonrenewal of the Prime Contract shall constitute nonrenewal of the Subcontract. Prime Contractor may terminate for convenience the Subcontract if and only if the Prime Contract is terminated. In such case, the Termination for Convenience clause shall apply, but is considered amended from its form in the Prime Contract to conform to the terms of this Agreement. The Parties agree that the foregoing shall be so stated in the Subcontract.

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8 The greater specificity in this regard, the higher likelihood of enforceability of the Teaming Agreement.