**MASSACHUSETTS TECHNOLOGY COLLABORATIVE**

**Sub-performer Agreement**

**Between Massachusetts Technology Collaborative and**

**\_\_\_\_\_\_\_**

This Sub-performer Agreement and any Attachments and Exhibits hereunder (collectively the "Agreement") is made and entered into by and between Massachusetts Technology Park Corporation d/b/a Massachusetts Technology Collaborative (“MassTech”), an independent public instrumentality of the Commonwealth of Massachusetts with a principal office and place of business at 75 North Drive, Westborough, Massachusetts, 01581, and \_\_\_\_\_\_\_\_\_\_\_, with a principal place of business at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ("Participant" or "\_\_\_\_\_"), together the Parties.

**Whereas**, National Security Technology Accelerator (“NSTXL”), acting under the authority of the Department of the Navy, Naval Surface Warfare Center, Crane Division, has entered into a Performer Agreement with MassTech (“Performer Agreement”) to provide funding for the Northeast Microelectronics Commons Hub (“NEMC Hub”), which includes development of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_; and

 **Whereas,** MassTech and Participant desire to enter into an agreement under which Participant will support of the development of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, in accordance with the Performer Agreement, and the terms and conditions of this Agreement and Statement of Work (“SOW”);

**Now, therefore**, in consideration of the premises, mutual covenants and representations set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Exhibit 1 Terms and Required Amendments**

Participant agrees to abide by the Federal Requirements set forth in Exhibit 1. Participant agrees that upon the request of MassTech it will negotiate in good faith with MassTech to incorporate additional provisions herein or to change provisions hereof, as MassTech may reasonably deem necessary, in order to comply with the provisions of the Federal Requirements or the Performer Agreement and any amendments thereto. If any such amendment to this Agreement causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this Agreement, an equitable adjustment shall be negotiated between the parties.

1. **Term and Termination**

* 1. This Agreement shall take effect \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the "Effective Date") and shall remain in effect until September 24, 2024 (the “Term”).
	2. In the event MassTech or the Government concludes that Participant has failed to comply with mandatory terms and conditions incorporated in this Agreement, MassTech will terminate this Agreement for cause. In the event Participant violated Government-mandated terms and conditions, the Government will determine whether MassTech should terminate this Agreement for cause or if additional efforts are in the best interest of the Government. Such failures may result in a Participant being deemed ineligible for subsequent funding or a follow-on production effort. The Government may also decide to report a termination for cause or default to [www.sam.gov](http://www.sam.gov). MassTech will take reasonable actions consistent with the Government’s determination.
	3. MassTech may terminate this Agreement or any part hereof by written notice to the Participant, should NSTXL terminate the Performer Agreement or any part thereof. The Parties will negotiate in good faith a reasonable and timely adjustment of all outstanding issues between the Parties as a result of termination. MassTech may terminate this Agreement in the event of an unforeseen public emergency or other change of law mandating immediate MassTech action inconsistent with performing its obligations.
	4. Upon termination Participant shall deliver to MassTech all written and tangible work product, whether in draft or final form at the time of termination, identified as Deliverables or associated with the activities in the SOW for which payment has been made, and all other property of MassTech, and all copies thereof in the direct or indirect possession or control of Participant, up to and including the date of termination.

* 1. Sections 7 through 30 of this Agreement shall survive termination.
1. **Stop Work Orders**
	1. MassTech may, at any time, issue a Stop Work Order to Participant requiring Participant to stop all, or any part, of the work required under the Statement of Work.
	2. Upon receipt of the Stop Work Order, Participant shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the stop work order during the period of work stoppage. Within the longer of (i) ninety (90) calendar days after the stop work order is delivered to the Participant, or within any extension of that period to which the Parties have agreed, or (ii) within ten (10) calendar days after the Government takes action with respect to a stop work order issued to MassTech, MassTech will either cancel the Stop Work Order, or terminate, in whole or in part, the work covered by this Agreement.
	3. If the Stop Work Order is cancelled, Participant shall resume the work required under this Agreement. Participant shall make requests for equitable adjustment in the delivery schedule or cost or price, or both, resulting from the Stop Work Order within twenty (20) calendar days after the end of the work stoppage.
2. **Changes**
	1. MassTech, in coordination with Participant, may negotiate modifications to the Statement of Work. Participant shall provide a written assessment of cost, schedule and performance impacts from any proposed modification. Upon agreement, the SOW shall be amended to reflect new performance objectives and revised payment terms (if applicable).
	2. Participant may recommend modifications to the SOW in writing. Only NSTXL with concurrence by the federal Agreements Officer may authorize changes that are inconsistent with the Task Description Document associated with the Performer Agreement, which shall be submitted on Participant’s behalf by MassTech. For the purposes of this Agreement, the “Agreements Officer (AO)” means the warranted and named Government contracting officer with authority to enter into, administer, or terminate a Project Order associated with the Performer Agreement, and whose concurrence is required before any modifications can be made to the Performer Agreement.
	3. Any such modification must be incorporated into this Agreement in writing by MassTech and Participant.
	4. Participant shall immediately notify MassTech whenever a verbal or written change notification has been received from anyone other than the MassTech contractual representative, which would affect any of the terms, conditions, cost, schedules, etc. of the Statement of Work, and the Participant is to perform no work or make any changes in response to any such notification or make any claim, unless MassTech (as a result of Agreement Officer concurrence or direction) directs the Participant, in writing, to implement such change notification, and that change notification is in keeping with the Agreement and/or the Statement of Work.
3. **Notices**

a) All communications to MassTech regarding legal issues shall be emailed to MassTech General Counsel Jennifer Saubermann at saubermann@masstech.org.

b) All communications regarding any other issues shall be emailed or delivered to the personnel specified in Section 2 of Attachment 2 (the SOW), **Project Personnel**.

 Any notice hereunder shall be in writing and shall be effective (i) if dispatched by email and delivery is electronically confirmed by said media, the day such electronic confirmation is received, (ii) if sent by courier, one business day after dispatch, (iii) if sent by first class mail, five business days after its date of posting.

1. **Timely Performance**

Participant acknowledges that expeditious completion of work and delivery of related deliverables set forth under this Agreement and the attached SOW are of the utmost importance to MassTech.

1. **Participant's Representations, Warranties and Certifications**

As of the Effective Date, Participant hereby represents, warrants and certifies as follows:

* 1. Participant is duly authorized to enter into this Agreement, and the execution, delivery and performance of this Agreement will not conflict with any other agreement or instrument to which it is a party or by which it is bound and will not violate any law, regulation, order or other legal requirement by which Participant or any of its assets is bound.
	2. Participant and all Project Personnel of Participant are fully capable and qualified to perform the described work and Participant's other obligations hereunder, and have obtained all requisite licenses and permits to perform such obligations.
	3. Participant and its Project Personnel are familiar with, and are and will remain in compliance with, and will not take any actions contrary to the provisions of, any laws, rules, regulations, ordinances, orders or requirements of the Commonwealth and other local, state or federal governmental authorities applicable to or implicated by the subject matter hereunder without limitation.
	4. Participant and its employees are not employees, partners or joint-venturers of MassTech. Participant will be solely responsible for withholding and paying all applicable payroll taxes of any nature including social security and other social welfare taxes or contributions that may be due on amounts paid to its employees. Participant has filed and will continue to file all necessary state tax returns and reports, and has paid and will continue to pay all taxes and has complied and will continue to comply with all laws of the Commonwealth relating to contributions and payment in lieu of contributions to the Employment Security System, and with all laws of the Commonwealth relating to Worker's Compensation, Mass. Gen. Laws ch. 152.
	5. Participant shall not discriminate against any qualified employee or applicant for employment because of race, color, national origin, ancestry, age, sex, religion, physical or mental handicap, or sexual orientation. Participant agrees to comply with all applicable Federal and State statutes, rules and regulations prohibiting discrimination in employment including but not limited to: Title VII of the Civil Rights Act of 1964; the Age Discrimination in Employment Act of 1967; Section 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990; and Mass. Gen. Laws ch. 151B.
	6. Participant represents and warrants that all personnel performing work hereunder are eligible to work in the United States at the time of execution of this Agreement and that Participant has a continuing obligation to ensure such status during the term of the Agreement.
	7. Additional representations, warranties and certifications may be set forth in the SOW.
1. **Ownership of Intellectual Property, Data Rights, and Title to Valuable Property**
2. Title to any item of property valued at $25,000 or less that is acquired by Participant pursuant to this Agreement shall vest with Participant upon acquisition with no further obligation of the parties unless mutually agreed upon by all parties. Should any item of property with an acquisition value greater than $25,000 be required, MassTech, at the request of Participant, must first obtain prior written approval of NSTXL and the Agreements Officer, as applicable. Upon written approval of NSTXL and/or the Agreements Officer, title to this property shall vest in Participant or its designee upon acquisition. Participant shall be responsible for the maintenance, repair, protection, and preservation of all such property at its own expense.
3. Any intellectual property and data rights hereunder shall be determined in accordance with Exhibit 2 (NSTXL Supplemental Intellectual Property & Patent Rights Agreement).
4. Government Furnished Property.
5. If Participant receives any Government Furnished Property (GFP) to facilitate performance of this Agreement, such GFP shall be used only for the performance of this Agreement unless NSTXL obtains an exception in writing from the Agreements Officer.
6. The Government shall retain title to all GFP. Title to GFP shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall GFP become a fixture or lose its identity as personal property by being attached to any real property.
7. All GFP shall be returned to the Government at the end of the Term in as good a condition as when received with the exception of reasonable wear and tear, or as otherwise agreed upon in the project award documentation. Participant shall obtain explicit written authorization from MassTech prior to the transfer or disposition of GFP. MassTech will only provide such authorization after receiving authorization from NSTXL and the Agreements Officer. Participant shall assume the risk and be responsible and liable for any and all maintenance, repair, or replacement, loss, theft or destruction of, or damage to, any Government Furnished Property while in its possession, use, or control, with the exception of reasonable wear and tear or reasonable and proper consumption, unless otherwise negotiated by NSTXL with the Agreements Officer.
8. Participant shall report losses of Government property outside normal process variation (e.g., losses due to theft, inadequate storage, lack of physical security or “Acts of God”) to MassTech.
9. Participant shall initiate and maintain the processes, systems, procedures, records, and methodologies necessary for effective and efficient control of Government property. Participant’s responsibility extends from the initial acquisition and/or receipt of property, through stewardship, custody, and use until formally relieved of responsibility by authorized means, including delivery, consumption, expending, sale (as surplus property), or other disposition, or via a completed investigation, evaluation, and final determination for lost property.
10. Participant shall include a similar clause in any sub-agreement related to the Performer Agreement.
11. **Insurance**

Participant shall obtain and maintain in effect through the term of this Agreement appropriate insurance coverage for its activities hereunder including, but not limited to, comprehensive general liability insurance (bodily injury and property damage) and professional liability insurance. At MassTech’s request, Participant will provide MassTech with copies of the certificates of insurance evidencing such coverage. Additional insurance requirements may be specified under the SOW.

1. **Limitation of Liability and Damages;** **Indemnification**

a) In the event of any full or partial termination of the Performer Agreement, or a project funded thereunder, by the Government, neither the Government, NSTXL nor MassTech shall be liable for any loss of profits, revenue, or any indirect or consequential damages incurred by Participant, its contractors, sub-performers, or customers as a result of such termination. In no event shall MassTech’s liability for termination exceed the total amount due to Participant which has been paid by NSTXL to MassTech for payment to Participant that has not been paid.

b) With regard to activities undertaken pursuant to this Agreement, no party shall make any claim against the other or the Government, the other’s or the Government’s employees, the other’s or the Government’s related entities (e.g., contractors, sub-performers), or employees of the other’s or the Government’s related entities for any injury or death of its own employees or employees of its related entities, whether such injury, death, damage or loss arises through negligence or otherwise, provided however, that in the event willful misconduct is determined by a tribunal of competent jurisdiction to have occurred, this clause shall not be a bar to suit and/or recovery.

c) None of the parties or the Government shall be liable to each other for consequential, punitive, special and incidental damages or other indirect damages, whether arising in contract (including warranty), tort (whether or not arising from the negligence of a party or the Government) or otherwise, except to the extent such damages are caused by a party’s or the Government’s willful misconduct or arise from third-party claims that are subject to indemnification under subparagraph (e), below. Under no circumstances will the above enumerated exceptions be interpreted to apply the Contract Disputes Act to this Agreement, or in any way cause this Agreement to be subject to any terms or regulations related to the Contract Disputes Act.

d) Participant agrees to extend the waiver of liability set forth above in subparagraphs (b) and (c) to entities at any tier performing under this Agreement by requiring them, through agreement, contract or otherwise, to agree to waive all claims against the Parties as well as the Government.

e) Each party (an “Indemnifying Party”) agrees to indemnify, hold harmless, and defend the other party and the Government and their respective managers, officers, directors, employees, agents, affiliates, successors, and permitted assigns, against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs or expenses of whatever kind, including professional fees and reasonable attorneys’ fees, arising out of any third-party claim alleging or arising from:

i) property damage or bodily injury, including death, caused solely by the willful misconduct of such Indemnifying Party, its agents, employees, or affiliates in connection with work under this Agreement,

ii) such Indemnifying Party’s infringement or wrongful use of intellectual property, including without limitation, technical data, software or inventions, or

iii) any failure by Indemnifying Party to comply with any federal, state, or local laws, regulations, or codes in the performance of this Agreement.

1. **Warranty Disclaimer**

 EACH PARTY DISCLAIMS ALL WARRANTIES, EITHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT, TITLE, QUALITY, OR FITNESS FOR A PARTICULAR PURPOSE.

1. **Assignment and Subcontracting**

 Participant shall not assign or in any way transfer any interest in this Agreement without the prior written consent of MassTech, including subcontracting any services except as otherwise included in the SOW attached hereto.

1. **Conflicts of Interest**

1. Participant acknowledges that all MassTech employees are subject to the Massachusetts Conflict of Interest statute, located at Mass. Gen. Laws ch. 268A.
2. Participant must monitor and disclose to MassTech all actual or potential organizational or personal conflicts of interest impacting Participant’s performance of this Agreement, as those conflicts are defined under Federal Acquisition Regulation Parts 3 and 9.5.
3. Participant must disclose the extent to which its efforts under this Agreement duplicates system development or enhancement being performed under other agreements or contracts.

1. **Record Keeping**, **Audit, and Inspection of Records**

Participant’s relevant financial records specific to this Agreement are subject to examination or audit by MassTech, NSTXL or the Federal Government for a minimum period of three (3) years after payment of the final invoice. MassTech, NSTXL or the Federal Government shall have direct access to sufficient records and information of Participant to ensure full accountability for all funding under this Agreement. Such audit, examination, or access will be performed during business hours on business days upon prior written notice and shall be subject to the security requirements of the audited party.

Exceptions below would affect the period of record retention and access:

1. If any litigation, claim, or audit involving the Government, NSTXL, MassTech, and/or Participant as a Party to the legal action is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.
2. For property acquired under this Agreement or for property that the Government shall receive title to, the records for real property and equipment, acquired with Federal funds, shall be retained for 3 years after final disposition.
3. **Inspection of Facilities**

Participant acknowledges that the Performer Agreement provides that Government shall have the right to inspect Participant’s plant or plants of any Participant sub-performers engaged in performance under this Agreement. If the Government performs inspections or tests at Participant’s premises, Participant shall furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

1. **Public Announcements, Press Releases, and Publications**
	1. NSTXL, in conjunction with the Government, reserves the right to review and approve all project-related press releases, public announcements, and publications prior to dissemination. MassTech will coordinate the review and approval of any press release and announcements with NSTXL. Participant must furnish Mass Tech with a copy of any proposed publication or public disclosure, at least seventy-five (75) days in advance of the proposed publication to allow for review and approval. Requests for publication review and verification approval shall identify the specific information to be released, the medium to be used, and the purpose for the release. In the event that NSTXL notifies MassTech in writing that the proposed publication or presentation requires changes, MassTech will provide such required changes to Participant in writing.
	2. Participant shall include a requirement similar to sub-paragraph (a) above in any sub-agreement under any Project Order.
	3. Information provided at meetings must be released in a manner consistent with statutory and regulatory requirements for protecting information. Such requirements include, but are not limited to, protection of classified, controlled unclassified, unclassified export-controlled, proprietary, privacy, and foreign government-provided information.
2. **Public Records**

a) As a public entity, MassTech is subject to the Massachusetts Public Records Law (set forth at Mass. Gen. Laws ch. 66) and thus documents and other materials made or received by MassTech and/or its employees are subject to public disclosure. All information received by MassTech shall be deemed to be subject to public disclosure, except as otherwise provided herein. It is MassTech’s expectation that the overwhelming percentage of documents and information it receives does not contain any information that would qualify for an exemption from disclosure under the Massachusetts Public Records Law. Participants should take great care in determining which documents they submit to MassTech and should assume that all documents submitted to MassTech are subject to public disclosure without any prior notice to the Participant.

b) If Participant wishes to have MassTech treat certain information or documentation as confidential, Participant must submit a written request to the MassTech General Counsel that details the type of information and/or documentation that the Participant wishes to be treated as confidential along with a detailed explanation supporting the application of the statutory exemption(s) from the Public Records Law cited by Participant. Participant should not submit any information to MassTech that it does not want publicly disclosed, but should provide enough detail about the information it requests to be treated as confidential so that the General Counsel can make a determination about the applicability of the asserted statutory exemption(s) from the Public Records Law cited by the Participant.

c) The MassTech General Counsel will issue a written determination within a reasonable period of time concerning the applicability of an exemption from disclosure under the Public Records Law. If the General Counsel determines that an exemption is applicable, the written determination will specify the method of submission of the confidential information. The MassTech General Counsel is the sole authority within MassTech for making determinations on the applicability and/or assertion of an exemption to the Public Records Law. No employee of MassTech other than the MassTech General Counsel has any authority to address issues concerning the status of “Sensitive Information” or to bind MassTech in any manner concerning MassTech’s treatment and disclosure of such documents.

d) By signing this Agreement, Participant acknowledges, understands and agrees that the procedures set forth herein are applicable to any documents submitted by Participant to MassTech and that Participant shall be bound by these procedures and the determination of the MassTech General Counsel.

1. **Choice of Law**

This Agreement shall be governed by and construed according to the laws of the Commonwealth of Massachusetts without regard to choice of law principles. Venue for all disputes arising from this Agreement, including but not limited to any mediation or arbitration commenced, shall be in Middlesex County, Massachusetts.

1. **Force Majeure**

 Neither Party shall be liable for any failure to perform due to any cause beyond their reasonable control and without their fault or negligence. Such causes may include, but are not limited to, acts of God or of a public enemy, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or unusually severe weather. Dates or times of performance including the Term may be extended to account for delays excused by this Section, provided that the party whose performance is affected notifies the other promptly of the existence and nature of such delay. This Agreement shall be completed with such adjustments as are reasonably required by the existence of Force Majeure or this Agreement may be terminated for convenience.

1. **Safety**

Participant shall adhere to all local, state, and federal rules and regulations required in maintaining a safe and non-hazardous occupational environment throughout the duration of this Agreement. Participant shall report any major accident/incident (including fire) occurring during performance of this Agreement resulting in any one or more of the following: causing one or more fatalities or one or more disabling injuries; damage of Government property exceeding $10,000; affecting program planning or production schedules; degrading the safety of equipment under contract, if such degradation may or has led to injury or property damage; identifying a potential hazard requiring corrective action.

1. **Environmental Requirements**

Participant shall comply with all Federal, State, and local environmental laws and regulations, treaties and agreements in the performance of this Agreement.

1. **Debarment and Suspension**

Participant shall not contract with any parties listed on the government-wide exclusions in the System for Award Management (SAM).

1. **Government Furnished Information**

(a) Participant shall not release to anyone outside Participant’s organization any government furnished information, regardless of medium (e.g., film, tape, document), pertaining to any part of any project related to the Performer Agreement unless-

i. The Performer Agreement Agreements Officer has confirmed in writing that they have

a. reviewed; and

b. verified compliance with applicable laws and regulations, including that no confidential information provided by the Government has been disclosed; or

ii. The information is otherwise in the public domain before the date of release.

(b) Requests for approval under the above paragraph shall identify the specific information to be released, the medium to be used, and the purpose for the release. MassTech shall submit the request to NSTXL for submission to the Agreements Officer, on behalf of the Participant, at least fifteen (15) business days before the proposed date for release. If additional time is required to review the release, MassTech shall notify Participant prior to the expiration of the aforementioned timeframe.

(c) Participant shall include a requirement similar to subparagraphs (a) and (b) above, and this subparagraph (c), in any sub-agreement related to the Performer Agreement.

1. **Fraud, Waste and Abuse**

Participant shall maintain and utilize systems and procedures to prevent, detect, and correct fraud, waste, and abuse in activities funded under this Agreement.

1. **Amendments and Waivers**

The terms of this Agreement and any attachments thereto can be amended only through a written document executed by both Parties. Conditions, covenants, duties and obligations contained herein may be waived only by written agreement between the parties. Forbearance or indulgence in any form or manner by a party shall not be construed as a waiver, nor in any way limit the remedies available to that party.

1. **Severability**

Each provision of this Agreement shall be treated as a separate and independent clause and any decision from a court of competent jurisdiction to the effect that any clause or provision of this Agreement is null or unenforceable shall in no way impair the validity, power or enforceability of any other clause or provision of this Agreement.

1. **Headings**

The headings and captions of the various subdivisions of this Agreement are for convenience of reference only and will in no way modify or affect the meaning or construction of any of the terms or provisions hereof.

1. **Counterparts**

This Agreement may be executed in two or more counterparts, and by different parties hereto on separate counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

1. **Entire Agreement, Attachments, Exhibits and Amendments**

The parties understand and agree that this Agreementand its exhibits and attachments supersede all other verbal and written agreements and negotiations by the parties regarding the matters set forth herein, are fully incorporated by reference, and can only be amended by written agreement of the parties.

The following, including without limitation any schedules, milestones, deliverables, budgets, and other terms relative to the nature of the work to be performed, are attached and incorporated into this Agreement:

i. Attachment 1 - Certification Regarding Lobbying

ii Attachment 2 - Statement of Work

 iii. Attachment 3 - Budget

 iv. Attachment 4 - Invoice Certification Form

 v. Exhibit 1- Federal Terms

vi. Exhibit 2 – NSTXL Supplemental Intellectual Property and Patent Rights Agreement

**The Massachusetts Technology Park Corporation \_\_\_\_\_\_\_\_\_\_\_\_\_**

**d/b/a Massachusetts Technology Collaborative**

**By:**  **By:**

**Name:** Carolyn A. Kirk  **Name:**

**Title:** Executive Director **Title:**

**Date:** **Date**:

**Attachment 1**

**Certification Regarding Lobbying**

**Certification for Contracts, Grants, Loans and Cooperative Agreements**

The undersigned, on behalf of [Participant], certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements and that all shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

|  |
| --- |
| **[PARTICIPANT]** |
| By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

**Attachment 2**

**Statement of Work**

Pursuant to the terms and conditions of the Agreement and this SOW, MassTech and Participant agree as follows:

* 1. Performance of Work, Deliverables, and Schedule

Participant shall perform the agreed upon work in accordance with the specifications and Budget set forth below.

**Scope**

**Schedule**

**Deliverables**

* 1. **Project Personnel**

Both MassTech and Participant have designated the following persons to serve as Project Manager to support effective communication between MassTech and the Participant and to report on the work’s progress. Each party will endeavor to maintain the continuity of its respective project personnel.

For MassTech: Adam Couturier (couturier@masstech.org) (508-870-0312)

MassTech Invoice Contact: Kerry Mustica (mustica@masstech.org) (508-870-0312)

For Participant:

Written notice shall be provided to personnel at the email addresses set forth in this Section 2 in the event of any change in Project Personnel.

* 1. **Payments, Costs Share and Invoices**

 **I. Payment**

a) In consideration of Participant’s performance of work and delivery of Deliverables hereunder, MassTech shall pay Participant up to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, as further set forth in Attachment 3 (Budget). Said amount shall be the sole and complete compensation for work performed by Participant under this SOW. Costs incurred are expected to be in line with the budget set forth in Attachment 3.

b) Participant shall be compensated on a cost-reimbursement basis for actual costs incurred in the performance of the Project. Notwithstanding the foregoing, MassTech will make payments upon achievement of the milestones set forth in Section 3(II) below.

c) MassTech will not reimburse for sales tax, interest, or other costs out of scope of this Agreement. In no case will MassTech reimburse the Participant in excess of the amount of funds obligated and allotted for payment by MassTech under this Agreement or by modification to this Agreement.

 d) All payment shall be considered provisional and subject to adjustment within the total not to exceed anticipated amount, in the event such adjustment is necessary as a result of a future audit finding.

e) MassTech shall have the right to recover from any payment previously made for amounts on preceding or pending invoices found by NSTXL not to be properly supported as payable to MassTech. Payments shall also be subject to reduction or setoff for overpayments made by MassTech to Participant.

f) Notwithstanding any other provision of this Agreement, MassTech shall be obligated to make payments to the Participant only to the extent that MassTech is legally entitled to recover the items for which payment is made as allowable costs under MassTech’s Agreement with NSTXL. This clause in no way obligates MassTech to provide payment for services not performed in accordance with the applicable SOW. Participant’s total invoiced amount shall not exceed the Agreement obligated amount indicated herein.

 **II. Invoices**

a) Participant shall submit invoices for payment upon completion of Milestone 1 and Milestone 2 activities. Milestone 1 shall be \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. Milestone 2 shall be the completion of all other activities in the Scope.

b) Invoices for Milestone 1 and Milestone 2 activities shall be addressed to MassTech personnel identified in Section 2, Project Personnel, of this SOW.

c) Invoices must specify the milestone completed, should be billed at the actual costs incurred up to the amount of each task category as set forth in Attachment 3 Budget and must include a certification statement, in the format attached as Attachment 4 which must be signed by an authorized representative of the Participant.

d) Invoices shall include supporting documentation including system-generated detailed activity reports showing income and expenses to provide evidence of costs incurred for both the costs for which reimbursement is being requested and the cost share, if any, which should tie back to invoice amounts and budget categories for this project. MassTech may accept these reports in lieu of the required detailed documentation as listed below. Acceptance of the system generated reports are subject to MassTech approval of form and format. Additional supporting documentation to support costs may be requested by MassTech from time to time, in addition to the system generated reports, and may include:

* + 1. Direct Labor: for each employee, the name, title, and number of hours worked or, if supported by an appropriate allocation methodology, the percentage of effort expended;
		2. Subcontractors/Consultants: copies of invoices for such subcontractors or consultants which have been reviewed and approved by Participant prior to submission to MassTech; and
		3. Direct Costs/Travel: all direct costs and travel expenses shall be itemized on the invoice and supported by documentation such as vendor invoices, travel vouchers, expense receipts or other documentation as required by MassTech. Participant shall be reimbursed for necessary, reasonable, and actual travel expenses for transportation, lodging, meals and incidental expenses only to the extent that they (1) do not exceed the maximum per diem rate in effect at the time of travel, as set forth in the United States Federal Travel Regulations for the area of travel authorized under this Agreement and (2) are otherwise reimbursable pursuant to the Allowable Cost clause of the Performer Agreement. Air travel shall be reimbursed for coach class only.

e) MassTech reserves the right to request the Participant to provide a budget to actual tracker with each invoice to the extent the invoice and supporting documentation does not adequately provide the acceptable level of information deemed necessary by MassTech. To the extent deemed necessary, MassTech would provide the format for this tracker.

4. **Access and Use**

Participant agrees that MassTech shall have the right to make use of and disseminate, in whole or in part, all work products, reports, and other information produced in the course of the Project and provided to MassTech as Deliverables, and to use the information therein contained to produce summaries, case studies or similar information resources.

5. **Additional Insurance Requirements**

None

6. **Amendments, Exhibits and Attachments**

All conditions, covenants, duties and obligations contained in this SOW and its exhibits and attachments may be amended only through a written amendment signed by Participant and MassTech.

7. **Small Business**

Participant certifies it is [ ] is not [ ] a small business under the NAICS code applicable to this Agreement.

**Attachment 3**

**Budget**

**Attachment 4**

**Invoice Certification Form**

**Invoice Number:**

**Statement of Work Number:**

I hereby attest that the expenses reported and the attached associated supporting documentation for which we are seeking reimbursement:

* Have been recognized on Participant’s books;
* Are allowable under and consistent with the terms and conditions of the Agreement and approved project budget;
* Are reasonable and appropriately allocated to the project; and
* Are not reimbursed by any other funding source

**Certified by:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Organization

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature of Authorized Signing Authority

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name and Title of Authorized Signing Authority

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Contact email and phone number

**EXHIBIT 1**

**Federal Requirements**

The requirements in this Section are federal flow-down provisions in the Performer Agreement that have been modified, as applicable, based on the identity and nature of the MassTech project.

**I.** **Laws applicable to receive Federal Funds**

a. 31 U.S.C. § 1352 Limitations on the use of appropriated funds to influence Federal Contracting and Financial Transactions

b. 41 U.S.C. Chapter 87, Kickbacks

c. 41 U.S.C. § 4712 and 10 U.S.C. § 2409 Whistleblower Protections

d. 41 U.S.C. Chapter 21 and the Procurement Integrity Act

**II. Laws Restricting Certain Activities**

a. 18 U.S.C. § 431 Contracts by Members of Congress

b. 22 U.S.C. Chapter 78 Combating Trafficking in Persons

c. 40 U.S.C. Chapter 37 Contract Work Hours and Safety Standards (if applicable)

d. 49 U.S.C. § 40118, Government-financed air transportation

**III. Safeguarding Covered Defense Information and Cyber Incident Reporting.** 48 CFR 252.204-7012 as prescribed by 48 CFR 204.7304(c) which shall flow-down to all Performers and sub-performers for non-COTS items (i.e., items that are not commercially available off-the-shelf items, as defined in FAR 2.101) where Covered Defense Information is used, stored, generated, or shared in the course of the performance of the scope of work identified in the SOW or TDD. The Project Order issued by the Government to NSTXL reflecting the Government’s decision to fund all or part of the Prototype Project relevant to this Agreement will identify the information that requires safeguarding and dissemination control. Upon receipt from NSTXL of documentation identifying information that requires safeguarding and dissemination control, MassTech shall inform Participant in writing of the information that requires safeguarding and dissemination control.

**IV.** **Export Control.** Participant and its sub-performers, contractors, and subcontractors, will comply with the following Export Control requirements:

1. International Traffic in Arms Regulation (22 CFR pt. 121 et seq.)
2. DoD Industrial Security Regulation (DoD 5220.22-R)
3. Department of Commerce Export Regulation (15 CFR pt. 770 et seq.)

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

**VI. Validation of Restrictive Markings on Technical Data.** Title 10 U.S. C. § 3782- Validation of proprietary data restriction is incorporated into this Agreement by reference, with all mention of the Government, or Department of Defense to mean the Government; Contractor understood to mean the Performer; and all mention of Contracting Officer understood to mean Agreements Officer.

**VII. FAR 52.204-25 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (NOV 2021).** The Performer Agreement between MassTech and NSTXL incorporates FAR 52.204-25, which must be incorporated into all sub-agreements. FAR 52.204-25, which prohibits the use of certain telecommunications or video surveillance equipment or services as a substantial or essential component of any system or as "critical technology" as part of any system, is hereby incorporated by reference.

**EXHIBIT 2**

**NSTXL SUPPLEMENTAL INTELLECTUAL PROPERTY & PATENT RIGHTS AGREEMENT**

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

NSTXL PROJECT ORDER #: N00164-23-9-G060

Definitions:

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

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

“Consortium” means the National Security Technology Accelerator (hereinafter referred to as “NSTXL”).

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

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

“Form, Fit and Function Data” means data that describes the required overall physical, functional and performance characteristics (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items.

“Government Purpose” means any activity in which the United States Government is a party, including cooperative agreements with international or multi-national defense organizations, or sales or transfers by the United States Government to foreign governments or international organizations. Government purposes include competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose Data for commercial purposes or authorize others to do so. Within a specific, agreed-upon timeframe “Government Purpose Rights” (“GPR”) may evolve into “Unlimited Rights” (see Unlimited Rights as defined below). GPR means the rights to: (a) Use, modify, reproduce, release, perform, display, or disclose Data within the Government without restriction; and (b) Release or disclose Data outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that Data for United States government purposes.

“Intellectual Property” (“IP”) means any invention, discovery, trade secret, technology, scientific or technological development, computer software, or other form of expression that is in tangible form. Intellectual Property may be protected by patent, trademark, or copyright laws or it may be protected as a trade secret and/or marked with an IP legend ©, ®, TM, PATENT or License.

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

“Limited Rights” means the rights to use, modify, reproduce, release, perform, display, or disclose Data, in whole or in part, within the Government. The Government may not, without the written permission of the party asserting limited rights, release or disclose the Data outside the Government, use the Data for manufacture, or authorize the Data to be used by another party, except that the Government may reproduce, release, or disclose such Data or authorize the use or reproduction of the Data by persons outside the Government if-

(i) The reproduction, release, disclosure, or use is-

(A) Necessary for emergency repair and overhaul; or

(B) A release or disclosure to-

(1) A Covered Government Support Contractor in performance of its covered Government support contract for use, modification, reproduction, performance, display, or release or disclosure to a person authorized to receive Limited Rights Data; or

(2) A foreign government, of Data other than detailed manufacturing or process data, when use of such data by the foreign government is in the interest of the Government and is required for evaluation or informational purposes;

(ii) The recipient of the Data is subject to a prohibition on the further reproduction, release,

disclosure, or use of the Data; and

(iii) The Consortium, prototype level performer, or sub-agreement holder asserting the restriction

is notified of such reproduction, release, disclosure, or use.

“Performer Agreement” means the agreement between NSTXL and a Performer, whose project proposal has been selected by the Government, in support of the Prototype Project.

“Patent” is a property right granted by the US Government, which gives the holder the exclusive right to exclude others from the manufacture, use and sale of the subject invention in the United States for a defined period of time. As property, the patent may be sold or assigned, pledged, mortgaged, licensed, willed, or donated, and the subject of contracts and agreements.

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

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

“Prototype Project” in the context of meeting the Other Transaction Authority is as follows: a prototype project addresses a proof of concept, model, reverse engineering to address obsolescence, pilot, novel application of commercial technologies for defense purposes, agile development activity, creation, design, development, demonstration of technical or operational utility, or combinations of the foregoing. A process, including a business process, may be the subject of a prototype project.

“Proprietary Information” means information and materials which are designated as proprietary in writing by the Consortium and/or Performer, whether by letter or by use of an appropriate stamp or legend, prior to or at the same time any such information or materials are disclosed to the Government. Notwithstanding the foregoing, materials and other information which are orally, visually, or electronically disclosed, or are disclosed in writing without an appropriate letter, stamp, or legend, shall constitute Proprietary Information if the Consortium,

within thirty (30) calendar days after such disclosure, delivers to the Government a written document or documents describing the material or information and indicating that it is proprietary, provided that any disclosure of information by the Government prior to receipt of such notice shall not constitute a breach by the Government of its obligations to protect Proprietary Information.

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

“Unlimited Rights,” means rights to use, modify, reproduce, perform, display, release, or disclose Data in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so, for an unlimited time. “Unlimited Rights” may evolve from “GPR” after a specified, agreed-upon date, however, “Unlimited Rights” may also be directly conferred by agreement.

**ARTICLE I. RIGHTS IN DATA, INTELLECTUAL PROPERTY**

1. In the performance of the Prototype Project funded under the Project Order, the following level and allocation of rights provided to the Government, and asserted by the PERFORMER have been agreed-to as follows:

As identified in the Technical Response of Massachusetts Technology Collaborative’s (Mass Tech’s) Microelectronics Commons Hub Lead solution dated 01 Sep 2023.

NEMC (Mass Tech Hub) has a three-part data rights and IP governance structure:

(1) NEMC will instruct members to declare and mark data rights or IP following the NSTXL Performer Agreement ARTICLE IV: Physical and Intellectual Property on all materials supplied to the Hub.

(2) Beginning with the project proposal phase separate from this Technical Proposal, the primary project performer will issue its organization’s non-disclosure agreement to proposal team members. Team members will mark and declare any data rights, background IP, proprietary information, and competition-sensitive information included in the proposal and expected to include or develop in the project. The team will also propose data rights and IP terms for government use.

(3) Upon project award, the primary Project Performer will execute subcontract agreements with project team members with terms and conditions for data rights, IP, proprietary information, and/or competition sensitive information. By default, existing or new IP will be shared among the performing team members unless specific

terms dictate otherwise.

1. Unless otherwise specified in this Agreement, the Government shall have Government Purpose Rights (GPR) in Technical Data (as defined above), including but not limited to Computer Software, and Computer Software Documentation delivered under this Project Order, except as provided in paragraphs 1, 2, and 3 below.
2. The Government shall have Unlimited Rights in Data for the following:
	1. Form, Fit, and Function Data;
	2. Corrections or changes to Data furnished to the PERFORMER by the Government;
	3. Data otherwise publicly available or Data that has been released or disclosed by the PERFORMER without restrictions on further use, release or disclosure, other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the Data to another party or the sale or transfer of some or all of a business entity or its assets to another party;
	4. Studies, analyses, test data, or similar data produced for the Prototype Project, when the study,analysis, test, or similar work was specified as an element of performance, excluding the PERFORMER’s internal development milestones;
	5. Data necessary for operation, maintenance, installation, or training;
	6. Computer software documentation required to be delivered under the Prototype Project;
	7. Products developed solely at Government expense;
	8. Technical Data described within Section 2, “Restrictive Rights Applicability – Source of Developmental Funds”, five years after completion of the project from which such data were generated.
3. Restrictive Rights Applicability – Source of Developmental Funds.
	1. If the Government pays less than 50% of the development costs for a line replaceable unit or spare part, the Government shall receive limited or restrictive rights, unless otherwise negotiated within this Agreement. If the Government pays 50% or more of the development costs for a line replaceable unit or spare part, the Government shall receive Government Purpose Rights, unless otherwise negotiated within this Agreement.
	2. For the purpose of determining the source of developmental funds, the Government’s contribution towards development costs includes any funds paid by the Government directly under this Project Order or any funds paid by the Government under any other contracts or agreements related to the same solution proposed in support of the Prototype Project. For the purpose of determining the source of developmental funds, the PERFORMER’s contribution towards development costs does not include funds paid by the PERFORMER to develop Data if the Data was in the public domain prior to award.
	3. Identification and Assertion of Use, Release, or Disclosure Restrictions - Except for Technical Data, including computer software documentation, or computer software in which the Government has Unlimited Rights under paragraph (B.1) of this section, the Government shall have limited rights in all Technical Data and restricted rights in computer software generated under this Agreement during the period commencing with award and ending upon the date five (5) years after the final submission of the Certificate of Completion for which such data was generated. The PERFORMER (with their subcontractors or suppliers) making a data rights assertion shall list in a Rights Assertion Table (RAT): (1) Technical Data or computer software to be furnished with restrictions; (2) basis for assertion; (3) asserted rights category; (4) name of person(s) or entity(s) asserting restrictions.
	4. Sufficient information shall be presumed to be at least accounting records showing the source of developmental funding for each item, component, or process that is described in a Technical Data or item listed in the RAT. The identification and assertion requirements apply only to Technical Data, including computer software documentation, or computer software to be delivered with other than Unlimited Rights. Notification and identification are not required for restrictions based solely on copyright, trademark or commercial license.
4. Data or Computer Software that will be delivered, furnished, or otherwise provided to the Government under the performance of the Prototype Project and funded under the Project Order, in which the Government has previously obtained rights, shall be delivered, furnished, or provided with the pre-existing rights, unless the parties have agreed otherwise in an individual prototype project, or any restrictions on the Governments rights to use, modify, reproduce, display or disclose the data have expired or no longer apply.
5. The PERFORMER, their sub-Agreement holders and suppliers are not required to provide the Government additional rights to use, modify, reproduce, release, perform, display, or disclose Data furnished to the Government other than those Unlimited Rights associated with Data. However, if the Government desires to obtain additional rights in Data in which it has other than Unlimited Rights, the PERFORMER agrees to promptly enter into negotiations with the Agreements Officer to determine whether there are acceptable terms for transferring such rights. All Data in which the PERFORMER has granted the Government additional rights shall be listed or described in a license agreement and added as a separate attachment to the Agreement or a part of an individual prototype project. The license shall enumerate the additional rights granted the Government in such Data and any terms of use, transferability, and rights.
6. Except for Data covered under paragraph six (6) below, and Data delivered with Unlimited Rights, Data to be delivered under this Agreement to the Government, and subject to restrictions on use, duplication or disclosure shall be marked with the following legend:

*Agreement No. 2216\_MassTech\_Microelectronics Commons*

*National Security Technology Accelerator (NSTXL) Consortium*

*14051 SGM Gene Shaw Tech DR STE C*

*Crane, Indiana 47522-7409*

*Prototype Project Expiration Date: September 24, 2024*

*The Government’s rights to use, modify, reproduce, release, perform, display, or disclose these technical data are restricted. No restrictions apply after the expiration date shown above, if displayed. Any reproduction of these technical data or portions thereof marked with this legend must also reproduce this marking.*

1. Pre-existing Data markings: If the terms of a prior contract or license permitted the PERFORMER to restrict the Government’s rights to use, modify, reproduce, release, perform, display, or disclose Technical Data deliverable under this Agreement, and those restrictions are still applicable, the PERFORMER may mark such Technical Data with the appropriate restrictive legend for which the Technical Data qualified under the prior contract or license unless the Government receives such Technical Data with less restrictions under this Agreement.
2. The Government shall have unlimited rights in all unmarked Technical Data. In the event that the PERFORMER learns of a release to the Government of its unmarked Technical Data that should have contained a restricted legend, the PERFORMER will have the opportunity to cure such omission going forward by providing written notice to the Agreements Officer within one year of the erroneous release.
3. Disclaimer of Liability: Notwithstanding the above, the Government shall not be restricted in, nor incur any liability for, the disclosure and use of: Technical Data not identified with a suitable notice or legend as set forth in this Section; nor, information contained in any Technical Data for which disclosure and use is restricted under the security requirements of this Agreement, if such information is or becomes generally known without breach of the above, is properly known to the Government or is generated by the Government independent of carrying out responsibilities under this Agreement, is rightfully received from a third party without restriction, or is included in Technical Data which the PERFORMER is required to furnish to the Government without restriction on disclosure and use.
4. Validation of Restrictive Markings on Technical Data
5. Title 10 U.S. C. § 3782- Validation of proprietary data restriction is incorporated into this Agreement by reference, with all mention of the Government, or Department of Defense to mean the Government; Contractor understood to mean the PERFORMER; and all mention of Contracting Officer understood to mean Agreements Officer.
6. Unjustified Data markings: The rights and obligations of the parties regarding the validation of restrictive markings on Technical Data furnished or to be furnished under this Agreement are contained in the Validation of Restrictive Markings on Technical Data section of this Agreement. Notwithstanding any provision of this Agreement concerning Inspection and Acceptance, the Government may ignore or, at the PERFORMER’s expense, correct or strike a marking if, in accordance with the procedures in this Agreement, a restrictive marking is determined to be unjustified.
7. A nonconforming marking is a marking placed on Technical Data delivered or otherwise furnished to the Government under this Agreement that is not in the format authorized by this Agreement. Correction of nonconforming markings is not subject to the Validation of Restrictive Markings section of this agreement. However, if the Agreements Officer notifies the PERFORMER of a nonconforming marking and the PERFORMER fails to remove or correct such marking within sixty (60) days, the Government may ignore or, at the PERFORMER’s expense, remove or correct any nonconforming marking. Such nonconformance would be subject to the Inspection and Acceptance terms for deliverables.
8. Throughout performance of this agreement, the PERFORMER or its suppliers that will deliver Data with other than Unlimited Rights, shall- (1) Have, maintain, and follow written procedures sufficient to assure that restrictive markings are used only when authorized by the terms of this Agreement; and, (2) Maintain records sufficient to justify the validity of any restrictive markings on Data delivered under this Agreement.
9. The PERFORMER reserves the right to protect by copyright original works developed under the Prototype Project. All such copyrights will be in the name of the PERFORMER. The PERFORMER hereby grants 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 developed under the Prototype Project executed under the Performer Agreement and funded by the Project Order, and to authorize others to do so, subject to the limitations on disclosure contained in the Performer Agreement.
10. 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 any submission 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 and the Prototype Project executed under the Performer Agreement with the written permission of the copyright holder.
11. The PERFORMER shall not, without the written approval of the Agreements Officer, incorporate any copyrighted data in the Data to be delivered under this Agreement unless the PERFORMER is the copyright owner or has obtained for the Government the license rights necessary to perfect a license or licenses in the deliverable Data, and has affixed a statement regarding the license or licenses obtained to the Data transmittal document.

1. Copyrighted Data that existed or was produced outside of this Agreement and is unpublished - having only been provided under licensing agreement with restrictions on its use and disclosure - and is provided under this Agreement shall be marked as unpublished copyright in addition to the appropriate license rights legend restricting its use, and treated in accordance with such license rights legend markings restricting its use.
2. The PERFORMER is responsible for affixing appropriate markings indicating the rights of the Government on all Data delivered under the Prototype Project.
3. The Government agrees not to remove any copyright notices placed on Data and to include such notices on all reproductions of the Data.
4. In addition to Data specified in this Agreement and in any Prototype Project executed under the Project Order to be delivered hereunder, the Government may, at any time during the performance of the Prototype Project or within a period of three (3) years after acceptance of all items (other than Data) to be delivered under the Performer Agreement, or the termination of the Performer Agreement, order any Data generated under the Performer Agreement or any sub-Agreement hereunder, except for Data related to the PERFORMER’s internal development milestones (as defined in the Statement of Work or Task Description Document). When the Data is ordered, the PERFORMER shall be compensated by the Government for converting the Data into the prescribed form, for reproduction and delivery. The obligation to deliver the Data of a sub-Agreement holder and pertaining to an item obtained from the subcontractor shall expire three (3) years after the date the PERFORMER accepts the last delivery of that item from that sub-Agreement holder under this Agreement.
5. The Government shall retain its rights in the unchanged portions of any Computer Software or Computer Software Documentation delivered under the Prototype Project that the Consortium uses to prepare, or includes in, derivative Computer Software or Computer Software Documentation.
6. The PERFORMER shall include this clause, suitably modified to identify the parties, in all sub-agreements or lower tier agreements, regardless of tier, for developmental prototype work.
7. The obligations of the Government and the PERFORMER under this Article shall survive after the expiration or termination of the Performer Agreement.
8. For purposes of determining the Government's rights in Technical Data and Computer Software developed under this Agreement, the Parties agree that developmental costs funded at Government expense under this Agreement shall be considered development at Government expense for purposes of any follow on or future acquisition contracts, including FAR and DFARS based contracts, notwithstanding the definition of "contract" in any such FAR based contract that is used in relation to determination of the Government's data rights.
9. Right to Develop Independently

Nothing in this Agreement will impair any Party’s right to independently acquire, license, develop or have developed, utilize or otherwise exploit information and technology with the same or similar uses or functions as the information or technology that is the subject of the Agreement or any Prototype Project issued pursuant to the Performer Agreement.

**ARTICLE II. PATENTS**

The PERFORMER agrees to be bound by the following rights and responsibilities with respect to any Subject Invention (i.e. any Invention made in the performance of the Statement of Work or TDD) or Prototype which is the principal objective of the Prototype Project executed under the Performer Agreement.

1. Allocation of principal rights
2. The PERFORMER shall retain ownership throughout the world to each Subject Invention consistent with the provisions of this section and 35 U.S.C. § 202, provided the PERFORMER has timely pursued a patent application and maintained any awarded patent and has not notified the Government (in accordance with subclause (B) below -- Invention Disclosure, Election of Title, and Filing of Patent Application) that the PERFORMER **does not** intend to retain title.
3. The PERFORMER shall retain ownership throughout the world to background inventions. Any invention related to, conceived of, or first reduced to practice in support of a PERFORMER’s internal development milestone shall be a background invention of the PERFORMER and shall not be classified as a Subject Invention, provided that an invention conceived of in support of an internal development milestone that is first reduced to practice under the Project Order in support of **other than** internal development milestones shall be considered a Subject Invention.
4. The Government is granted a nonexclusive, nontransferable, irrevocable, paid-up license to

practice or have practiced for or on behalf of the United States the Subject Invention throughout the world.

1. Invention Disclosure, Election of Title, and Filing of Patent Application
2. If the PERFORMER -- acting on behalf of its company, institution, personnel, subcontractors and/or agents -- **elects to retain title** to a Subject Invention, the PERFORMER shall disclose each Subject Invention to the Agreements Officer on a DD Form 882 within eight (8) months of actual or constructive knowledge of a Subject Invention being completed or upon the Subject Invention being disclosed to the PERFORMER’s personnel responsible for patent matters, whichever is first in time.
3. If the PERFORMER determines that it **does not intend to retain title** to any Subject Invention, the PERFORMER shall notify the Agreements Officer, in writing, within eight (8) months of actual or constructive knowledge of a Subject Invention being completed or upon the disclosure of the Subject Invention to the PERFORMER’s personnel responsible for patent matters, whichever is first in time. However, in any case where publication, sale, or public use has initiated the one (1) year statutory period wherein valid patent prosecution can still be obtained in the United States, the period for such notice is shortened to at least sixty (6) calendar days prior to the end of the statutory period.
4. Upon the Agreements Officer’s written request, the PERFORMER shall convey title to any Subject Invention to the Government under any of the following conditions:
5. If the PERFORMER fails to disclose or elects not to retain title to the Subject Invention within the times specified in this Article; provided, that the Government may only request title within sixty (60) calendar days after learning of the failure of the PERFORMER to disclose or elect within the specified times.
6. In those countries in which the PERFORMER fails to file patent applications within the times specified within this Article; provided, that if the PERFORMER has filed a patent application in a country after the times specified in this Article, but prior to its receipt of the written request by the Government, the PERFORMER shall continue to retain title in that country; or;
7. In any country in which the PERFORMER 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.
8. Minimum Rights to the PERFORMER and protection of the PERFORMER’s right to file.
9. The PERFORMER shall retain a nonexclusive, royalty-free license throughout the world in each Subject Invention to which the Government obtains title, except if the PERFORMER fails to disclose the Subject Invention within the times specified within this Article. The PERFORMER’s license extends to the U.S. (including Canada) subsidiaries and affiliates, if any, within the corporate structure of which the PERFORMER is a party and includes the right to grant licenses of the same scope to the extent that the PERFORMER was legally obligated to do so at the time the Prototype Project was awarded. The license is transferable only with the approval of the Government, except when transferred to a successor of that part of the business to which the Subject Invention pertains. The Government's approval for license transfer shall not be unreasonably withheld.
10. The PERFORMER’s license, as immediately described above in (D)(1), 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. However, the license shall not be revoked in that field of use or the geographical areas in which the PERFORMER has achieved practical application and continues to make the benefits of the Subject 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 PERFORMER, its licensees, or its subsidiaries or affiliates have failed to achieve practical application in that foreign country.
11. Before revocation or modification of the license, the Agreements Officer shall furnish the PERFORMER a written notice of its intention to revoke or modify the license, and the PERFORMER shall be allowed thirty (30) calendar days (or such other time as may be authorized for good cause shown) after the notice to show cause why the license should not be revoked or modified.
12. Action to protect the Government’s interest
13. The PERFORMER agrees to execute or to have executed and promptly deliver to the Agreements Officer all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those Subject Inventions to which the PERFORMER elects to retain title, and (ii) convey title to the Government when requested under and in accordance with this Article to enable the Government to obtain patent protection throughout the world in that Subject Invention.
14. The PERFORMER agrees to require, by written agreement, its employees, other than clerical and non-technical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the PERFORMER each Subject Invention made under the Prototype Project in order that the PERFORMER can comply with the disclosure provisions of this Article. The PERFORMER shall instruct employees, through employee agreements or other suitable educational programs, on the importance of reporting Subject Inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.
15. The PERFORMER shall notify the Agreements Officer of any decisions 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) calendar days before the expiration of the response period required by the relevant patent office.
16. The PERFORMER 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 Government support under Agreement No. N00164-19-9-0001, awarded by NSWC Crane Division. The Government has certain rights in the Invention."*

1. The PERFORMER agrees that, with respect to any Subject Invention in which it has retained title, the Government has the right to require the PERFORMER, a prototype inventor, an assignee, or exclusive licensee of a Subject Invention to grant a non-exclusive license to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the PERFORMER, a prototype inventor, an assignee, or exclusive licensee refuses such a request, the Government has the right to grant such a license itself if the Agreements Officer determines that: (1) Such action is necessary because the PERFORMER, a prototype inventor, an assignee, or a licensee has not taken effective steps, consistent with the intent of this Agreement, to achieve practical application of the Subject Invention; or (2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the PERFORMER, prototype inventor, an assignee, or their licensees; or (3) Such action is necessary to meet requirements for public use and such requirements are not reasonably satisfied by the PERFORMER, a prototype inventor, an assignee, or licensees.
2. The Government authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of the Prototype Project.
3. The PERFORMER shall report to the Agreements Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on or under the performance of the Prototype Project of which the PERFORMER has knowledge. In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of the Prototype Project, or out of the use of any supplies furnished or work or services performed under the Prototype Project, the PERFORMER shall furnish to the Government, when requested by the Agreements Officer, all evidence and information in the PERFORMER’s possession pertaining to such claim or suit. Such evidence and information shall be furnished at the expense of the Government except where the PERFORMER has agreed to indemnify the Government.
4. The PERFORMER shall include this clause (D)(7) suitably modified, to identify the Parties in all sub-agreements or lower tier agreements, regardless of tier, for experimental, developmental, or research work.
5. The obligations of the Government and the PERFORMER under this Article shall survive after the expiration or termination of the Performer Agreement.