



Appendix E – Prime Contract Flowdowns – OTA

(W900KK-18-9-0005/ WO W900KK-22-9-0002)

1. U.S. Government Contract Regulations. This Subcontract is being issued in support of a U.S. Government project through an Other Transaction Authority (“OTA”). The clauses below are incorporated herein with the same force and effect as if they were set forth in full text in the Subcontract.

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 terminating party will issue to the PROJECT AGREEMENT HOLDER a notice that they have failed under this Agreement, provide what failures have been identified, and which provision for cause, as outlined above, the terminating 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 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.*

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 this Agreement was improperly terminated 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 convenience. In the event of such termination, NSTXL shall provide written notice to the PROJECT AGREEMENT HOLDER and the PROJECT AGREEMENT HOLDER shall immediately stop all work hereunder and shall immediately cause its subcontractors to cease work, if applicable, by written notice. Subject to the terms of this Agreement, the Government shall pay reasonable costs and/or fees that NSTXL and the PROJECT AGREEMENT HOLDER can demonstrate to the reasonable satisfaction of the Government are the result of the termination. PROJECT AGREEMENT HOLDER shall not be paid for any work performed or costs incurred which reasonably could have been avoided upon receipt of notice of the termination for convenience from NSTXL. 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.

4. Limitation on Damages

In the event of any full or partial termination of this Agreement, or a project funded hereunder, by the Government or NSTXL, 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 the 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. 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, as instructed by the Government, 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 and the Government to negotiate an equitable reimbursement in accordance with Article II.

E. Flow Down

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

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 HOLDER 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 that becomes 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 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 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.

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 herein, 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. Flow down: 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 XVIII: 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.

Revision History

Rev	Date	Section	Paragraph	Summary of change	Authorized by
1.0	7/25/23			Initial issue	Kathryn Bigelow