

A PROJECT AGREEMENT BETWEEN

DEFENSE ENERGY CENTER OF EXCELLENCE, d/b/a NATIONAL SECURITY TECHNOLOGY
ACCELERATOR
2221 SOUTH CLARK STREET
ARLINGTON, VA 22202

AND

PERFORMER
ADDRESS
CITY, STATE, ZIP

NSTXL OTA CONTRACT #: W900KK-18-9-0005
NSTXL PROJECT AGREEMENT #: NSTXL-TREX-18-000X

This Project Agreement (hereinafter the “Agreement” or the “Project Agreement”) is entered into between the Defense Energy Center of Excellence, d/b/a National Security Technology Accelerator, (hereinafter referred to as “NSTXL”) and PERFORMER, (hereinafter referred to as the “PROJECT AGREEMENT HOLDER”)(Collectively, NSTXL and PROJECT AGREEMENT HOLDER 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 and supersedes all prior representations and agreements. It shall not be varied except by an instrument in writing of subsequent date duly executed by an authorized representative of each Party.

PROJECT AGREEMENT TERM: The term of this Agreement shall be the date of completion established in each Statement of Work (Appendix A). NSTXL and the PROJECT AGREEMENT HOLDER may subsequently amend the term of this Agreement upon concurrence by both Parties by written amendment or modification, as applicable.

AUTHORITY: The United States Government (the “Government”), acting through the Army Contracting Command - Orlando (“ACC-Orlando” or “ACC-ORL”)(for purposes of this Agreement ACC-Orlando may be referred to as the “Government”) entered into a 10 U.S.C. § 2371b Other Transaction Agreement (“OTA”) with NSTXL to support the Department of Defense (“DoD”) in a program designed to spur innovative development and demonstration of technology and to carry out certain prototype projects to increase warfighter readiness via modeling, simulation and training. The NSTXL OTA, W900KK-18-9-0005, was signed between ACC-Orlando and NSTXL on the 22nd of November, 2017.

NATIONAL SECURITY TECHNOLOGY
ACCELERATOR (NSTXL)

PERFORMER

(Name & Title)

(Name & Title)

(Signature)

(Signature)

(Date)

(Date)

ARTICLE I: SCOPE OF THE AGREEMENT

A. The following attachments as delineated are to be considered part of this Agreement and are incorporated in whole into this Agreement:

1. Appendix A: Project Award Package
 - a. Milestones and Payments Schedule
 - b. Certificate of Completion Template
 - c. Operational Security (OPSEC) and Security (IF APPLICABLE)
 - e. Supplemental Intellectual Property Agreement (IF APPLICABLE)
2. Appendix B: Department of Defense Other Transactions Guide for Prototype Projects, dated January 2017 (“DoD Guide”), the *definitions* section (see, *DI. Definitions* of the DoD Guide), as supplemented

B. Background

On the 22nd of November, 2017, NSTXL entered into an OTA with the Government, OT Agreement No. W900KK-18-9-0005. The OTA requires NSTXL to enter into a Project Agreement with each TRex member *whose prototype project is selected by the Government*.

Prior to project award the PROJECT AGREEMENT HOLDER submitted a TRex membership application and acknowledged and agreed to the TRex Principles of Engagement agreement, pursuant to which the PROJECT AGREEMENT HOLDER became a member of TRex and agreed to comply with all provisions of the TRex Principles of Engagement.

C. Definitions

The “definitions” section, *and only the definitions section*, as outlined in the Department of Defense Other Transactions Guide for Prototype Projects, dated January 2017, (Appendix B) (hereinafter referred to as the “DoD Guide”, see, *DI. Definitions* of the DoD Guide) shall be considered as the primary reference for terms outlined and utilized throughout the performance of this Agreement. The definitions section of the DoD Guide, *and only the definitions section*, as updated from time to time by the Department of Defense (“DoD”), shall by agreement of the Parties be automatically incorporated in full into this Agreement at the time of such update, and in the event of conflict between this Agreement and the DoD Guide, the DoD Guide shall supersede and take precedent. Additionally, the following definitions supplement the DoD Guide pertaining to this Agreement:

“Academic Research Institution” means institutions (colleges, universities or other educational institutions) of higher learning in the U.S.

“Agreement” (aka “Project Agreement”) means that agreement NSTXL-TREX-18-0004 between NSTXL and the PROJECT AGREEMENT HOLDER that serves as the baseline agreement for all activities by and between NSTXL and the PROJECT AGREEMENT HOLDER in connection with the OTA award.

“Agreements Officer (AO)” an individual with authority to enter into, administer, or terminate OTs for prototype projects on behalf of the Government.

“Agreements Officer Representative (AOR)” is the individual designated by the Government on a per project basis to monitor all technical aspects and assist in administration of the specific project.

“Army Contracting Command – Orlando” (aka “ACC-Orlando” or “ACC-ORL”) means the Army Contracting Command who is designated as the lead Government administrator under the OTA.

“Cash Contribution” means financial resources expended by the PROJECT AGREEMENT HOLDER to conduct a project awarded under this Agreement. A Cash Contribution may be individual and/or company funds or outside

sources of income or may be non-federal (e.g., state or local funds) contract or grant revenues or from profit or fees, including from a federal procurement contract not associated with this Agreement. A Cash Contribution may include corporate retained earnings, current or prospective Independent Research and Development (IR&D) funds or any other indirect cost pool allocation. New or concurrent IR&D funds can be utilized as a cash contribution provided those funds identified are to be spent on the conduct of a Statement of Work and are not otherwise disallowed or disallowable. *Prior IR&D will not be considered part of the cash or in kind contribution on the project recipient's cost sharing portion.* Cash Contributions include the funds spent for labor (including benefits and direct overhead), materials, new equipment (prorated if appropriate), subcontractor efforts expended on a project, and restocking the parts and material consumed under a project. *Cash Contributions do not include contributions by the United States Government or any component thereof.*

“Contracting Activity” means an element of an agency designated by the agency head and delegated authority regarding acquisition functions. It also means elements designated by the director of a defense agency which has been delegated contracting authority through its agency charter.

“Cost Share” means resources expended by a PROJECT AGREEMENT HOLDER on the proposed Statement of Work. There are two kinds of cost share: cash contribution and in-kind contribution.

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

“Date of Completion” is the date on which all work is completed or the date on which the period of performance ends.

“Development” means the systematic use, under whatever name, of scientific and technical knowledge in the design, development, test, or evaluation of an 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 functions of design engineering, prototyping, and engineering testing.

“Effective Date” means the date of last signature.

“Government” means the U.S. Government and its departments and agencies, including the Department of Defense (“DoD”) and/or ACC-Orlando.

“Government Fiscal Year” means the period commencing on October 1st and ending September 30th of any calendar year.

“In Kind Contribution” means nonfinancial resources expended by the PROJECT AGREEMENT HOLDER to conduct a project, such as wear and tear on in-place capital assets like machinery or the prorated value of space used for the conduct of a project, and the reasonable fair market value (appropriately prorated) of equipment, materials, and other property used in the conduct of a project.

“Intellectual Property” collectively refers to rights governed by a variety of different laws, such as patent, copyright, trademark, and trade secret laws, and for purposes of this Agreement includes, but is not limited to: data of any kind, software, Subject Inventions and/or their patents, technical manuals schematics, blueprints, and all other similar materials and/or documents.

“Milestone” means a scheduled event signifying the completion of a major deliverable or a set of related deliverables.

“NSTXL” is a consortium of industry, nonprofit and academia comprised of traditional defense contractors and nontraditional defense contractors.

“TReX Member(s)” means the applicant(s) that have applied, and been accepted, to be members of TReX.

“Other Transactions” is the term commonly used to refer to the statutory authority to enter into transactions other than contracts, grants or cooperative agreements.

“OTA” refers to the *Other Transaction Agreement* between the Government and NSTXL, Agreement No. W900KK-18-9-0005.

“Payable Milestone” means that once a milestone has been met (see definition of “Milestone”), the Government can approve payment to NSTXL of a predetermined dollar amount in relation to performance of a particular project.

"Program Executive Office for Simulation, Training and Instrumentation" (aka PEO STRI) refers to the acquisition activity responsible for the overall programmatic and financial oversight of the Training and Readiness Accelerator.

“PROJECT AGREEMENT HOLDER” means the recipient issued a Project Agreement by NSTXL under the OTA.

“Signatory Authority” refers to the individual that has the authority to legally bind a party to an agreement.

“Statement of Work” (aka “SOW”), if applicable, means that agreement between NSTXL and the PROJECT AGREEMENT HOLDER whose proposal for a project is evaluated and competitively selected by the Government for award under the OTA and which falls under the Appendix A of the Project Agreement. The SOW establishes the scope of work, terms and conditions for the PROJECT AGREEMENT HOLDER’s performance, and payment under the Government funded project. The SOW(s) is issued by NSTXL to the PROJECT AGREEMENT HOLDER to be performed under the terms contained in the Agreement.

“Task Request” means a solicitation provided by the Government to NSTXL that includes a detailed description of activities, schedules, and funding, as appropriate, for NSTXL consideration and acceptance of its commitment to perform the task.

“Training and Readiness Accelerator” or “TReX” is the DoD sponsored entity that NSTXL manages on the Government’s behalf.

D. Scope

Refer to Appendix A.

NSTXL shall be responsible for the administration and overall project surveillance of the project(s) funded under the OTA and the Project Agreement. The Government designated AOR shall be responsible for technical supervision of each project funded, overseeing performance of the PROJECT AGREEMENT HOLDER(s) under the project, and reviewing and approving deliverables and Milestone Payments.

E. Goals/Objectives

Refer to Appendix A: Statement of Work

The purpose for entering into this Agreement is to spur innovative development and demonstration of technology and to carry out certain prototype projects to increase warfighter readiness via modeling, simulation and training. It is believed that the PROJECT AGREEMENT HOLDER may assist the Government through modeling, simulation and training related prototypes directly relevant to enhancing the mission effectiveness of military personnel and supporting platforms, systems, components, or materials.

F. Reports

The PROJECT AGREEMENT HOLDER conducting prototype projects in accordance with this Agreement shall maintain records of the activities performed and funding expended under the effort and the results of any studies, analyses, tests and other investigations conducted. PROJECT AGREEMENT HOLDER shall submit reports as required per this Agreement and any appendices. Further, in the event the Government requests relevant material in connection with the OTA and/or the Project Agreement, NSTXL may look to the PROJECT AGREEMENT HOLDER to comply with such requests. The PROJECT AGREEMENT HOLDER shall provide access to the

Comptroller General of the United States, or their designated representative, upon request and as required under 10 U.S.C. § 2371b.

G. Role and Responsibilities

Government Responsibilities. The Government will provide strategic technology development and technical guidance. The Government will *solely* be responsible for evaluation, acceptance, and selection of any technology project and/or proposal submitted by NSTXL. The Government will monitor the technical work performed and technical compliance under each funded project. The Government also may (1) directly participate in these collaborative efforts, (2) provide full or partial funding, and (3) share expertise and facilities.

NSTXL Responsibilities. NSTXL shall enter into a Project Agreement with a PROJECT AGREEMENT HOLDER and manage and supervise any project under the OTA. NSTXL shall provide administrative support to TReX consortium members.

PROJECT AGREEMENT HOLDER Responsibilities. The PROJECT AGREEMENT HOLDER shall conduct themselves commensurate with the terms and conditions of this Agreement and all attendant documents that are derivative thereof, including any appendices. PROJECT AGREEMENT HOLDER(s) shall on a best efforts basis provide technological, personnel, administrative and management support for any project for which they are chosen to enter into an agreement with NSTXL, and which is in support of the OTA.

ARTICLE II: TERM and TERMINATION

A. The Term of this Agreement

The term of this Agreement shall be the date of completion established in each Statement of Work (Appendix A). NSTXL and the PROJECT AGREEMENT HOLDER may subsequently amend the term of this Agreement upon concurrence by both Parties. Provisions of this Agreement, which, by their express terms or by necessary implication, apply for periods of time other than specified in Article II, shall be given effect, notwithstanding this Article.

B. Termination Provisions

1. Termination by Mutual Consent

This Agreement, or any specific project under this Agreement, in whole or in part, may be terminated at any time upon mutual written consent of both Parties. In the event the Parties to this Agreement agree to terminate via mutual consent, the Parties shall negotiate in good-faith what, if anything, is owed and due, including any applicable offset(s), prior to the Agreement, or any specific project under this Agreement, actually being terminated.

2. Termination for Failure to Perform

The Government and/or NSTXL may terminate this Agreement, or any part hereof, or any specific project hereunder, for "cause". Cause shall be defined as:

- a. In the event of any material failure to perform by the PROJECT AGREEMENT HOLDER under the Agreement or the material failure to perform by a PROJECT AGREEMENT HOLDER subcontractor under any Statement of Work;
- b. In the event the PROJECT AGREEMENT HOLDER fails to comply with any material term and/or condition of the Agreement, or any subcontractor to the PROJECT AGREEMENT HOLDER fails to comply with any material term and/or condition of the Agreement and/or Statement of Work;
- c. In the event the PROJECT AGREEMENT HOLDER fails to provide the Government and/or NSTXL, upon written request, with adequate assurances of future performance.

In the event the Government and/or NSTXL seeks to terminate for cause per the above, the moving party will issue to the PROJECT AGREEMENT HOLDER a notice that they have failed under this Agreement, identify what failures have been identified, and which provision for cause, as outlined above, the moving party seeks to

move forward under. The PROJECT AGREEMENT HOLDER shall have fifteen (15) calendar days (should the fifteenth day fall upon a weekend or Government sanctioned holiday the fifteenth day shall be deemed the next official Government work day) to respond and/or take corrective action to mollify, mitigate, correct and/or cure the cited defect (hereinafter "Remedial Action"), and further, the PROJECT AGREEMENT HOLDER shall be under an obligation to assist NSTXL with any Remedial Action, if requested to do so. The Government and/or NSTXL will consult with the PROJECT AGREEMENT HOLDER to discuss the cause of the termination notice and determine whether additional efforts are in the best interest of the Government, and/or NSTXL if applicable, and whether Remedial Action could cure the cited defect. In the event the PROJECT AGREEMENT HOLDER Remedial Action mollifies, mitigates, corrects and/or cures the cited defect, the issue shall be resolved, however, notwithstanding the preceding, *the Government, and/or NSTXL if applicable, may move forward with termination of the Agreement, or any project under the Agreement, in whole or in part, under any other clause under this Article II and/or the OTA.*

In the event of termination for a failure to perform, the PROJECT AGREEMENT HOLDER will stop work immediately, and if applicable, terminate all subcontractors. In the event of termination for a failure to perform the Government shall only be liable to NSTXL, and thus NSTXL shall only be liable to the PROJECT AGREEMENT HOLDER, for the actual work performed to date, minus any applicable offset for the failure to perform. Further, the PROJECT AGREEMENT HOLDER shall be liable to the Government and/or NSTXL for any and all rights and remedies provided by law and herein due to a failure to perform. Furthermore, in the event of a termination for failure to perform by the PROJECT AGREEMENT HOLDER, or one of its subcontractors, the Government will receive all rights to all Intellectual Property created under this Agreement and/or any Statement of Work and/or any other agreement derivative of this Agreement, if applicable. If it is later determined that the Government improperly terminated this Agreement for failure to perform, such termination shall be deemed a termination for convenience as outlined under Article II(B)(3) -- *Termination for Convenience* -- immediately below.

3. Termination for Convenience

The Government reserves the right to terminate this Agreement, or any part hereof, or any specific project under this Agreement, in whole or in part, for its sole convenience, upon written notice to NSTXL, with such written notice providing NSTXL a reasonable time to execute the Government's directives under the termination for convenience. In the event of such termination, NSTXL shall immediately stop all work hereunder and shall immediately cause the PROJECT AGREEMENT HOLDER to cease work, if applicable, by written notice. Subject to the terms of this Agreement and the OTA the Government shall pay NSTXL and the PROJECT AGREEMENT HOLDER reasonable costs and/or fees that NSTXL can demonstrate to the reasonable satisfaction of the Government that are the result of the termination. Neither NSTXL nor the PROJECT AGREEMENT HOLDER shall be paid for any work performed or costs incurred which reasonably could have been avoided upon receipt of the termination for convenience from the Government. The Government and NSTXL will negotiate in good faith resolution of all intellectual property created under this Agreement, and the PROJECT AGREEMENT HOLDER shall assist NSTXL in this negotiation, if requested and applicable. At the Government's direction, this negotiation may occur upon notice of termination or after termination is effective, with such election by the Government not bearing upon or interfering with any other rights, duties and obligations of the Parties under this Agreement.

NSTXL and the PROJECT AGREEMENT HOLDER agree under the scenario articulated -- Termination for Convenience -- immediately above in this Article II (B)(3) the Parties will negotiate a good faith fee for service in seeking reimbursement from the Government, and such fee shall not be greater than twenty five (25%) of the gross amount recovered by the PROJECT AGREEMENT HOLDER related to the provision hereto, provided, however, the fee aforementioned is not inconclusive of any other fee(s) that the PROJECT AGREEMENT HOLDER may incur as a result of actions undertaken under this provision (e.g., legal fees and costs), and NSTXL shall be under no obligation of contribution to PROJECT AGREEMENT HOLDER hereunder.

4. Limitation on Damages

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 PROJECT AGREEMENT HOLDER, its contractors, subcontractors, or customers. Liability for any damages under 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 PROJECT AGREEMENT HOLDER. In no instance shall the Government's liability for termination exceed the total amount due under this Agreement. Similarly, in no instance shall NSTXL's liability for

termination exceed the total amount due by the Government to NSTXL under the Agreement, and which has actually been paid to NSTXL under this Agreement to date, for the benefit of the PROJECT AGREEMENT HOLDER.

C. Cost Share (IF APPLICABLE)

The requirement for cost share of the total project cost is assessed prior to award. In the event that during the course of the performance of the project, the PROJECT AGREEMENT HOLDER has reason to believe the cost sharing funds available will be insufficient, the PROJECT AGREEMENT HOLDER shall notify NSTXL within ten (10) business days of the event that gave rise to the insufficient cost sharing funds. NSTXL will notify the Government within ten (10) business days of receiving such notice from the PROJECT AGREEMENT HOLDER. The *Government* will determine whether it is in the Government's best interest to either renegotiate the scope and/or terms of the award to meet the cost share requirement or terminate in whole or in part the project.

D. Survival

The terms of Article VI Disputes, Article VII Confidential Information, Article IX Patent Rights, Article X Data Rights and the Articles and/or provisions that address the Liability of the Parties shall survive any termination of the Agreement or any Statement of Work issued hereunder.

E. Stop Work Clause

As directed by the Government Agreements Officer, NSTXL may, at any time, by written order to the PROJECT AGREEMENT HOLDER, require the PROJECT AGREEMENT HOLDER to stop all, or any part, of the work called for under this Agreement for a period of ninety (90) days after the written order is delivered to the PROJECT AGREEMENT HOLDER, and for any further period to which the Parties and the Government may agree. The order shall be specifically identified as a stop-work order issued under this Article. Upon receipt of the order, the PROJECT AGREEMENT HOLDER shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of ninety days (90) days after a stop-work is delivered to the PROJECT AGREEMENT HOLDER, or within any extension of that period to which the Parties and Government shall have agreed, NSTXL shall either (1) Cancel the stop-work order; or, (2) Terminate the work covered by the Statement of Work, in whole or in part.

If a stop work order issued under this clause is canceled, the PROJECT AGREEMENT HOLDER shall resume work. The Government, through NSTXL, shall make an equitable adjustment in the delivery schedule or estimated cost and/or price, or both, and the Government's share of the Statement of Work shall be modified, in writing, accordingly, if—

1. The stop-work order results in an increase in the time required for, or in the PROJECT AGREEMENT HOLDER's cost properly allocable to, the performance of any part of the Statement of Work; and,
2. The PROJECT AGREEMENT HOLDER asserts its right to the adjustment within thirty (30) days after the end of the period of work stoppage; provided, that, if the Government decides the facts justify the action, the Government through NSTXL may receive and act upon a proposal submitted at any time before final payment under the Statement of Work.

If a stop work order is not canceled and the work covered by the Statement of Work is terminated in accordance with this Article II, NSTXL shall work with the PROJECT AGREEMENT HOLDER to negotiate an equitable reimbursement in accordance with Article II.

F. Flow Down

PROJECT AGREEMENT HOLDER shall include Article II, suitably modified to identify the parties, in all lower tier agreements, regardless of tier.

ARTICLE III: MANAGEMENT OF THE PROJECT

A. Management Structure

NSTXL shall be responsible for the overall day to day administration of projects issued under the OTA and this Agreement, which shall include general oversight of programmatic, reporting, financial and administrative matters. The PROJECT AGREEMENT HOLDER is under the affirmative obligation to assist NSTXL with all reasonable requests pertaining to this general oversight function and to do so in a timely manner. The PROJECT AGREEMENT HOLDER(s) shall be solely responsible for the performance of each project funded under this Agreement, and the Government may choose to work with the PROJECT AGREEMENT HOLDER(s) directly on any project that makes up the substance of this Agreement. *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 sponsored and directed project under this Agreement and/or any Statement of Work.*

NSTXL shall appoint an agent for this Agreement as the lead point of contact between the Government, NSTXL and the PROJECT AGREEMENT HOLDER.

B. Modifications

With regard to projects the Government determines to fund under this Agreement, any PROJECT AGREEMENT HOLDER recommendations for modifications, including justifications to support any changes to the funded project, will be documented in a letter and submitted by the PROJECT AGREEMENT HOLDER to NSTXL with a copy to the Government AOR designated for the particular project. The AO shall be responsible for review and modification or changes to the terms and conditions of the Statement of Work, if any. NSTXL shall modify and/or amend this Agreement and/or Statement of Work(s) in the event of any such modification or amendment to the project as authorized by the Government.

C. Management of Projects

1. Performance under this Agreement is subject to the technical direction of the AOR designated in the Statement of Work. For the purposes of this Agreement, technical direction includes, but is not limited to, the following:
 - a. Direction to the PROJECT AGREEMENT HOLDER which shifts work emphasis between work areas or tasks, and/or; fills in details or otherwise serves to accomplish the objectives described in any statement of work;
 - b. Guidelines to the PROJECT AGREEMENT HOLDER that assist in the interpretation of drawings, specifications or technical portions of work description;
 - c. Review, and where required by the Statement of Work, approval of technical reports, drawings, specifications, or technical information to be delivered by the PROJECT AGREEMENT HOLDER under the Statement of Work.

The AOR shall monitor the PROJECT AGREEMENT HOLDER's performance with respect to compliance with the technical requirements of the Statement of Work.

2. Technical direction must be within the general scope of work stated in the Statement of Work. Technical direction may not be used to:
 - a. Assign additional work outside the Statement of Work;
 - b. Increase or decrease the estimated Statement of Work cost, fee (if any), or the time required for the Statement of Work performance;
 - c. Change any of the terms, conditions or specifications of the Statement of Work; or,

- d. Accept non-conforming work.

As such, no verbal or written request, notice, authorization, direction or order received by the PROJECT AGREEMENT HOLDER shall be binding upon NSTXL or Government, or serve as the basis for a change in the Statement of Work cost or any other provision of the Statement of Work, unless issued (or confirmed) in writing by NSTXL or the AOR.

- 3. The PROJECT AGREEMENT HOLDER shall immediately notify the NSTXL agent 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, and the PROJECT AGREEMENT HOLDER 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 the NSTXL contractual representative directs the PROJECT AGREEMENT HOLDER, in writing, to implement such change notification, and that change notification is in keeping with the Agreement and/or the Statement of Work.

ARTICLE IV: AGREEMENT ADMINISTRATION

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

NSTXL:

Lawrence M. Solliday
National Security Technology Accelerator (NSTXL)
2221 S. Clark Street
Arlington, VA 22202
P: 812-675-7739
E: larry@nstxl.org

PROJECT AGREEMENT HOLDER:

PERFORMER POC Information

Agreement Officer Representative:

TBD
Agreements Officer Representative

PEO STRI Representative:

Rick Denny
Department of Army Civilian
PEO-STRI Training & Readiness Accelerator (TReX) – PM
SETA II – ACOR TO 1042 IPO
12211 Science Drive, Orlando, FL 32826
O: 407-384-5443, DSN: 970-5443
C: 407-893-0957
E: ricky.l.denny.civ@mail.mil

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

ARTICLE V: OBLIGATION AND PAYMENT

- A. Obligation

Except as specified in Article VI: Disputes, NSTXL's liability to make payments to PROJECT AGREEMENT HOLDER is solely limited to those funds obligated under the Statement of Work and which NSTXL has actually received.

B. Payments

1. **Accounting System Requirements:** Prior to the submission of invoices, PROJECT AGREEMENT HOLDER shall have and maintain an established accounting system, which complies with Generally Accepted Accounting Principles (GAAP) and the requirements of this Agreement and/or appendices, if any. PROJECT AGREEMENT HOLDER shall ensure that appropriate arrangements have been made for receiving, distributing and accounting for Federal funds under this Agreement. Consistent with this stipulation, an acceptable accounting system will be one in which all cash receipts and disbursements are controlled and documented properly.
2. **Payable Milestones:** PROJECT AGREEMENT HOLDER shall segregate and track all individual project costs separately, shall document the accomplishment of each Payable Milestone under each project, and shall compile such documentation for inclusion in the PROJECT AGREEMENT HOLDER's Payable Milestones Report, which shall be submitted or otherwise provided to NSTXL and/or the Government as established on a per project basis.
3. **Advance Payments:** If requested, advance payments may be approved by the AO through amendment to the Milestone and Payments schedule.

C. Invoicing Instructions

Payment Method Types: a Statement of Work will be issued as a fixed price milestone payment method as described below.

1. **Fixed Price Milestone Payment Method:** Payments shall be made in accordance with the Payable Milestone Schedule associated with each SOW (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 SOW (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. **Information for Inclusion on Invoice:** Each invoice must contain the following tracking information in a box at the bottom of the invoice itself: OTA contract number *W900KK-18-9-0005*, the Project Agreement number (see cover page of this Agreement), Total Contract Ceiling (i.e., upper limit on what may be placed on the Agreement during the course of contract; *not to include NSTXL fees*), Total Amount of Current Invoice, Total Amount Remaining on Agreement to Date.
3. **Submission of Invoices:**
 - a. **Frequency:** Invoices shall be submitted in accordance with the approved Milestones and Payments schedule. Invoices may be submitted no more frequently than monthly. Each invoice must be submitted with a fully filled out Certificate of Completion (see template in Award Packet).
 - b. **Submission Procedure:** PROJECT AGREEMENT HOLDER shall submit all invoices and corresponding Certificate of Completion directly to NSTXL at success@nstxl.org. Upon receiving the signed Certificate of Approval from the AOR 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 PROJECT AGREEMENT HOLDER'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.

D. Payment Terms:

1. *Payment Procedure:* Payments from the Government on the invoice will be made to NSTXL via electronic funds transfer through the WAWF system. Upon receiving the funds, NSTXL will make a ACH transfer to the bank account and routing number designated by the PROJECT AGREEMENT HOLDER. Funds transfers take up to three (3) business days depending upon the financial institution of the PROJECT AGREEMENT HOLDER.
2. *Payment Terms:* The PROJECT AGREEMENT HOLDER shall be paid within thirty (30) calendar days of NSTXL receiving payment from the Government.
3. *Delayed Funding:* NSTXL shall not be liable to the PROJECT AGREEMENT HOLDER for any charge, cost, fee, interest payment or other penalty where a delay in funding is not the direct result of an NSTXL willful act and/or omission to withhold funds, including any delay by the Government to release funds, that are owed and due to the PROJECT AGREEMENT HOLDER.
4. *Final Payment:* Prior to final payment, PROJECT AGREEMENT HOLDER 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 Project Agreement Holder in writing and/or compelled under law by a tribunal of competent jurisdiction.

E. Limitation of Funds

Except as specifically excepted within this Agreement NSTXL's financial liability to the PROJECT AGREEMENT HOLDER(s) will not exceed the amount made available, and actually paid, by the Government to NSTXL and obligated by NSTXL under the Statement of Work for PROJECT AGREEMENT HOLDER's projects under the OTA and this Agreement.

F. Financial Records and Reports

In addition to the accounting system requirements found herein and/or stipulated to in Appendix A, the PROJECT AGREEMENT HOLDER shall maintain adequate records to account for federal funds received under this Agreement and shall maintain adequate records to account for Statement of Work funding provided under this Agreement, *should cost sharing procedures be implemented for funding a particular project*. PROJECT AGREEMENT HOLDER shall ensure that, for each project, PROJECT AGREEMENT HOLDER's relevant financial records are available and subject to examination or audit by the Government on behalf of the Army Contracting Command for a period not to exceed five (5) years after final payment of the PROJECT AGREEMENT HOLDER's project award. The AO or designee shall have direct access to sufficient records and information of PROJECT AGREEMENT HOLDER 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 PROJECT AGREEMENT HOLDER through NSTXL to the Government, by PROJECT AGREEMENT HOLDER's external CPA accounting firm, at the expense of that PROJECT AGREEMENT HOLDER, and upon approval by the Government. Upon request by the Government the PROJECT AGREEMENT HOLDER understands that, and consents to, being the subject of audit by the Comptroller General of the United States per 10 U.S.C. §2371b.

ARTICLE VI: DISPUTES

A. General

For the purposes of this Article, "Parties" means NSTXL, the PROJECT AGREEMENT HOLDER and the Government where collectively identified and "Party" where each entity is individually identified. The Parties shall communicate with one another in good faith and in a timely and cooperative manner when raising issues under this Article.

B. Dispute Resolution Procedures

Any disagreement, claim, or dispute between the Government and NSTXL and/or the PROJECT AGREEMENT HOLDER 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, disagreements, or misunderstandings arise, the Parties shall attempt to resolve the issue(s) involved by discussion and mutual agreement as soon as practicable. In no event shall a dispute, disagreement, or misunderstanding which arose more than three months prior to the notification made under this Article constitute the basis for relief under this article unless ACC-ORL, in the interest of justice, waives this requirement.

Failing resolution by mutual agreement, the aggrieved Party shall document the dispute, disagreement or misunderstanding by notifying the other Party in writing documenting the relevant facts, identifying unresolved issues, specifying the clarification or remedy sought and documenting the rationale as to why the clarification/remedy is appropriate. Within 10 working days after providing notice to the other Party, the aggrieved Party may, in writing, may request a decision by ACC-ORL. The decision shall be rendered from a position at least one level above the AO.

The other Party shall submit a written position on the matter(s) in dispute within 30 calendar days after being notified that a decision has been requested. The ACC-ORL representative will conduct a review of the matter(s) in dispute and render a decision in writing within thirty (30) calendar days of receipt of such position. Any such decision is final and binding, unless a Party shall, within thirty (30) calendar days request further review by the CEO of NSTXL and the ACC-ORL Executive Director. In the event of a decision, or in the absence of a decision, within sixty (60) calendar days of such referral for further review (or such other period as agreed to by the Parties), either Party may pursue any right or remedy provided by law in a court of competent jurisdiction as authorized by 28 U.S.C. §1491, including but not limited to the right to seek extraordinary relief under Public Law 85-804, as long as such tribunal is in keeping with the terms and conditions of this Agreement. Alternatively, the Parties may agree to explore and establish an Alternate Disputes Resolution procedure to resolve this dispute.

C. Limitation of Liability and Damages

In no event shall the liability of the Government exceed the amount obligated by the Government under this Agreement. In no event shall the liability of NSTXL exceed the amount that NSTXL has received from the Government in consideration of this Agreement, and any liability claim and/or recovery is further limited by the amount of money NSTXL has received from the Government under the specific Statement of Work that is the subject of dispute or recovery.

No Party shall be liable to any other Party for consequential, punitive, special, exemplary and/or incidental damages or other indirect damages, whether arising in contract (including warranty), tort (whether or not arising from the negligence of a Party) or otherwise, excluding liability for misuse or unauthorized disclosure of intellectual property, except to the extent such damages are caused by a Party's willful misconduct. Notwithstanding the foregoing, claims for contribution toward third-party injury, damage, or loss are not limited, waived, released, or disclaimed.

With regard to the activities undertaken pursuant to this Agreement, no Party shall make any claim against the other(s), employees of the other(s), the other(s) related entities (e.g., divisions, units, offices, contractors, subcontractors, vendors etc.), or employees of the other(s) related entities for any injury to or death of its own employees or employees of its related entities, or for damage to or loss of its own property or that of its related entities, whether such injury, death, damage or loss arises through negligence or otherwise, except in the case of willful misconduct.

The award of a project or Project Agreement to one or more TReX Members under the OTA shall not create an organizational conflict of interest within the meaning of 48 C.F.R. Parts 209 and 252. No liability will transfer from one TReX Member to another TReX Member unless stipulated in the Statement of Work and agreed to by the affected TReX Member(s). All responsibility, financial and otherwise, for a particular Statement of Work shall be limited to the PROJECT AGREEMENT HOLDER.

Notwithstanding the other provisions of this Article, this limitation and waiver of liability shall not be applicable to:

1. Actions for damages caused by willful misconduct or gross negligence; and,

2. Intellectual property claims related to the misuse or unauthorized disclosure of intellectual property; and,
3. Actions pursued by NSTXL and/or the Government regarding a material breach or nonpayment of funds, if applicable

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.

ARTICLE VII: CONFIDENTIAL INFORMATION

A. Definitions

“Disclosing Party” means NSTXL, PROJECT AGREEMENT HOLDER, or the Government who discloses Confidential Information as contemplated by the subsequent paragraphs.

“Receiving Party” means NSTXL, PROJECT AGREEMENT HOLDER, or the Government who receives Confidential Information disclosed by a Disclosing Party.

“Confidential Information” means information and materials of a Disclosing Party which are designated as confidential or as a Trade Secret in writing by such Disclosing Party, 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 by such Disclosing Party to the Receiving Party. Notwithstanding the foregoing, materials and other information which are orally, visually, or electronically disclosed by a Disclosing Party, or are disclosed in writing without an appropriate letter, stamp, or legend, shall constitute Confidential Information or a Trade Secret if such Disclosing Party, within thirty (30) calendar days after such disclosure, delivers to the Receiving Party a written document or documents describing the material or information and indicating that it is confidential or a Trade Secret, provided that any disclosure of information by the Receiving Party prior to receipt of such notice shall not constitute a breach by the Receiving Party of its obligations under this Paragraph. “Confidential Information” includes any information and materials considered a Trade Secret by PROJECT AGREEMENT HOLDER. “Trade Secret” means all forms and types of financial, business, scientific, technical, economic, or engineering or otherwise proprietary information, including, but not limited to, patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if:

1. The owner thereof has taken reasonable measures to keep such information secret; and,
2. The information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, the public.

B. Exchange of Information

Neither the Government nor NSTXL on behalf of NSTXL member entities or the PROJECT AGREEMENT HOLDERS shall be obligated to transfer Confidential Information independently developed absent an express written agreement between the Parties involved in the exchange providing the terms and conditions for such disclosure.

C. Authorized Disclosure

The Receiving Party agrees, to the extent permitted by law, that Confidential Information shall remain the property of the Disclosing Party (no one shall disclose unless they have the right to do so), and that, unless otherwise agreed to by the Disclosing Party, Confidential Information shall not be disclosed, divulged, or otherwise communicated by it to third parties or used by it for any purposes other than in connection with specified project efforts and the licenses granted, if any. The following information will not be considered confidential:

1. Information received or become available without restriction to the Receiving Party under a proper, separate agreement.

2. Information not identified with a suitable notice or legend per Article VII, "Confidential Information," herein.
3. Information lawfully in possession of the Receiving Party without such restriction to the Receiving Party at the time of disclosure thereof as demonstrated by prior written records.
4. Information that later become part of the public domain through no fault of the Receiving Party.
5. Information received by the Receiving Party from a third party having no obligation of confidentiality to the Disclosing Party that made the disclosure.
6. Information developed independently by the Receiving Party without use of Confidential Information as evidenced by written records.
7. Information required by law or regulation to be disclosed; provided, however, that the Receiving Party has provided written notice to the Disclosing Party promptly so as to enable such Disclosing Party to seek a protective order or otherwise prevent disclosure of such information.

D. Return of Proprietary Information

Upon the request of Disclosing Party, the Receiving Party shall promptly return all copies and other tangible manifestations of the Confidential Information disclosed or destroy said materials, at the request of the Disclosing Party. As used in this section, tangible manifestations include human readable media as well as magnetic and digital storage media.

E. Term

The obligations of the Receiving Party under this Article shall continue for a period of five (5) years after the expiration or termination of this Agreement.

F. Flow Down

PROJECT AGREEMENT HOLDER shall flow down the requirements of this Article, in a manner that is at least as restrictive as this Agreement, to their respective personnel, member entities, agents, sub-awardees (including employees) at all levels, receiving such Confidential Information under this Agreement. None of the Confidential Information will be provided to any person unless such person has a need to know the Confidential Information.

ARTICLE VIII: PUBLICATION AND ACADEMIC RIGHTS

A. Use of Information, Publication, Public Disclosure of Information, or Other Public Announcements.

For the purposes of this Article, "Parties" means NSTXL, the PROJECT AGREEMENT HOLDER and the Government where collectively identified and "Party" where each entity is individually identified.

NSTXL, PROJECT AGREEMENT HOLDER(s), and the Government shall have the right to publish or otherwise disclose information and/or data developed by the Government and/or the respective PROJECT AGREEMENT HOLDER(s) under the projects conducted through the OTA and under this Agreement. The Parties shall include an appropriate acknowledgement of the sponsorship of the projects by the Government, NSTXL and PROJECT AGREEMENT HOLDER(s) in such publication or disclosure. The Parties shall have only the right to use, disclose and exploit any such data and Confidential Information or Trade Secrets in accordance with the rights held by them pursuant to this Agreement. Notwithstanding the above, the Parties shall not be deemed authorized by this paragraph alone to disclose any Confidential Information or Trade Secrets of the Government or NSTXL or PROJECT AGREEMENT HOLDER(s).

The aforementioned rights of the Parties are subject to the provisions of Article VII -- Confidential Information, and Article VIII -- Publication and Academic Rights, and Article X -- Data Rights and Copyrights. Further, the Parties agree as follows:

1. Any public announcements (including press releases, website postings or other public statements) by any Party regarding this Agreement or a project awarded thereafter shall be coordinated with the identified ACC-ORL AO.

2. Acknowledgment of Government support will appear in any publication of any material based on or developed under this Agreement, using the following acknowledgement terms:

“Effort sponsored by the U.S. Government under the Training and Readiness Accelerator (TReX), OTA. The U.S. Government is authorized to use, reproduce and distribute reprints for Governmental purposes notwithstanding any copyright notation hereon.”

3. Every publication of material based on or developed under this Agreement must contain the following disclaimer:

“The views and conclusions contained herein are those of the authors and should not be interpreted as necessarily representing the official policies or endorsements, either expressed or implied, of the U.S. Government.”

The PROJECT AGREEMENT HOLDER shall flow down these requirements to its sub-awardees, at all tiers.

ARTICLE IX: PATENT RIGHTS

A. Definitions

“Invention” means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code.

“Made” when used in relation to any invention means the conception or first actual reduction to practice of such invention.

“Practical application” means to manufacture, in the case of a composition of product; to practice, in the case of a process or method, or to operate, in the case of a machine or system; and in each case, under such conditions as to establish that the invention is capable of being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

“Subject invention” means any invention of the PROJECT AGREEMENT HOLDER conceived or first actually reduced to practice in the performance of work under a funding agreement.

“Background Invention” means any invention, or improvements to any invention, other than a Subject Invention, made by PROJECT AGREEMENT HOLDER (or its subcontractors of any tier) that was conceived, designed, developed, produced, and/or actually reduced to practice, outside the scope of work performed under this Agreement.

B. Allocation of Principal Rights

Refer to Appendix A: Intellectual Property Agreement (IF APPLICABLE)

C. Invention Disclosure, Election of Title, and Filing of Patent Application

1. NSTXL, on behalf of the PROJECT AGREEMENT HOLDER(s), shall disclose each Subject Invention to the Government within four months after the inventor discloses it has been made to his company personnel. The disclosure to the Government shall be in the form of a written report and shall identify the Agreement under which the Subject Invention was made and the identity of the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the Subject Invention. The disclosure shall also identify any publication, sale, or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure.

2. If the PROJECT AGREEMENT HOLDER determines that it does not intend to retain title to any such invention, NSTXL shall notify the AO at ACC-Orlando, in writing, within nine months of disclosure to NSTXL. However, in any case where publication, sale or public use has initiated the one-year statutory period wherein valid patent protection can still be obtained in the United States, the period for such notice may be shortened by ACC-ORL to a date that is no more than 60 days prior to the one-year statutory period.
3. At NSTXL's request the PROJECT AGREEMENT HOLDER(s) shall file its initial patent application on a Subject Invention to which it elects to retain title within one-year after election of title or, if earlier, prior to the end of the statutory period wherein valid patent protection can be obtained in the United States after a publication, or sale or public use. PROJECT AGREEMENT HOLDER(s) may elect to file patent applications in additional countries (including the European Patent Office and the Patent Cooperation Treaty) within either 10 months of the corresponding initial patent application or six months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications, where such filing has been prohibited by a Secrecy Order.
4. After considering the position of NSTXL on behalf of the PROJECT AGREEMENT HOLDER(s), a request for extension of the time for disclosure election, and filing under this Article IX may be approved by ACC-ORL, which approval shall not be unreasonably withheld.

D. Conditions When the Government May Obtain Title

Upon written request from the Government, PROJECT AGREEMENT HOLDER shall convey to the Government title to any Subject Invention under any of the following conditions:

1. If PROJECT AGREEMENT HOLDER fails to disclose or elects not to retain title to the Subject Invention within the times specified in this Article IX -- Patent Rights; provided, that the Government may only request title within 60 Calendar days after learning of the failure of the PROJECT AGREEMENT HOLDER to disclose or elect within the specified times; or,
2. In those countries in which the PROJECT AGREEMENT HOLDER fails to file patent applications within the times specified in this Article IX -- Patent Rights; provided, that if PROJECT AGREEMENT HOLDER has filed a patent application in a country after times specified in this Article IX -- Patent Rights, but prior to its receipt of the written request by the Government through NSTXL, the PROJECT AGREEMENT HOLDER shall continue to retain title in that country; or,
3. In any country in which the PROJECT AGREEMENT HOLDER decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceedings on, a patent on a Subject Invention.

E. Minimum Rights of PROJECT AGREEMENT HOLDER and Protection of PROJECT AGREEMENT HOLDER's Right to File

The Parties agree that:

1. The PROJECT AGREEMENT HOLDER shall retain a non-exclusive, royalty-free license throughout the world in each Subject Invention to which the Government obtains title, except if the PROJECT AGREEMENT HOLDER fails to disclose the invention within the times specified hereto. The PROJECT AGREEMENT HOLDER license extends to the domestic (including Canada) subsidiaries and affiliates, if any, of the PROJECT AGREEMENT HOLDER within the corporate structure of which the PROJECT AGREEMENT HOLDER is a party and includes the right to grant licenses of the same scope to the extent that the PROJECT AGREEMENT HOLDER was legally obligated to do so at the time the project under the Agreement was funded. The license is transferable only with the approval of the Government, except when transferred to a successor entity or that part of the business to which the invention pertains. Government approval for license transfer shall not be unreasonably withheld.
2. The PROJECT AGREEMENT HOLDER domestic license may be revoked or modified by the Government to the extent necessary to achieve expeditious practical application of the Subject Invention pursuant to an

application for an exclusive license submitted consistent with appropriate provisions at 37 C.F.R. Part 404. This license shall not be revoked in that field of use or the geographical areas in which the PROJECT AGREEMENT HOLDER has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the Government to the extent the PROJECT AGREEMENT HOLDER, its licensees, or the subsidiaries or affiliates have failed to achieve practical application in that foreign country.

3. Before revocation or modification of the license, the Government shall furnish NSTXL, and NSTXL shall forward to the PROJECT AGREEMENT HOLDER, a written notice of the Government's intention to revoke or modify the license, and NSTXL, on behalf of the PROJECT AGREEMENT HOLDER, shall be allowed thirty (30) calendar-days (or such other time as may be authorized by the Government for good cause shown) after the notice to show cause why the license should not be revoked or modified.

F. Action to Protect the Government's Interest

1. PROJECT AGREEMENT HOLDER(s) shall execute or have executed and promptly deliver to the Government all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those Subject Inventions to which the PROJECT AGREEMENT HOLDER elects to retain title, and (ii) convey title to the Government when requested consistent with this Article IX -- Patent Rights, and to enable the Government to obtain patent protection throughout the world in that subject invention.
2. PROJECT AGREEMENT HOLDER shall require, by written agreement, that employees of the PROJECT AGREEMENT HOLDER working on projects under this Agreement, other than clerical and non-technical employees, agree to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format acceptable to NSTXL, each Subject Invention made under this Agreement in order that NSTXL can comply with disclosure provisions of the OTA and this Article IX -- Patent Rights, and to execute all papers necessary to file the patent applications on the subject Invention and to establish the Government's rights in the Subject Invention. NSTXL hereby instructs the PROJECT AGREEMENT HOLDER, and in turn the PROJECT AGREEMENT HOLDER shall instruct its employees, through employee agreements or other suitable educational programs, on the importance of reporting Inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.
3. NSTXL is under an obligation to notify the Government of any PROJECT AGREEMENT HOLDER decision not to continue the prosecution of a patent application, pay maintenance fees or defend in a reexamination or opposition proceedings on a patent, in any country, not less than thirty (30) days before the expiration of the response period required by the relevant patent office. As such, this obligation is also carried by the PROJECT AGREEMENT HOLDER, and the obligation shall be facilitated through NSTXL.
4. The PROJECT AGREEMENT HOLDER shall include, within the specification of any United States patent application and any patent issuing thereon covering a Subject Invention, the following statement: "*This invention was made with U.S. Government support under Agreement No. W900KK-18-9-0005 awarded by ACC-ORL to the National Security Technology Accelerator Consortium. The Government has certain rights in the invention.*"

G. Flow Down: Lower Tier Agreements

PROJECT AGREEMENT HOLDER shall include this Article IX -- Patent Rights, suitably modified to identify the parties, in all lower tier agreements, regardless of tier, for experimental, development, or research work. A higher tier subcontractor shall not as part of the consideration for awarding the subcontract, be required to obtain rights in the subcontractor's Subject Invention.

H. Reporting on Utilization of Subject Inventions

The PROJECT AGREEMENT HOLDER agrees to submit, during the term of the Agreement, periodic reports no more frequently than annually on the utilization of a Subject Invention or on efforts at obtaining such utilization that are being made by the PROJECT AGREEMENT HOLDER(s) or its licensees or assignees. Such reports shall

include information regarding the status of development, date of first commercial sale or use, gross royalties received by the PROJECT AGREEMENT HOLDER(s) and such other data and information as the Government may reasonably specify. Consistent with 35 U.S.C. § 205, the Government agrees it shall not disclose such information to persons outside the Government without permission of NSTXL, on behalf of the PROJECT AGREEMENT HOLDER(s).

I. Opportunity to Cure

Certain provisions of this Article IX -- Patent Rights, provide that the Government may gain title or license to a Subject Invention by reason of NSTXL's and/or PROJECT AGREEMENT HOLDER action, or failure to act, within the times required by this Article IX -- Patent Rights. The Government may pursue any and all rights under 35 U.S.C. § 207. Prior to claiming such rights, the Government will give written notice to NSTXL of the Government's intent, and afford NSTXL, on behalf of the PROJECT AGREEMENT HOLDER, a reasonable time to cure such action or failure to act. The length of the cure period will depend on the circumstances, but in no event will be more than 60 days. NSTXL, on behalf of the PROJECT AGREEMENT HOLDER, may also use the cure period to show good cause why the claiming of such title or right would be inconsistent with the intent of the OTA and/or this Agreement in light of the appropriate timing for introduction of the technology in question, the relative funding and participation of the parties in the development, and other relevant factors.

J. Background Information

In no event shall the provisions set forth in this Article IX apply to any Background Inventions or Patents. PROJECT AGREEMENT HOLDER or its subcontractors shall retain the entire right, title, and interest throughout the world to each such Inventions and Patents that each party has brought through NSTXL to the project issued under this Agreement and the Government shall not have any rights under this Agreement.

K. Survival Rights

Provisions of this Article shall survive termination of this Agreement.

ARTICLE X: DATA RIGHTS AND COPYRIGHTS

ALLOCATION AND LEVELS OF DATA RIGHTS WILL BE CONSIDERED, NEGOTIATED, AND DOCUMENTED FOR EACH PROJECT BY THE GOVERNMENT, NSTXL AND THE PROJECT AGREEMENT HOLDER. SHOULD THE GOVERNMENT PROVIDE ALTERNATE DATA RIGHTS LANGUAGE IN A TECHNICAL DIRECTION LETTER, OR OTHER DIRECTIVE, THE ALTERNATIVE LANGUAGE WILL BE INCORPORATED INTO THIS AGREEMENT AND WILL SUPERSEDE THE LANGUAGE PROVIDED IN THIS ARTICLE X. IN THE ABSENCE OF THE PARTIES ADDRESSING THE ISSUE, OR COMING TO AN AGREEMENT ON SPECIFIC DATA RIGHTS, THE PARTIES AGREE TO THE FOLLOWING:

Rights in technical data under this Agreement shall be determined in accordance with the provisions of DFARS Part 227, DFARS 252.227-7013 through DFARS 252.227-7021 and DFARS 252.227-7025 through DFARS 252.227-7030.

With respect to Government purpose rights license provided for in those regulations, the Government acknowledges and agrees that it shall obtain such rights pursuant to this Agreement only to the extent that its financial contributions toward the development of the technical data is equal to or greater than 50% of the total costs of such development. The Government shall have unlimited rights in technical data that are data pertaining to an item, component, or process which has been or will be developed exclusively with Government funds and computer software developed exclusively with Government funds. Nothing in this Agreement shall require PROJECT AGREEMENT HOLDER to grant the Government a new license, or change any license, or otherwise limit the data rights of a PROJECT AGREEMENT HOLDER or its subcontractors, with respect to data developed prior to the award of or outside of the performance of a project awarded pursuant to this Agreement.

PROJECT AGREEMENT HOLDER or subcontractors of any tier reserves the right to protect by copyright original works developed under this Agreement. All such copyrights will be in the name of PROJECT AGREEMENT HOLDER or their subcontractors of any tier. Subject to the terms of Article VII, Confidential Information,

PROJECT AGREEMENT HOLDER shall grant to the U.S. Government a non-exclusive, non-transferable, royalty-free, fully paid-up license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, for Governmental purposes, any copyrighted materials other than data developed under this Agreement.

In the event data is exchanged with a notice indicating that the data is protected under copyright as a published, copyrighted work and it is also indicated on the data that such data existed prior to, or was produced outside of this Agreement, the Party receiving the data and others acting on its behalf may reproduce, distribute, and prepare derivative works for the sole purpose of carrying out that Party's responsibilities under this Agreement. PROJECT AGREEMENT HOLDER is responsible for affixing appropriate markings indicating the rights of the Government on all data and technical data delivered under this Agreement or a Project, subject to the provisions of this Agreement.

A. Data First Produced by the Government

To the extent that data first produced by the Government is used by or on behalf of PROJECT AGREEMENT HOLDER in the performance of any Statement of Work, the Government shall retain its preexisting rights in such data, including modifications or changes to such data as part of the performance under the Statement of Work. Such data will, to the extent permitted by law, be appropriately marked with a suitable notice or legend and maintained in confidence for a period of five (5) years after the development of the information, with the express understanding that during the aforesaid period such data may be disclosed and used (under suitable protective conditions) by or on behalf of the Government for Government purposes only.

B. Prior Data

In the event it is necessary for the Government to furnish PROJECT AGREEMENT HOLDER with data which existed prior to, or was produced outside of this Agreement, and such data is so identified with a suitable notice or legend, the data will be maintained in confidence and disclosed and used by the PROJECT AGREEMENT HOLDER only for the purpose of carrying out PROJECT AGREEMENT HOLDER's responsibilities under this Agreement. Data protection will include proprietary markings and handling, and the signing of non-disclosure agreements by PROJECT AGREEMENT HOLDER's employees and/or its subcontractors' employees. Upon completion of activities under this Agreement, such data will be disposed of as requested by the Government.

C. Data First Produced by the Project Agreement Holder

In the event it is necessary for PROJECT AGREEMENT HOLDER to furnish the Government with data which existed prior to, or was produced outside of, this Agreement, and such data embodies trade secrets or comprises commercial or financial information which is privileged or confidential, and such data is so identified with a suitable notice or legend, the data will be maintained in confidence and disclosed and used by the Government and such Government Contractors or contract employees that the Government may hire on a temporary or periodic basis only for the purpose of carrying out the Government's responsibilities under this Agreement consistent with the provisions of Article VII of this Agreement. Data protection will include proprietary markings and handling, and the signing of non-disclosure agreements by such Government Contractors or contract employees. PROJECT AGREEMENT HOLDER, if furnishing data which existed prior to, or was produced outside of this Agreement, has the right to license such data to other NSTXL Members or to entities not a party to this Agreement for a fee and/or royalty payments as determined by PROJECT AGREEMENT HOLDER. PROJECT AGREEMENT HOLDER shall not be obligated to provide data that existed prior to, or was developed outside of this Agreement to other NSTXL Members or NSTXL or the Government. Upon completion of activities under this Agreement, such data will be disposed of as requested by PROJECT AGREEMENT HOLDER.

D. Oral and Visual Information

If information which PROJECT AGREEMENT HOLDER considers to embody trade secrets or to comprise commercial or financial information which is privileged or confidential is disclosed orally or visually to the Government or NSTXL, PROJECT AGREEMENT HOLDER must within five (5) days after such disclosure, deliver to the Government and/or NSTXL a written document or documents describing the material or information and indicating that it is confidential or a Trade Secret, provided that any disclosure of information by the

Government or NSTXL prior to receipt of such notice shall not constitute a breach by the Government or NSTXL of its obligations under Article VII: Confidential Information.

E. Disclaimer of Liability

Notwithstanding the above, the Government or NSTXL shall not be restricted in, nor incur any liability for, the disclosure and use of:

1. Data not identified with a suitable notice or legend as set forth within this Article; nor,
2. Information contained in any data for which disclosure and use is restricted within this Article, if such information is or becomes generally known without breach of the above, is known to or is generated by the Government or NSTXL independently of carrying out responsibilities under this Agreement, is rightfully received from a third party without restriction, or is included in data which the members have, or are required to furnish to the Government or NSTXL without restriction on disclosure and use.
3. Any documentation, materials, or any other information that the PROJECT AGREEMENT HOLDER submitted to NSTXL and/or the Government as part of any request for solution, request for proposal, request for information, or any other public solicitation.

F. Marking of Data

Any data delivered under this Agreement, by PROJECT AGREEMENT HOLDER, the Government, or NSTXL, shall be marked with a suitable notice or legend.

G. Flow Down: Lower Tier Agreements

PROJECT AGREEMENT HOLDER shall include this Article X suitably modified to identify the parties, in all subcontracts, lower tier agreements, regardless of tier, for experimental, development, or research work performed under the NSTXL Agreements, pursuant to this Agreement.

H. Survival Rights

Provisions of this Article shall survive termination of this Agreement.

ARTICLE XI: EXPORT CONTROL

A. Information subject to Export Control Laws/International Traffic in Arms Regulation (ITAR)

Export Compliance: Information subject to Export Control Laws/International Traffic in Arms Regulation (ITAR) Public Law 90-629, « Arms Export Control Act, » as amended (22 U.S.C. § 2751 et. seq.) requires that all unclassified technical data with military application may not be exported lawfully without an approval, authorization, or license under EO 12470 or the Arms Export Control Act. For purposes of making this determination, the Military Critical Techniques List (MCTL) shall be used as general guidance. All documents determined to contain export controlled technical data will be marked with the following notice:

WARNING - this document contains technical data whose export is restricted by the Arms Export Control Act (Title 22, U.S.C. Sec. 2751, et. seq.) or the Export Administration Act of 1979, as amended, Title 50, U.S.C. Sec. 2401 et seq. Violations of these export laws are subject to severe criminal penalties. Disseminate in accordance with provision of DOD Directive 5230.25.

Each Party agrees to comply with U.S. Export regulations including, but not limited to, the requirements of the Arms Export Control Act (22 U.S.C. § 2751 et. seq.), including the International Traffic in Arms Regulation (ITAR), Public Law 90-629; and the Export Administration Act of 1979. Each Party is responsible for obtaining from the Government export licenses or other authorizations/approvals, if required, for information or materials provided from one Party to another under this Agreement. Accordingly, PROJECT AGREEMENT HOLDER shall not export, directly, or indirectly, any products and/or technology, Confidential Information, Trade Secrets, or Classified and Unclassified Technical data in violation of any U.S. Export laws or regulations.

B. Flow down

PROJECT AGREEMENT HOLDER shall include this Article, suitably modified, to identify all Parties, in all lower tier agreements. This Article shall, in turn, be included in all sub-tier subcontracts or other forms of lower tier agreements, regardless of tier.

ARTICLE XII: OPERATIONAL SECURITY (OPSEC) and SECURITY

See Appendix A for specific OPSEC and Security requirements. Appendix A, its directives, requirements and mandates are explicitly incorporated hereunder this Agreement and the roles, obligations and responsibilities of the Parties vis-a-vis Appendix A shall be meticulously followed and subscribed to in both letter and spirit.

- A. For all projects the following statement shall be employed by the PROJECT AGREEMENT HOLDER unless otherwise stated by the Government under Appendix A:

Classification guidance for requirement: *“The security level for this agreement is UNCLASSIFIED.”*

- B. Flowdown: The requirements delineated herein Article XII and under Appendix A, in turn, shall be included in all sub-tier agreements or other forms of lower-tier agreements.

ARTICLE XIII: TITLE AND DISPOSITION OF PROPERTY

A. Definitions

In this Article, “property” means any tangible personal property other than property actually consumed during the execution of work under this Agreement.

B. Title to Property

No significant items of property are expected to be acquired under this Agreement by the Parties. Title to any item of property that is acquired by a PROJECT AGREEMENT HOLDER under this Project Agreement shall vest in PROJECT AGREEMENT HOLDER upon acquisition with no further obligation of the Parties unless otherwise determined by the AO. The PROJECT AGREEMENT HOLDER shall be responsible for the maintenance, repair, protection and preservation of all such property at its own expense and without contribution by NSTXL or the Government. .

ARTICLE XIV: CIVIL RIGHTS ACT

This Agreement is subject to the compliance requirements of Title VI of the Civil Rights Act of 1964 as amended (42 U.S.C. § 2000d et. seq.) relating to nondiscrimination in federally assisted programs. PROJECT AGREEMENT HOLDER agrees to sign an Assurance of Compliance with the nondiscriminatory provisions of the Act, and will require each subcontractor or subawardee to sign an Assurance of Compliance as well, *if requested*, by NSTXL and/or the Government.

ARTICLE XV: REPRESENTATIONS AND WARRANTIES

Representations and Warranties of All Parties

Each Party to this Agreement represents and warrants to the other Party(ies) that (1) it is free to enter into this Agreement; (2) in so doing, it will not violate any other agreement to which it is a party; and, (3) it has taken all action(s) necessary to authorize the execution and delivery of this Agreement and the performance of its obligations under this Agreement.

ARTICLE XVI: ASSIGNMENT OF AGENCY

Neither this Agreement nor any rights or obligations of any Party heretofore shall be assigned or otherwise transferred by either Party without the prior written consent of the other Party except that it is agreed that either Party may assign this Agreement to the successors or assignees of a substantial portion of the Party’s business

interests to which this Agreement directly pertains without prior written consent. In the event of a Party filing for federal bankruptcy protection or an equivalent state process (e.g. assignment for the benefit of creditors) the counter Party shall have the sole election of terminating this Agreement, in whole or in part, and shall communicate such determination to the other Party or their representative and/or assignees.

ARTICLE XVII: ORDER OF PRECEDENCE

Except as otherwise dictated, in the event of any inconsistency between the terms of this Agreement and any other document, the inconsistency shall be resolved by giving precedence in the following order: (1) this Agreement; (2) Attachment(s) or Appendice(s) to this Agreement; (3) the Statement of Work documentation (including but not limited to the NSTXL member entity proposal selected for funding by the Government). In any event, specifically negotiated Statement of Work terms will govern over general terms of this Agreement.

ARTICLE XVIII: EXECUTION

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 TRex Principles of Engagement. This Agreement may be revised only by written consent of NSTXL and the PROJECT AGREEMENT HOLDER contractual representatives designated in this Agreement.

ARTICLE XIX: FLOW DOWN PROVISION

The PROJECT AGREEMENT HOLDER is obligated under this Agreement to ensure flow down provisions, where applicable, are properly incorporated in whatever controlling agreement(s) the PROJECT AGREEMENT HOLDER has executed between itself and its subcontractors (including, but not limited to: agents, partners, joint ventures, consultants, service providers etc.), and to monitor compliance thereof. Nothing in this Agreement is meant to prohibit the PROJECT AGREEMENT HOLDER and the lower tier subcontractors from negotiating additional terms and conditions, provided that the negotiated terms and conditions adhere to the flow down provisions from this Agreement.

ARTICLE XX: 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. Force Majeure

No failure or omission by NSTXL or PROJECT AGREEMENT HOLDER(s) in the performance of any obligation of this Agreement shall be deemed a breach of this Agreement or create any liability if the same shall arise from any cause or causes beyond the control of the Parties, including but not limited to, the following: acts of God; acts or omissions of any Government, including the failure to appropriate funding; any rules, regulations or orders issued by any Governmental authority or by any officer, department, and/or agency or instrumentality thereof; fire, storm, flood, earthquake, accident, war, rebellion, insurrection, terrorist incident, riot, or invasion, provided that such failure or omission resulting from one of the above causes cannot be cured. In the event a cure is possible for any failure or omission resulting from one of the above causes all Parties are under an obligation to cure as soon as is practicable after the occurrence.

C. Governing Law

This Agreement between NSTXL and the PROJECT AGREEMENT HOLDER shall be governed by and construed in accordance with the laws of the District of Columbia and the venue for any action hereunder shall be in the appropriate forum in the District of Columbia.

D. 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.

E. Further Acts

The Parties to this Agreement hereby agree to execute any other documents and take any further actions that are reasonably necessary or appropriate in order to implement the transactions contemplated by this Agreement.

F. Agreement Confidentiality: Maintenance of Confidentiality

The PROJECT AGREEMENT HOLDER 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 PROJECT AGREEMENT HOLDER agrees to inform NSTXL in the event the Agreement Information is disseminated. Nothing in this clause shall prevent the PROJECT AGREEMENT HOLDER from disclosing the Agreement Information to its retained services professionals (e.g., lawyers, accountants, consultants etc.), the PROJECT AGREEMENT HOLDER 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.

G. Drafting Party

The provisions of this Agreement have been prepared, examined, negotiated and revised by each Party hereto, and no implication shall be drawn and no provision shall be construed against either Party by virtue of the purported identity of the drafter of this Agreement, or any portion thereof.

H. 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 particular 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.

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 PROJECT AGREEMENT HOLDER 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. Each Party acknowledges, represents and warrants that this Agreement is fully integrated and not in need of parol evidence in order to reflect the intentions of the Parties.