

NSTXL

NATIONAL SECURITY TECHNOLOGY ACCELERATOR

NSTXL OTA CONTRACT #: N00164-19-9-0001
NSTXL PROJECT ORDER #:
PERFORMER AGREEMENT #:



Version	Date	Summary of Changes
Original	XX/XX/XXXX	Base Agreement

Prototype Project: *Name*

Project Code: *Code*

A PERFORMER AGREEMENT BETWEEN
NATIONAL SECURITY TECHNOLOGY ACCELERATOR (NSTXL)
7835 S WEST GATE ROAD
SCOTLAND, IN 47457-3700

AND


PERFORMER
ADDRESS
CITY, STATE, ZIP

NSTXL OTA CONTRACT #: N00164-19-9-0001
NSTXL PROJECT ORDER #:

This PERFORMER AGREEMENT (hereinafter the “Agreement” or the “PERFORMER AGREEMENT”) is entered into between the National Security Technology Accelerator, (hereinafter referred to as “NSTXL”) and **PERFORMER**, (hereinafter referred to as the “PROTOTYPE LEVEL PERFORMER”). Collectively, NSTXL and PROTOTYPE LEVEL PERFORMER may be referred to as the “Parties” or “Party” where an entity is individually identified. This Agreement constitutes the entire understanding and agreement between the Parties with respect to the subject matter hereof.

PERFORMER AGREEMENT TERM: The term of this Agreement shall be the date of completion established in the Statement of Work and/or Task Description Document (Attachment A). NSTXL and the PROTOTYPE LEVEL PERFORMER may subsequently amend the term of this Agreement upon concurrence by both Parties by written amendment or modification, as prescribed within Article V.

AUTHORITY: The United States Government, acting through the Department of the Navy, Naval Surface Warfare Center, Crane Division (“NSWC Crane”) entered into a 10 U.S.C. § 4022 Other Transaction Agreement (“OTA”) with NSTXL to support the Department of Defense (“DoD”) in a program designed to refine strategies, facilitate management planning activities, and implement integrated complimentary solutions that enable broader DoD access to commercial state of the art EMS technologies, advanced trusted microelectronics, radiation hardened and strategic missions hardware.

NATIONAL SECURITY TECHNOLOGY ACCELERATOR (NSTXL) 	<u>PERFORMER:</u>
Name: <u>Megan Steele-Holdaway</u> Title: <u>Senior Contracts Manager</u> E-mail: megan@nstxl.org Phone: <u>800.364.1545 ext. 725</u>	Name: _____ Title: _____ E-mail: _____ Phone: _____
_____ (Signature) _____ (Date)	_____ (Signature) _____ (Date)

Contents

ARTICLE I: SCOPE OF THE AGREEMENT	4
A. Description of Agreement	4
B. Scope of Agreement	4
C. Duration of Agreement	4
D. Execution of Agreement	4
E. Background	5
F. Definitions	5
ARTICLE II: AGREEMENT ADMINISTRATION	7
A. Roles and Responsibilities	8
B. Project Administration	9
C. Accounting System Requirements	10
D. Applicable Laws to this Other Transaction Agreement under 10 U.S.C. § 4022	10
E. Export Control	11
F. Security Requirements	11
ARTICLE III: OBLIGATION, PAYMENT, AND ACCOUNTING REQUIREMENTS	12
A. Incremental Funding and Limitation of Obligation	12
B. Payment Milestone Schedule	12
C. Inspections and Acceptance	12
D. Invoicing and Payment Instructions	14
E. Allowable Costs	15
F. Requirements for Cost Share and Participation (if applicable)	15
ARTICLE IV: PHYSICAL AND INTELLECTUAL PROPERTY	16
A. Government Furnished Property	16
B. Performer Acquired Property	16
C. Intellectual Property	17
D. Proprietary Information	17
E. Disclosure of Information	17
ARTICLE V: MODIFICATIONS AND TERMINATIONS	18
A. Modifications and Changes	18
B. Stop Work	19
C. Force Majeure	20
D. Project Termination	20
E. Dispute Resolution Procedures	20
ARTICLE VI: GENERAL PROVISIONS	22

ARTICLE I: SCOPE OF THE AGREEMENT

A. Description of Agreement

1. This PERFORMER AGREEMENT is the result of a Prototype Project Order being issued by the Government under Other Transaction Agreement (OTA) No. N00164-19-9-0001, the contract governing the Strategic & Spectrum Missions Advanced Resilient Trusted Systems (S2MARTS) Consortium-Based OTA awarded to NSTXL on February 22, 2019.
2. This PERFORMER AGREEMENT includes the relevant mandatory flow-down terms and conditions of Other Transaction Agreement No. N00164-19-9-0001, as directed by the Government. NSTXL does not have the authority to modify those terms. Failure to comply with the incorporated Government's terms and conditions may result in a selected Performer being deemed ineligible for an Other Transaction Award, subsequent funding, or a follow-on production contract.
3. Any conditions negotiated for the Prototype Project between the PROTOTYPE LEVEL PERFORMER and the Government will be incorporated within the Project's Statement of Work (or Task Description Document).

B. Scope of Agreement

1. The following attachments as delineated are to be considered part of this Agreement and are incorporated in whole into this Agreement:
 - a. Statement of Work/Task Description Document
 - b. Line Item Structure and Associated Funding Information
 - c. Milestones and Payment Schedule
 - d. Certificate of Completion Template
 - e. Security and Information Assurance Requirements (*If applicable*)
 - f. Supplemental Intellectual Property Agreement
 - g. Contract Deliverable Requirements (*If applicable*)
 - h. Additional Terms and Conditions (if applicable)
2. Except as otherwise dictated, in the event of any inconsistency between the terms of this Agreement and any other document, materials and/or written and/or verbal understanding, the inconsistency shall be resolved by giving precedence in the following order: (1) this Agreement; (2) Attachments or Appendices to this Agreement; (3) the Statement of Work / Task Description Documentation (including but not limited to the NSTXL member entity proposal selected for funding by the Government).

C. Duration of Agreement

The Period of Performance shall begin upon the Agreement execution date of _____, and shall continue through the anticipated Date of Completion of _____, or the delivery and acceptance of the last Payable Milestone; whichever occurs first. This Agreement **(does or does not)** include potential optional periods that have not yet been funded.

D. Execution of Agreement

This Agreement constitutes the entire agreement of the Parties and supersedes all prior and contemporaneous agreements, understandings, negotiations, and discussions among the Parties, whether oral or written, with respect to the subject matter hereof, but does not supersede the Membership Application and NSTXL's Principles of Engagement. This Agreement may be revised only by written consent of NSTXL and the PROTOTYPE LEVEL

PERFORMER contractual representatives designated in this Agreement or those representatives of PROTOTYPE LEVEL PERFORMER with the authority to legally bind PROTOTYPE LEVEL PERFORMER.

E. Background

On the 22nd of February 2019, NSTXL entered into an OTA with the Government, OTA No. N00164-19-9-0001. OTA No. N00164-19-9-0001 instructs NSTXL to enter into an agreement with a Consortium Member whose Prototype Project is selected by the Government and subsequently awarded funding for implementation.

Prior to submission of a proposal, the PROTOTYPE LEVEL PERFORMER submitted a membership application and acknowledged and agreed to the Principles of Engagement agreement, pursuant to which the PROTOTYPE LEVEL PERFORMER became a member in good standing of NSTXL's consortium.

F. Definitions

"Agreements Officer (AO)" means the warranted and named Government contracting officer with authority to enter into, administer, or terminate a Project Order associated with this agreement, and whose concurrence is required before any modifications can be made to this Agreement.

"Agreements Officer's Representative (AOR)" means an individual designated and authorized in writing by the Agreements Officer to perform specific technical or administrative functions on behalf of the Government and in coordination with the Parties of this agreement.

"Computer Software" as used in this Agreement means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae and related material that would enable the software to be reproduced, recreated or recompiled. Computer software does not include computer data bases or computer software documentation.

"Computer Software Documentation" means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provides instructions for using the software.

"Consortium Member" means the signatories to the NSTXL Principles of Engagement covering NSTXL managed Other Transaction Agreements who are in good standing as a member of the NSTXL consortia.

"Controlled Unclassified Information" means any unclassified information that law, regulation, or government-wide policy requires safeguarding and/or dissemination controls upon.

"Cost Sharing" means the required minimum one-third cost share contributed by a traditional Defense Contractor to be eligible for a Prototype Award when a Non-traditional Defense Contractor is not participating to a significant extent.

"Covered Defense Information" means unclassified controlled technical information or other information, as described in the Controlled Unclassified Information (CUI) Registry at <http://www.archives.gov/cui/registry/category-list.html> that requires safeguarding or dissemination controls pursuant to and consistent with law, regulations, and Government wide policies, and is (1) marked or otherwise identified in the Project Order, Statement of Work, Task Description Document or Project Deliverable (and applicable documentation) and provided to the Consortium Member(s) by or on behalf of the Government in support of the performance of the Project Order; or (2) collected, developed, received, transmitted, used, or stored by or on behalf of the Consortium Member(s) in support of the performance of the Project Order, Statement of Work, Task Description Document or Project Deliverable.

“Data,” means recorded information, regardless of form or method of recording, which includes but is not limited to, technical data, computer software, computer software documentation, and mask works. The term does not include financial, administrative, cost, pricing or management information and does not include inventions.

“Date of Completion” is the date on which all work is completed or the date on which the period of performance ends for each specific Project Order.

“Development”: means the systematic use, under whatever name, of scientific and technical knowledge in the design, development, test, or evaluation of existing or potential new technology, product or service (or of an improvement in an existing technology, product or service) for the purpose of meeting specific performance requirements or objectives. Development includes the research function of design engineering, prototyping and engineering testing.

“Government Furnished Property” means property in the possession of, or directly acquired by, the Government and subsequently furnished to the PROTOTYPE LEVEL PERFORMER for performance of a contract. Government-furnished property includes, but is not limited to, spares and property furnished for repair, maintenance, overhaul, or modification.

“Government Technical Representative” means a Government employee charged with oversight of an individual Project Order, and responsible for reporting status and findings to the Agreement Officer’s Representative (AOR).

“Invention,” as used in this Agreement, means any innovation or discovery that is or may be patentable or otherwise protectable under title 35 of the United States Code (U.S.C.).

“Joint Certification Program” means a United States / Canadian contractor has been granted access to Department of Defense/Department of National Defense unclassified export controlled technical data/critical technology on an equally favorable basis in accordance with DODI 5320.24 “Withholding of Unclassified Technical Data and Technology from Public Disclosure” and Canadian Technical Data Control Regulations.

“Milestone” or “Payable Milestone” means a schedule event signifying the completion of a major deliverable or a set of related deliverables. A milestone that has been completed (as determined by the Government AOR) by a Project Order awardee will be approved for payment. This approved payment will represent a predetermined dollar amount in relation to performance of a particular Project Order under this Agreement.

“PERFORMER AGREEMENT” or “Agreement” means this agreement between NSTXL and PROTOTYPE LEVEL PERFORMER, whose project proposal has been selected by the Government, in support of the Prototype Project.

“Project Order” means the Government document(s) issued to NSTXL reflecting the Government’s decision to fund all or part of a selected proposal submitted in response to a Request for Solutions. The Project Order will identify the Prototype Project, the period of performance, the Statement of Work, Project Deliverable or Task Description Document, and the approved payment terms and conditions. The Project Order formalizes the scope of work and terms and conditions for performance by, and payment to, the Consortium Member as facilitated by NSTXL.

“Proposal” means the proposal submitted by a Consortium Member (or Performer) in response to a request issued by the Government for the consideration, negotiation and acceptance between the Government and the Performer leading to a Project Order to be performed by the Consortium Member(s).

“Prototype” means a physical or virtual model used to evaluate the technical or manufacturing feasibility or military utility of a technology, process, concept, end item, or system.

“Prototype Project” in the context of meeting the Other Transaction Authority is as follows: a prototype project addresses a proof of concept, model, reverse engineering to address obsolescence, pilot, novel application of commercial technologies for defense purposes, agile development activity, creation, design, development,

demonstration of technical or operational utility, or combinations of the foregoing. A process, including a business process, may be the subject of a prototype project.

“Statement of Work (SOW)” means a Performer submitted and Government accepted technical document which defines the specific activities, deliverables or milestones required to be performed under the Project Order under the conditions of the Performer’s Proposal.

“Task Description Document” (TDD) means a performer provided technical document or specification outlining the project tasks to be performed along with schedule milestones and delivery dates required for successful completion. Once selected by the Government as a viable solution, the proposed TDD may be incorporated into the resultant OTA with any mutually agreed upon modifications or changes prior to award. The TDD may be referenced along with or instead of a Government issued Statement of Work.

“Technical Data” means recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software or data incidental to agreement administration, such as financial and/or management information.

“Unlimited Rights,” means rights to use, modify, reproduce, perform, display, release, or disclose Data in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so, for an unlimited time.

ARTICLE II: AGREEMENT ADMINISTRATION

All matters under this Agreement shall be referred to the following representatives of the Parties:

NSTXL AGENT:

Megan Steele-Holdaway, Senior Contracts Manager
7835 S. West Gate Road
Scotland, IN 47457-3700
Email: megan@nstxl.org

PROTOTYPE LEVEL PERFORMER:

(Name)
(Address)
(Email)
(Phone)

AGREEMENT OFFICER REPRESENTATIVE:

(Name)
(Address)
(Email)
(Phone)

GOVERNMENT TECHNICAL REPRESENTATIVE

(Name)
(Address)
(Email)

(Phone)

Each Party may change its representatives named in this Article by written notification to the other Parties.

A. Roles and Responsibilities

1. Government Responsibilities. The Agreements Officer (AO), his or her designated AO Representative (AOR) and the Government Technical Representative (GTR) (collectively the “Government”) will provide strategic technology development and technical guidance through communications and collaboration. The Government will monitor the technical work performed and technical compliance under each funded Project Order. The Government also may (1) directly participate in collaboration efforts, (2) approve full or incremental funding at the Project Order, (3) share expertise, information, property, and facilities, and (4) issue concurrence or nonconcurrence of PROTOTYPE LEVEL PERFORMER’s Milestone Deliverables. (Reference Inspection and Acceptance terms in Article III)

The Government will not direct any commitments or changes that will affect price, quality, quantity, delivery, or any other term or condition of this Agreement without the due consideration of NSTXL and the PROTOTYPE LEVEL PERFORMER (Reference Modification and Changes section in Article V). Government may choose to work with the PROTOTYPE LEVEL PERFORMER(s) directly on any Prototype Project that makes up the substance of this Agreement through the named GTR or the AOR as a non-performing, advisory asset.

2. NSTXL Responsibilities. NSTXL shall administer, monitor, and direct any exchanges among the Government, the PROTOTYPE LEVEL PERFORMER, and NSTXL, as well as facilitate any Prototype Project negotiations or changes under the Agreement contingent upon Agreement Officer guidance. NSTXL shall provide administrative support to the PROTOTYPE LEVEL PERFORMER as defined below.

NSTXL shall be responsible for the overall administration of Prototype Projects issued under this Agreement, which shall include general coordination of programmatic, reporting, financial and administrative matters pertaining to exchanges of information, meetings, statuses, submissions and conferences between the Government and the PROTOTYPE LEVEL PERFORMER. The PROTOTYPE LEVEL PERFORMER is under the affirmative obligation to assist NSTXL with all reasonable requests pertaining to this general administrative function and to do so in a timely manner.

NSTXL is not responsible for, and explicitly disclaims, any oversight, guidance and/or management of any technical (e.g., of, involving, or concerned with applied and industrial sciences, art(s), engineering, information technology, materials, craft, technique or related aspect or field) aspect of the Government funded and directed Prototype Project under this Agreement and/or any Statement of Work or Task Description Document. NSTXL further disclaims any project management, supply chain approval or cost oversight authority to direct the performance of the PROTOTYPE LEVEL PERFORMER in executing their defined SoW or TDD, notwithstanding any expressly defined terms and conditions contained within this Agreement.

NSTXL’s agent, identified within Article II of this Agreement, shall act as the lead point of contact between the Government, NSTXL and the PROTOTYPE LEVEL PERFORMER.

3. PROTOTYPE LEVEL PERFORMER Responsibilities. The PROTOTYPE LEVEL PERFORMER shall conduct themselves commensurate with the terms and conditions of this Agreement and all attendant documents that are derivative thereof, including any appendices. The PROTOTYPE LEVEL PERFORMER shall be solely responsible for the performance of each project funded under this Agreement, the timely and accurate submission of Milestone Deliverables, and the satisfactory completion of any defined project deliverables.

PROTOTYPE LEVEL PERFORMER(s) shall on a best effort basis provide technological, personnel, administrative and management services for the Prototype Project for which they are awarded under the OTA and formally executed and implemented into this agreement with NSTXL.

B. Project Administration

1. Project Reporting

PROTOTYPE LEVEL PERFORMER shall provide recurring status reporting as specified in the Statement of Work or Task Description Document. Any Prototype Project status reports that are prepared for the Government by the PROTOTYPE LEVEL PERFORMER must be routed through NSTXL as the responsible Party for coordinating formal communications between the Government and the PROTOTYPE LEVEL PERFORMER.

PROTOTYPE LEVEL PERFORMER shall provide, with each milestone invoice, a breakdown of all costs incurred by subcontractors listed in the proposal in the performance of that milestone. Each invoice will include the total paid to each subcontractor for work performed under the contract to date. PROTOTYPE LEVEL PERFORMER will identify each subcontractor as either a small or large business as determined by North American Industry Classification System (NAICS) code.

Meeting minutes, milestone-based technical reports, draft or final delivery products and associated manuals, studies or technical data shall be conveyed directly to the Government as per the terms of the SOW or TDD along with a notification and a Certificate of Completion in the form attached (as applicable) sent to NSTXL for confirmation. Over the performance of the Prototype Project, the PROTOTYPE LEVEL PERFORMER shall issue a Monthly Milestone Report to NSTXL on or before the 15th of the month covering performance and status updates for the prior month. The Monthly Milestone Report is an on-line, project information data capture via the S²MARTS [S2MARTS Performer Prototype RX \(monday.com\)](https://s2marts.monday.com) interface.

Final Report PROTOTYPE LEVEL PERFORMER agrees to complete a brief online survey on the administrative experience of this Agreement and the project. This information will be kept confidential and not shared with the Government or any other party outside of NSTXL unless approved by the PROTOTYPE LEVEL PERFORMER in writing and/or compelled under law by a tribunal of competent jurisdiction.

2. Retention and Access to Records

The PROTOTYPE LEVEL PERFORMER's financial records, supporting documents, statistical records, and all other records pertinent to this Prototype Project shall be retained for a minimum of three (3) years after the expiration of the term of this Agreement or final acceptance of the last prototype milestone deliverable, whichever occurs later. The PROTOTYPE LEVEL PERFORMER shall allow access to these records for Government review in order to assess work quality and legal compliance, and as a historical archive of Government interest. This applies to hard copy, digital or soft copy mediums that shall be readable and transferable in an appropriate media format to maintain integrity, security, and reliability of these records. Exceptions below would affect the period of retention and access:

- (a) If any litigation, claim, or audit involving the Government or NSTXL as a Party to the legal action is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.

(b) For PROTOTYPE LEVEL PERFORMER acquired property under an expense reimbursement agreement, or for property that the Government shall receive title to, the records for real property and equipment, acquired with Federal funds, shall be retained for 3 years after final disposition.

(c) If the Government requests that the PROTOTYPE LEVEL PERFORMER transfer certain records to DoD custody when the Government determines that the records possess long term retention value beyond three (3) years; the PROTOTYPE LEVEL PERFORMER shall comply with the request and then PROTOTYPE LEVEL PERFORMER shall be relieved of the retention responsibility.

C. Accounting System Requirements

1. The PROTOTYPE LEVEL PERFORMER affirms and represents that it maintains adequate accounting systems that:

- a. Comply with Generally Accepted Accounting Principles
- b. Control and properly document all cash receipts and disbursements expended under this Prototype Project.

2. Financial Records: The PROTOTYPE LEVEL PERFORMER shall maintain adequate records to account for control and expenditure of federal funds received under this Agreement.

3. *One Third Cost Sharing Provision (if applicable)*

Should Cost Sharing procedures be implemented for funding the Prototype Project, then the following provision applies with respect to Government access, audit or review of financial records (Ref Article III Section E for accounting details):

The AO or written designee shall have direct access to sufficient records and information of PROTOTYPE LEVEL PERFORMER to ensure full accountability for all funding under this Agreement. Such audit, examination or access shall be performed during business hours on business days upon prior written notice and shall be subject to the security requirements of the audited Party. Any audit required during the course of the program may be conducted by the Government using Government auditors or, at the request of PROTOTYPE LEVEL PERFORMER through NSTXL to the Government, by PROTOTYPE LEVEL PERFORMER's external CPA accounting firm, at the expense of that PROTOTYPE LEVEL PERFORMER, and upon approval by the Government.

4. Comptroller General Access to Information for Records Examination in support of Audits

In accordance with 10 U.S.C. § 4022c, each Prototype Project awarded under this Agreement, and that provides for payments in a total amount in excess of five million dollars (\$5,000,000), shall provide for the Comptroller General, at the discretion of the Comptroller General, opportunity to examine the records of any party to the Agreement or any entity that participates in the performance of the Agreement and/or Statement of Work, including any sub-performer(s). However, the Comptroller General may not examine records pursuant to this Agreement more than three years after the final payment is made by the United States under the Agreement.

This requirement does not apply to entities (i) participating in the performance of Prototype Projects with payments totaling less than five million dollars (\$5,000,000), and (2) who have not entered into any other agreement that provides for audit access by a Government entity in the year prior to the date of this PERFORMER AGREEMENT.

D. Applicable Laws to this Other Transaction Agreement under 10 U.S.C. § 4022

1. This PERFORMER AGREEMENT is issued and governed under common law, and as such, it's generally not subject to the Federal Acquisition Regulations (or any other supplements), nor shall any associated regulatory clauses be read-in or implied unless otherwise expressly defined in this agreement.
2. Governing Law: This Agreement between NSTXL and the PROTOTYPE LEVEL PERFORMER shall be governed by and construed in accordance with the laws of Delaware, USA and the venue for any action hereunder shall be in the appropriate forum in Delaware, USA.
3. The PROTOTYPE LEVEL PERFORMER represents and warrants that the PROTOTYPE LEVEL PERFORMER is made aware of and will comply with the statutes below in connection with the Project Order and this Agreement.

Laws applicable to receive Federal Funds

- a. 31 U.S.C. § 1352 Limitations on the use of appropriated funds to influence Federal Contracting and Financial Transactions
- b. 41 U.S.C. Chapter 87, Kickbacks
- c. 41 U.S.C. § 4712 and 10 U.S.C. § 2409 Whistleblower Protections
- d. 41 U.S.C. Chapter 21 and the Procurement Integrity Act

Laws Restricting Certain Activities

- e. 18 U.S.C. § 431 Contracts by Members of Congress
- f. 22 U.S.C. Chapter 78 Combating Trafficking in Persons
- g. 40 U.S.C. Chapter 37 Contract Work Hours and Safety Standards (if applicable)
- h. 49 U.S.C. § 40118, Government-financed air transportation

Safeguarding Covered Defense Information and Cyber Incident Reporting

48 CFR 252.204-7012 as prescribed by 48 CFR 204.7304(c) which are incorporated into this Agreement and shall flow-down to all Performers and sub-performers for non-COTS items where Covered Defense Information is used, stored, generated, or shared in the course of the performance of the scope of work identified in the SOW or TDD. The Project Order will identify the information that requires safeguarding and dissemination control.

E. Export Control

1. The PROTOTYPE LEVEL PERFORMER shall comply, and require all sub-performers to comply, with the International Traffic in Arms Regulation (22 CFR pt. 121 et seq.), the DoD Industrial Security Regulation (DoD 5220.22-R) and the Department of Commerce Export Regulation (15 CFR pt. 770 et seq.), where applicable.
2. The PROTOTYPE LEVEL PERFORMER shall include this Section, suitably modified to identify the parties, in all subcontracts or lower tier agreements, regardless of tier, for developmental prototype work.

F. Security Requirements

In the event that a Prototype Project under this Agreement requires the PROTOTYPE LEVEL PERFORMER to have access to, or generate, classified information, the Government will generate a Department of Defense Security Classification Specification (DD Form 254) specific to the Prototype Project. Reference Attachment E incorporated into this Agreement for further details and requirements pertaining to the Prototype Project's protection protocols.

ARTICLE III: OBLIGATION, PAYMENT, AND ACCOUNTING REQUIREMENTS

A. Incremental Funding and Limitation of Obligation

1. If the respective Prototype Project executed under this Agreement is incrementally funded, then neither the Government nor NSTXL is obligated to reimburse the PROTOTYPE LEVEL PERFORMER for costs incurred in excess of the total amount allotted by the Government to the Prototype Project; and, the PROTOTYPE LEVEL PERFORMER is not obligated to continue performance on the Prototype Project (including actions under the Termination clause of this Agreement) or otherwise incur costs in excess of:
 - a. The amount then allotted to the Prototype Project by the Government; or
 - b. If the Prototype Project involves cost-sharing, the amount then allotted by the Government to the Prototype Project plus the PROTOTYPE LEVEL PERFORMER'S corresponding share, until the AO notifies the PROTOTYPE LEVEL PERFORMER in writing that the amount allotted by the Government has been increased and specifies an increased amount, which shall then constitute the total amount allotted by the Government to the Prototype Project.
2. All schedules of Milestone Payments for individual fixed-price type Prototype Projects will include the applicable negotiated line items and Payable Milestones for each selected and funded prototype. Payments for fixed-price type Prototype Projects will be based on the completed milestone performed by the PROTOTYPE LEVEL PERFORMER, and for expenditure-type Prototype Projects, payments will be based on actual expenditures incurred.
3. Any costs incurred by the PROTOTYPE LEVEL PERFORMER prior to the execution of any individual Prototype Project order will be the sole responsibility of the PROTOTYPE LEVEL PERFORMER and will not be used as the basis of a claim against or construed as an obligation to the Government or NSTXL.
4. Except as specifically excepted within this Agreement, NSTXL's financial liability to the PROTOTYPE LEVEL PERFORMER will not exceed the amount made available for successfully completed Payable Milestone(s), and actually paid, by the Government to NSTXL for payment to PROTOTYPE LEVEL PERFORMER under the Statement of Work.
5. If for any reason project funds are delayed for the project work tasking and/or scheduled activities of the PROTOTYPE LEVEL PERFORMER under this agreement, NSTXL will notify the PROTOTYPE LEVEL PERFORMER within 7 days of its knowledge regarding delayed funding and the circumstances regarding the Government's availability of funds. NSTXL shall not be liable to the PROTOTYPE LEVEL PERFORMER for any charge, cost, fee, interest payment or other penalty where a delay in funding, including any delay by the Government to release funds, is not the direct result of an NSTXL willful act and/or willful omission to withhold funds that are owed and due to the PROTOTYPE LEVEL PERFORMER.

B. Payment Milestone Schedule

Payable Milestones: PROTOTYPE LEVEL PERFORMER shall document the accomplishment of each Payable Milestone under each project, and shall compile such information for inclusion in the PROTOTYPE LEVEL PERFORMER's Certificate of Completion, which shall be submitted or otherwise provided to NSTXL as established on a per project basis, on or before the scheduled due date of the current milestone as annotated in Attachment C.

C. Inspections and Acceptance

1. The Government has the right to inspect and test all materials furnished and services performed under this Agreement, to the extent practicable at all places and times, including the period of performance, and in any event, before acceptance, or upon delivery. The Government may also inspect the plant or plants of any Consortium Member or any sub-performer engaged in performance under a Project Order. The Government will perform inspections and tests in a manner that will not unduly delay the work or interfere with performance.
2. If the Government performs inspection or tests on the premises of the PROTOTYPE LEVEL PERFORMER, the PROTOTYPE LEVEL PERFORMER shall furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.
3. Unless otherwise specified in the Statement of Work or Task Description Document, the Government will accept or reject all deliveries as promptly as practicable after receipt.
4. If the PROTOTYPE LEVEL PERFORMER fails to proceed with reasonable promptness to perform required replacement or correction, or if the PERFORMER AGREEMENT HOLDER fails to incorporate the Government's recommended corrective course of action; the Government may terminate the Prototype Project for default.
5. This clause applies in the same manner and to the same extent to corrected or replacement materials or services as to materials and services originally delivered under the individual Prototype Project.
6. Upon a successful inspection and acceptance of the deliverable milestone products and services and delivery of a Certificate of Completion to the Government for approval, the Government will sign the Certification of Completion confirming that the PERFORMER AGREEMENT HOLDER's obligation has been met for the defined work product or service.
7. If the PROTOTYPE LEVEL PERFORMER fails to perform or deliver, or take appropriate corrective action, the Government may terminate the Project Order for cause or modify the Project Order to establish a new delivery date or curtail the Milestone Schedule or sever any incomplete phases.
8. Shipping
 - i. The PROTOTYPE LEVEL PERFORMER is responsible for the cost of shipping and the risk of loss for any Prototype Project deliverables required, unless otherwise stated in the Project Order. All deliveries will be f.o.b. destination, unless otherwise stated in the Project Order.
 - ii. Risk of loss or damage to the supplies provided under Prototype Projects executed under this Agreement shall remain with the PROTOTYPE LEVEL PERFORMER executing said project until, and shall pass to the Government upon:
 - a. Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or
 - b. Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination.
 - iii. Unless otherwise specified, all hardware shall be packaged in accordance with the PROTOTYPE LEVEL PERFORMER's commercial best practice to ensure undamaged arrival at destination.
 - iv. Under no circumstance does a receipt of a shipped deliverable, report, prototype or technical data imply or constitute final acceptance by the Government.

D. Invoicing and Payment Instructions

1. *Fixed Price Milestone Payment Method:* Payments shall be made in accordance with the Payable Milestone Schedule associated with each Statement of Work (if applicable), provided the designated AOR has verified compliance and accomplishment of the stated effort in the Certificate of Completion. The Payable Milestone Schedule may be revised as appropriate and deemed necessary by issuance of a bilateral modification to the Statement of Work (if applicable). An acceptable invoice for a fixed price milestone payment(s) is one that conforms with the Certificate of Completion stipulated instructions as found in Appendix A.
2. *Cost Reimbursement/ Expenditure Payment Method:* Cost Reimbursement invoices shall be submitted no more frequently than monthly, reflecting actual costs incurred in support of the approved SoW/TDD and provided the designated AOR and GTR have verified compliance and accomplishment of the stated effort in the Certificate of Completion. The PROTOTYPE LEVEL PERFORMER shall provide a copy of the approved provisional billing rates letter or forward pricing rate agreement upon request. Other reasonable supporting detail shall be provided on an individual invoice basis upon request.

When *travel* is authorized under this Agreement, PROTOTYPE LEVEL PERFORMER shall be reimbursed for necessary, reasonable, and actual travel expenses for transportation, lodging, meals and incidental expenses only to the extent that they (1) do not exceed the maximum per diem rate in effect at the time of travel, as set forth in the United States Federal Travel Regulations for the area of travel authorized under this Agreement and (2) are otherwise reimbursable pursuant to the Allowable Cost clause of this Article. Air travel shall be reimbursed for coach class only.

PROTOTYPE LEVEL PERFORMER shall provide a detailed summary of all such costs by category of expense with each invoice. PROTOTYPE LEVEL PERFORMER shall provide a legible receipt for each claimed individual expense exceeding \$75.00.

3. *Information for Inclusion on Invoice:* Each invoice must contain the following tracking information: i) OTA contract number N00164-19-9-0001, ii) the PERFORMER AGREEMENT number (see cover page of this Agreement), iii) Total Project Ceiling (i.e., upper limit on what may be placed on the Agreement during the course of contract; not to include NSTXL fees), iv) Total Amount of Current Invoice, v) Total Amount of Funding Remaining on Agreement to Date (i.e., the balance of non-invoiced funding), vi) The number and/or title of the completed payable milestone.
4. *Submission of Invoices:*
 - a. *Frequency:* Invoices shall be submitted in accordance with the approved Milestone and Payment schedule. Invoices may be submitted no more frequently than monthly. Each invoice must be submitted with a fully filled out Certificate of Completion.
 - b. *Submission Procedure:* PROTOTYPE LEVEL PERFORMER shall submit all invoices and corresponding Certificate of Completion directly to NSTXL at success@nstxl.org. Upon receiving the signed approval from the AOR and Government Technical Representative for the milestone and corresponding invoice, NSTXL will submit the invoice into the Wide Area Work Flow (WAWF) system for processing and payment.
 - c. *Final Invoice:* The PROTOTYPE LEVEL PERFORMER's final invoice (completion invoice) will be clearly indicated as such and shall indicate the cumulative amounts incurred and billed to completion, and a written certification of the total hours expended.

5. *Payment Procedure:* NSTXL will make an ACH transfer to the bank account and routing number designated by the PROTOTYPE LEVEL PERFORMER. Funds transfers take up to three (3) business days depending upon the financial institution of the PROTOTYPE LEVEL PERFORMER.
6. *Payment Terms:* The PROTOTYPE LEVEL PERFORMER shall be paid within fifteen (15) calendar days of NSTXL receiving payment from the Government.

For Projects that are funded by the Government in advance, NSTXL shall pay an approved invoice within thirty (30) calendar days of receipt.

E. Allowable Costs

1. No Project Order will be executed under this Agreement on an expenditure basis unless the PROTOTYPE LEVEL PERFORMER performing under the Project Order has an accounting system that (i) is capable of identifying and segregating costs to the individual agreements, and (ii) provides for an equitable allocation of costs.
2. When the PROTOTYPE LEVEL PERFORMER performing under a Project Order has a system capable of identifying amounts/costs, the PROTOTYPE LEVEL PERFORMER will identify the basis for determining actual costs with supporting detail when presented for expenditure reimbursement.
3. If the PROTOTYPE LEVEL PERFORMER performing under this Project Order is subject to Contract Accounting Standards on other agreements or contracts, then the allowable costs for Project Orders executed under this agreement on an expenditure reimbursement basis (i.e., not fixed price) are only allowable for reimbursement subject to the cost principles of Federal Acquisition Regulation (FAR) Part 31, Defense Federal Acquisition Regulation Supplement (DFARS) Part 231, and Navy and Marine Corps Acquisition Regulation Supplement (NMCARS) Part 5231, with all mention of Contractor understood to mean the PROTOTYPE LEVEL PERFORMER and all mention of Contracting Officer understood to mean Agreements Officer.

F. Requirements for Cost Share and Participation (if applicable)

1. In accordance with 10 USC 4022, where it is determined that a cost share is required for an individual Technology Project, at least one third of the total cost of the Prototype Project is to be paid out of funds provided by parties to the transaction other than the Federal Government. Each prototype proposed by a traditional Defense Contractor shall document the cost sharing proposed.
2. Federal funds and any PROTOTYPE LEVEL PERFORMER's cost sharing funds are to be used only for expenditures that a reasonable and prudent person would incur in carrying out the Project Order.
3. For Prototype Projects that require cost sharing, the non-Federal amounts counted towards the PROTOTYPE LEVEL PERFORMER's contribution may not include costs that were incurred before the date on which the Prototype Project becomes effective, except that costs incurred for a prototype after the start of negotiations, but prior to award of the subject Prototype Project, may be counted towards the non-Federal contribution if the Agreements Officer determines the PROTOTYPE LEVEL PERFORMER incurred the costs in anticipation of entering into the Prototype Project and it was appropriate for the PROTOTYPE LEVEL PERFORMER to incur the costs prior to the Prototype Project award. The Agreements Officer will not consider the cost of Government funded research, prior Independent Research and Development (IR&D), or indirect costs that are not allocable to the Prototype Project, as part of the cost sharing contribution.

4. To enforce the cost sharing requirement, at least one third of the total cost of the Prototype Project (excluding those performed exclusively by Non-traditional Defense Contractors) will be paid by the PROTOTYPE LEVEL PERFORMER no later than delivery of the final milestone. If at conclusion of the project it is determined that a nontraditional Defense Contractor did not participate to a significant extent, the overall price of that project will be reduced to no more than two-thirds of the total awarded price. The Government shall retain sole authority to determine if the nontraditional Defense Contractors involvement meets the statutory requirements for avoiding cost sharing.

ARTICLE IV: PHYSICAL AND INTELLECTUAL PROPERTY

A. Government Furnished Property

1. The Government may provide Government Furnished Property (GFP) to facilitate the performance of individual Project Orders. The Government will identify whether GFP will be provided and its expected disposition to provide notice and account for GFP disposition. Such GFP will be specifically identified to a particular Statement of Work or Task Description Document incorporated at award or via a modification to this Agreement. The GFP shall be utilized only for the performance of that individual Project Order unless a specific exception is made in writing by the AO.
2. The Government shall retain title to all GFP. Title to GFP shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall GFP become a fixture or lose its identity as personal property by being attached to any real property.
3. All GFP shall be returned to the Government at the end of the period of performance of each Project Order in as good a condition as when received with the exception of reasonable wear and tear, or as otherwise agreed upon in the project award documentation. The PROTOTYPE LEVEL PERFORMER shall obtain explicit written authorization from the AO for any transfer or disposition of GFP. The PROTOTYPE LEVEL PERFORMER shall assume the risk and be responsible and liable for any and all maintenance, repair, or replacement, loss, theft or destruction of, or damage to, any Government Furnished Property while in its possession, use, or control, with the exception of reasonable wear and tear or reasonable and proper consumption, unless otherwise negotiated under the terms of the individual Project Order.
4. The PROTOTYPE LEVEL PERFORMER shall report losses of Government property outside normal process variation (e.g., losses due to theft, inadequate storage, lack of physical security or "Acts of God") to NSTXL and the Agreements Officer. This reporting requirement does not change any liability provisions or other reporting requirements that may exist under this Agreement.
5. PROTOTYPE LEVEL PERFORMER shall initiate and maintain the processes, systems, procedures, records, and methodologies necessary for effective and efficient control of Government property. PROTOTYPE LEVEL PERFORMER's responsibility extends from the initial acquisition and/or receipt of property, through stewardship, custody, and use until formally relieved of responsibility by authorized means, including delivery, consumption, expending, sale (as surplus property), or other disposition, or via a completed investigation, evaluation, and final determination for lost property. This requirement applies to all Government property under the PROTOTYPE LEVEL PERFORMER's accountability, stewardship, possession or control, including its vendors or sub-performers.

B. Performer Acquired Property

No significant items of property are expected to be acquired under this Agreement. Title to any item of property valued at \$25,000 or less that is acquired by the PROTOTYPE LEVEL PERFORMER pursuant to a Project Order shall vest with the PROTOTYPE LEVEL PERFORMER upon acquisition with no further obligation of the Parties unless

otherwise identified by the AO and mutually agreed upon by all Parties. Should any item of property with an acquisition value greater than \$25,000 be required, NSTXL, at the request of the PROTOTYPE LEVEL PERFORMER, must first obtain prior written approval of the AO. Upon written approval of the AO, title to this property also shall vest in PROTOTYPE LEVEL PERFORMER or their designee upon acquisition. The PROTOTYPE LEVEL PERFORMER shall be responsible for the maintenance, repair, protection, and preservation of all such property at its own expense. Property acquired pursuant to this clause shall not be considered as an exchange for services in performance of the Project Order, but it shall be considered a Government contribution under this Agreement.

C. Intellectual Property

The PROTOTYPE LEVEL PERFORMER acknowledges and agrees to comply with the Intellectual Property & Patent Rights Terms attached hereto. The Government and the PROTOTYPE LEVEL PERFORMER may specially negotiate Data Rights, Patents, Licensing, Copyright, Trademarks, Trade Secrets or Software restrictions that develop out of products or services invented, augmented, improved or transformed during the performance of the Prototype Project.

D. Proprietary Information

For information to be treated as “Proprietary Information” hereunder, information and materials must be designated as proprietary in writing, whether by letter or by use of an appropriate stamp or legend, prior to or at the same time any such information or materials are disclosed to the Government or NSTXL. Notwithstanding the foregoing, materials and other information which are orally, visually, or electronically disclosed, or are disclosed in writing without an appropriate letter, stamp, or legend, shall constitute Proprietary Information if the PROTOTYPE LEVEL PERFORMER, within thirty (30) calendar days after such disclosure, delivers to NSTXL or the Government a written document or documents describing the material or information and indicating that it is proprietary, provided that any disclosure of information prior to receipt of such notice shall not constitute a breach of any obligation to protect Proprietary Information. NSTXL shall not release or disclose any clearly marked Proprietary Information to any outside agency or private entity without prior written approval of the PROTOTYPE LEVEL PERFORMER’s named agent.

NSTXL shall limit the disclosure of any Proprietary Information received from the PROTOTYPE LEVEL PERFORMER or their sub-performers to those of its employees, agents, representatives and the Government having a direct need to know about the same to achieve the objectives of the Prototype Project and funded Project Order implemented through this Agreement. NSTXL shall exercise the same care and safeguards with respect to Proprietary Information disclosed by the PROTOTYPE LEVEL PERFORMER as NSTXL uses to maintain the confidentiality of its own Proprietary Information. NSTXL shall not be liable in damages for any inadvertent disclosure of Proprietary Information where at least a reasonable degree of care has been exercised, provided that timely notification of such disclosure is afforded to the PROTOTYPE LEVEL PERFORMER.

E. Disclosure of Information

1. PROTOTYPE LEVEL PERFORMERS shall not release to anyone outside the PROTOTYPE LEVEL PERFORMER’s organization any government furnished information, regardless of medium (e.g. film, tape, document), pertaining to any part of any Project Order or any Prototype Project related to a PERFORMER AGREEMENT unless-
 - a. The Agreements Officer has given prior written approval; or
 - b. The information is otherwise in the public domain before the date of release.
2. Requests for approval under paragraph (a)(1) shall identify the specific information to be released, the medium to be used, and the purpose for the release. NSTXL shall submit the request to the Agreements Officer, on behalf of the PROTOTYPE LEVEL PERFORMER, at least 10 business days before the

proposed date for release. If additional time is required to review the release, the Government shall notify NSTXL prior to the expiration of the aforementioned timeframe.

3. PROTOTYPE LEVEL PERFORMER shall include a requirement similar to subparagraphs 1. and 2. above and this subparagraph 3 in any sub-agreement under any Project Order.
4. Public Announcements/Press Release: NSTXL in conjunction with the Government reserves the right to review and approve all project-related press releases prior to distribution. NSTXL will coordinate the development and approval of any press releases with the PROTOTYPE LEVEL PERFORMER and respective project sponsor.

ARTICLE V: MODIFICATIONS AND TERMINATIONS

A. Modifications and Changes

1. The Government, through direction of the named Agreements Officer, may request modifications (changes), including justifications to support any changes to the funded Project Order. The Agreements Officer shall provide a written request for changes to the Statement of Work or Task Description Document, to the PROTOTYPE LEVEL PERFORMER through NSTXL for a cost and price impact assessment. The PROTOTYPE LEVEL PERFORMER will have no more than thirty (30) calendar days to respond with a written assessment of cost, schedule and performance impacts from the Government's request for modification. Upon negotiation and agreement of the requested modification between the PROTOTYPE LEVEL PERFORMER and the Government, the Statement of Work or TDD(s) shall be revised accordingly, and this Agreement shall be amended to reflect these new performance objectives as well as the revised Milestone Payment Schedule (if applicable).
2. PROTOTYPE LEVEL PERFORMER may make recommendations for modifications (changes), including justifications to support any changes to the Prototype Project. Such recommendations shall be documented in writing and submitted by the PROTOTYPE LEVEL PERFORMER to NSTXL with a copy issued to the Government AOR designated for the Prototype Project. The Agreements Officer shall be responsible for review and determination of change requests, and the AO may issue to NSTXL authorization for modification or changes to the Statement of Work or Task Description Document, if any. NSTXL shall modify and/or amend this Agreement and/or Statement of Work or TDD(s) in the event of any such modification authorization or amendment is mutually agreed upon by the Parties.

Changes to a deliverable due date must be requested in writing by the PROTOTYPE LEVEL PERFORMER to NSTXL no later than 3 days before the original agreed upon deliverable due date (Attachment C). The request must include supporting rationale for the revision, a revised delivery date, and impacts to subsequent milestones. Such changes are subject to approval of the AO.

3. Changes in the terms and/or conditions of this Agreement, the Statement of Work, Task Description Document or any Prototype Projects executed under this Agreement, except for minor or administrative corrections, may only be made by written agreement between NSTXL and the PROTOTYPE LEVEL PERFORMER.
4. Any technical direction provided by the Government must be within the general scope of the Statement of Work or TDD, and may include:
 - a. Issuing direction to the PROTOTYPE LEVEL PERFORMER which shifts work emphasis between work areas, phases, milestones or tasks, and/or; fills in details or otherwise serves to accomplish the objectives described in any statement of work;

- b. Providing guidelines to the PROTOTYPE LEVEL PERFORMER that assist in the interpretation of drawings, specifications or technical portions of the work description;
 - c. Reviewing, and where required by the Statement of Work or TDD, approving technical reports, drawings, specifications, or technical information to be delivered by the PROTOTYPE LEVEL PERFORMER under the Statement of Work / TDD.
5. No Party may issue technical direction that has the effect of any of the following:
- a. Assign work outside of the Statement Work or TDD;
 - b. Increase or decrease the estimated Statement of Work or TDD cost/price, or the time required for performance;
 - c. Change any of the terms, conditions or specifications of the Project Order, Statement of Work, TDD; or,
 - d. Accept or direct non-conforming work.

No verbal or written request, notice, authorization, direction or order received by the PROTOTYPE LEVEL PERFORMER shall be binding upon NSTXL or the Government, or serve as the basis for a change in the Statement of Work/ TDD cost or any other provision, unless issued (or confirmed) in writing by NSTXL working on behalf of the Agreements Officer.

6. The PROTOTYPE LEVEL PERFORMER shall immediately notify NSTXL whenever a verbal or written change notification has been received from anyone other than the NSTXL contractual representative, which would affect any of the terms, conditions, cost, schedules, etc. of the Statement of Work/ TDD, and the PROTOTYPE LEVEL PERFORMER is to perform no work or make any changes in response to any such notification or make any claim on NSTXL or the Government, unless NSTXL (as a result of Agreement Officer concurrence or direction) directs the PROTOTYPE LEVEL PERFORMER, in writing, to implement such change notification, and that change notification is in keeping with the Agreement and/or the Statement of Work and TDD.

B. Stop Work

- 1. The Government may, at any time, by written order to the PROTOTYPE LEVEL PERFORMER, with coordination through NSTXL, require the PROTOTYPE LEVEL PERFORMER performing under a Project Order to stop all, or any part, of the work called for under the Statement of Work or TDD. This written order is referred to as a Stop Work Order.
- 2. Upon receipt of the Stop Work Order, the PROTOTYPE LEVEL PERFORMER shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the stop work order during the period of work stoppage. Within the period of ninety (90) calendar days after the stop work order is delivered to the PROTOTYPE LEVEL PERFORMER, or within any extension of that period to which the Parties have agreed, the Government will either:
 - a. Cancel the stop work order, or
 - b. Terminate, in whole or in part, the work covered by the Agreement
- 3. If a Stop Work Order is cancelled, the PROTOTYPE LEVEL PERFORMER shall resume work under the Project Order. The Government reserves the right to make an equitable adjustment in the delivery schedule or Project Order cost or price, or both that result from the Stop Work Order. The PROTOTYPE LEVEL PERFORMER performing under the Project Order shall assert its right to an equitable adjustment as a result of the Stop Work Order within thirty (30) calendar days after the end of the period of work stoppage.

C. Force Majeure

No failure or omission by NSTXL or the PROTOTYPE LEVEL PERFORMER during the performance of any obligation of this Agreement shall be deemed a breach of this Agreement or create any liability if the failure or omission arises from a cause beyond the control of the Parties, including, but not limited to the following: acts of God; acts or omissions of the Government in either its sovereign or contractual capacity; changes to any rules, regulations or orders issued by any Governmental authority or by any officer, department, and agency or instrumentality thereof, unless affected by modification to the Agreement; fire; storm; flood; earthquake; accident; war; rebellion; insurrection; riot; and invasion, provided that such failure or omission resulting from one of the above causes is cured as soon as is practicable.

D. Project Termination

1. The Government reserves the right to terminate the Prototype Project and the defined Statement of Work or TDD, or any Project Order supporting this Agreement, or any part hereof, at any time, for its sole convenience. In the event of such termination, the PROTOTYPE LEVEL PERFORMER shall stop work thereunder and cause any and all of its suppliers and sub-performers to cease work, as directed by the Agreements Officer. The Government and the PROTOTYPE LEVEL PERFORMER, via NSTXL, should negotiate in good faith a reasonable and timely adjustment of all outstanding issues between the Parties as a result of termination, which may include noncancelable commitments made prior to the termination. Failure of the Parties to agree to an equitable adjustment shall be resolved pursuant to the Disputes clause of this Agreement.
2. If the termination is a result of a failure to comply with the terms and conditions of this Agreement or Project Order, then the Government reserves the right to report the termination to the systems of record for reporting terminations for cause or default as it relates to the specific performer.
3. No less than fifteen (15) calendar days before making a decision to terminate for a failure to comply or perform, the Government will issue written notification to NSTXL identifying how PROTOTYPE LEVEL PERFORMER has failed to perform under the respective Statement of Work or TDD and/or derivative agreements. The Government will consult with NSTXL (and the PROTOTYPE LEVEL PERFORMER) to ascertain the cause of the failure and determine whether additional efforts are in the best interest of the Government. The Government and the PROTOTYPE LEVEL PERFORMER, via NSTXL, should negotiate in good faith a reasonable and timely adjustment of all outstanding issues between the Parties as a result of termination, which may include non-cancelable commitments made prior to the termination. Failure of the Parties to agree to an equitable adjustment shall be resolved pursuant to the Disputes clause of this Agreement.

E. Dispute Resolution Procedures

1. Any disagreement, claim, or dispute between the Government and NSTXL and/or the PROTOTYPE LEVEL PERFORMER concerning questions of fact or law arising from or in connection with this Agreement and/or any derivative agreement or appendices, and, whether or not involving an alleged breach of this Agreement and/or any derivative agreement or appendices, may be raised only under this Article.

Whenever disputes arise, the Parties shall attempt to resolve the issue(s) involved by discussion and mutual agreement within thirty (30) calendar days. The Parties agree that the notification under subparagraph (2) of this Section shall not be made earlier than thirty (30) calendar days from when the dispute arose. In no event shall a dispute that arose more than one hundred and eighty (180) calendar days prior to the

notification made under subparagraph (2) of this clause constitute the basis for relief under this clause unless the Agreements Officer approves a waiver of this requirement in writing.

2. Failing resolution by mutual agreement, the aggrieved Party shall notify the other Party (through NSTXL) in writing of the relevant facts, identifying unresolved issues, and specifying the clarification or remedy sought. The dispute will then be referred to the Chief of the Contracting Office for NSW Crane Division and an executive of NSTXL, who shall meet in good faith to resolve the dispute. NSTXL may request that a representative of the PROTOTYPE LEVEL PERFORMER attend.
3. If the immediately above noted Parties are not able to resolve the dispute within sixty (60) calendar days of the date the notice under subparagraph (2) is received, then either party may pursue any remedy under the law.
4. Pending resolution of any such dispute by settlement or by final judgment, the Parties shall each proceed diligently with performance, unless otherwise mutually agreed, or the Agreements Officer directs, in writing, to stop work.

LIMITATION OF LIABILITY AND DAMAGES; INDEMNIFICATION

1. In the event of any full or partial termination of this Agreement, or a project funded hereunder, by the Government, neither the Government nor NSTXL shall be liable for any loss of profits, revenue, or any indirect or consequential damages incurred by the PROTOTYPE LEVEL PERFORMER, its contractors, sub-performers, or customers as a result of such termination. Damages for such termination of this Agreement is limited solely to direct damages and costs and/or fees incurred as a result of any termination of this Agreement, and subject to mitigation of such damages by the PROTOTYPE LEVEL PERFORMER. In no instance shall the Government's liability for termination exceed the total amount due and unpaid to PROTOTYPE LEVEL PERFORMER under this Agreement. Similarly, in no instance shall NSTXL's liability for termination exceed the total amount due to PROTOTYPE LEVEL PERFORMER under this Agreement which has been paid by the Government to NSTXL to date for payment over to the PROTOTYPE LEVEL PERFORMER and that has not been so paid.
2. With regard to the activities undertaken pursuant to this Agreement, no Party shall make any claim against the other or the Government, the other's or the Government's employees, the other's or the Government's related entities (e.g. contractors, sub-performers), or employees of the other's or the Government's related entities for any injury or death of its own employees or employees of its related entities, whether such injury, death, damage or loss arises through negligence or otherwise, provided however, that in the event willful misconduct is determined by a tribunal of competent jurisdiction to have occurred, this clause shall not be a bar to suit and/or recovery.
3. None of the Parties or the Government shall be liable to each other for consequential, punitive, special and incidental damages or other indirect damages, whether arising in contract (including warranty), tort (whether or not arising from the negligence of a Party or the Government) or otherwise, except to the extent such damages are caused by a Party's or the Government's willful misconduct or arise from third-party claims that are subject to indemnification under subparagraph 5 below.

Under no circumstances will the above enumerated exceptions be interpreted to apply the Contract Disputes Act to the OTA or this Agreement, or in any way cause the OTA or this Agreement to be subject to any terms of or regulations related to the Contract Disputes Act.

4. The PROTOTYPE LEVEL PERFORMER agrees to extend the waiver of liability set forth above in subparagraphs 2 and 3 to entities at any tier performing the Project Order under this Agreement by

requiring them, through agreement, contract or otherwise, to agree to waive all claims against the Parties to this Agreement as well as the Government.

5. Each Party (an “Indemnifying Party”) agrees to indemnify, hold harmless, and defend the other Party and the Government and their respective managers, officers, directors, employees, agents, affiliates, successors, and permitted assigns, against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs or expenses of whatever kind, including professional fees and reasonable attorneys’ fees, arising out of any third-party claim alleging or arising from:
 1. property damage or bodily injury, including death, caused solely by the willful misconduct of such Indemnifying Party, its agents, employees, or affiliates in connection with work under this Agreement,
 2. such Indemnifying Party’s infringement or wrongful use of intellectual property, including without limitation, Technical Data, software, or inventions, or
 3. any failure by Indemnifying Party to comply with any applicable federal, state, or local laws, regulations, or codes in the performance of its obligations under this Agreement.

ARTICLE VI: GENERAL PROVISIONS

A. Severability

In the event that any provision of this Agreement, or any related agreement, becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Agreement shall continue in full force and effect without said provision; provided, that no such severability shall be effective if the result of such action materially changes the economic benefit of this Agreement, or the rights and/or liabilities of any Party.

B. Counterparts

This Agreement may be executed simultaneously in any number of counterparts, each of which counterparts shall be deemed to be an original, and such counterparts shall constitute but one and the same instrument. Execution and delivery hereof by facsimile or electronic means shall have the same force and effect as execution by original signature.

C. Agreement Confidentiality: Maintenance of Confidentiality

The PROTOTYPE LEVEL PERFORMER agrees to keep the contents of this Agreement and all derivative information and/or Appendice(s) (“Agreement Information”) confidential and to not, without the prior written consent of NSTXL, disclose, or allow any of its representatives who receive Agreement Information to disclose the Agreement Information in any manner whatsoever, in whole or in part. The PROTOTYPE LEVEL PERFORMER agrees to inform NSTXL in the event the Agreement Information is disseminated. Nothing in this clause shall prevent the PROTOTYPE LEVEL PERFORMER from disclosing the Agreement Information to its retained services professionals (e.g., lawyers, accountants, consultants etc.), the PROTOTYPE LEVEL PERFORMER employee’s, or any other third party to the extent such party is necessary to effectuate this Agreement or the subject matter of this Agreement. This clause is a material term of this Agreement and a breach of this clause is acknowledged between the Parties to cause NSTXL harm in its ongoing business endeavors.

D. Waiver

No waiver of any provision of this Agreement shall be binding unless and until set forth expressly in writing and signed by the waiving party. To be valid, NSTXL’s signature must be by a person specially authorized to sign such a document. The waiver by either Party of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any preceding or succeeding breach of the same or any other term or provision, or a waiver

of any contemporaneous breach of any other term or provision, or a continuing waiver of the same or any other term or provision. No failure or delay by a Party in exercising any right, power, or privilege hereunder or other conduct by a Party shall operate as a waiver thereof, in the particular case or in any past or future case, and no single or partial exercise thereof shall preclude the full exercise or further exercise of any right, power or privilege. No action taken pursuant to this Agreement shall be deemed to constitute a waiver by the Party taking such action of compliance with any representations, warranties, covenants or agreements contained herein.

E. Safety

The PROTOTYPE LEVEL PERFORMER shall adhere to all local, state, and federal rules and regulations required in maintaining a safe and non-hazardous occupational environment throughout the duration of this Agreement. The PROTOTYPE LEVEL PERFORMER, through NSTXL, shall during the course of a Project Order report any major accident/incident (including fire) resulting in any one or more of the following: causing one or more fatalities or one or more disabling injuries; damage of Government property exceeding \$10,000; affecting program planning or production schedules; degrading the safety of equipment under contract, such as personnel injury or property damage may be involved; identifying a potential hazard requiring corrective action.

F. Environmental Requirements

The PROTOTYPE LEVEL PERFORMER shall comply with all Federal, State, and local environmental laws and regulations, treaties and agreements when executing Prototype Projects under this Agreement. The recipient shall evaluate the environmental consequences and identify the specific types and amounts of hazardous waste being generated during the conduct of efforts undertaken under this Project Order. The PROTOTYPE LEVEL PERFORMER shall give consideration to alternative materials and processes in order to eliminate reduce or minimize hazardous waste being generated. The PROTOTYPE LEVEL PERFORMER shall not use Class 1 Ozone Depleting Chemicals in executing Prototype Projects under this Agreement.

G. Assignment

Neither this Agreement nor any of the rights or obligations under this Agreement, may be assigned or delegated, in whole or in part, by operation of law or otherwise, by any party hereto without the prior written consent of the other parties hereto, and any such assignment without such prior written consent shall be null and void; provided, however, that the PROTOTYPE LEVEL PERFORMER may assign any or all of their rights and obligations under this Agreement to any of their Affiliates, but only to the extent that such assignment would not result in an impairment of the other Party's rights under this Agreement. No assignment shall relieve the assigning party of any of its obligations hereunder.

H. Organizational Conflicts of Interest

1. Throughout performance, the PROTOTYPE LEVEL PERFORMER shall monitor all potential conflicts of interest, to include conflicts between its company's efforts for which it is currently under contract (to include any form of agreement).
2. The PROTOTYPE LEVEL PERFORMER performing under this Agreement must monitor and disclose the extent to which their prototype-level performance duplicates system development or enhancement being performed under other agreements or contracts for which they are under contract or agreement.
3. The PROTOTYPE LEVEL PERFORMER must immediately report all potential or real organizational conflict of interests to NSTXL and the Government.
4. The Government has the right to limit PROTOTYPE LEVEL PERFORMER(s)'s involvement under this Agreement or other action to mitigate organizational conflicts of interest. In the event the PROTOTYPE

LEVEL PERFORMER believes that the conflict can be mitigated, the PROTOTYPE LEVEL PERFORMER shall submit to the Agreements Officer a conflict mitigation plan.

I. Entire Agreement

This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof and completely supersedes all prior or contemporaneous agreements, understandings, arrangements, commitments, negotiations and discussions of the Parties, whether oral or written (all of which shall have no substantive significance or evidentiary effect). No officer, employee, or representative of NSTXL has any authority to make any representation or promise in connection with this Agreement or the subject matter hereof that is not contained herein, and the PROTOTYPE LEVEL PERFORMER represents and warrants that they have not executed this Agreement in reliance upon any such representation or promise. No modification of this Agreement shall be valid unless made in writing and signed by the Parties hereto.

J. Clauses Incorporated by Reference

1. 52.204-25 PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (NOV 2021)