



RTI Purchase Order Terms and Conditions v1.15



RTI International
3040 East Cornwallis Road
P.O. Box 12194
Research Triangle Park, NC 27709-2194 USA
www.rti.org

RTI International is a registered trademark and a trade name of Research Triangle Institute.

In accepting this Purchase Order, the Supplier certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this type of transaction by any Federal department or agency. Any change in the debarred or suspended status of the Supplier during the life of this Purchase Order must be reported immediately to RTI. The Supplier agrees to incorporate the Debarment and Suspension certification into any lower-tier subcontract or Purchase Order that they may enter into as a part of this Purchase Order.

1.0 Definitions

“Agreement” means the PO, these terms, and any other mutually executed agreement between Supplier and RTI under which this PO is issued.

“Client” means the US government or another client of RTI.

“PO” means the purchase order issued by an authorized RTI representative.

“Prices” means the agreed upon payment and currency for the performance of Services or the supply of Products, including all applicable fees, payments and Taxes.

“Products” means products specified by RTI in the Agreement.

“RTI” means Research Triangle Institute, with its principal place of business at 3040 Cornwallis Road, Research Triangle Park, NC 27709 and its subsidiaries.

“Services” means services specified by RTI in the Agreement.

“Taxes” means any and all applicable taxes, charges, fees, levies or other assessments applicable to the performance of Services or the supply of Products hereunder.

“Terms” means the terms and conditions specified in the Agreement.

“Supplier” means a party receiving a PO from RTI which references the Terms.

2.0 Scope

2.1 Performance

Supplier shall perform Services and supply Products specified in the Agreement for the Prices set forth therein and pursuant to the delivery timeframes set forth by RTI. When specified by RTI, Supplier shall comply with the geographic code requirements as set forth by the Client. Supplier will ensure that it does not engage in any procurement activity from the following countries: Cuba, Laos, Iran, North Korea, and Syria. Supplier shall be responsible and accountable for all RTI or Client provided property and, where applicable, Supplier shall comply with the requirements of 48 C.F.R. 45.5 with respect to such property. Supplier assumes the risk of, and shall be responsible for, any loss or destruction of, or damage to, RTI or Client property upon its delivery to Supplier employees. In the event of loss, damage or destruction of RTI or Client property by Supplier, RTI may initiate an equitable adjustment to the Prices in favor of RTI. RTI may direct changes to the Agreement in writing, and Supplier shall comply immediately with such direction. If RTI directed changes increase or decrease the cost or time required for Supplier to provide deliverables under the Agreement, the parties shall negotiate an equitable adjustment in the price or schedule, or both, to reflect the increase or decrease.

2.2 On Time Delivery

Time is of the essence in Supplier’s delivery of Products and performance of Services. Supplier will promptly notify RTI if it is unable to comply with the delivery or performance date specified in the Agreement. If Supplier fails to deliver or perform on time, and the parties are unable to mutually agree to an extension of time, Supplier will be liable for actual and reasonable costs and damages Buyer incurs as a result of the late delivery or performance.

2.3 Personnel

Where certain Supplier personnel are identified by RTI as “key personnel,” Supplier agrees that such key personnel’s involvement in the performance of Supplier’s responsibilities under the Agreement is essential to Supplier’s satisfaction of its responsibilities hereunder. Supplier will not replace key personnel without RTI’s prior written consent.

3.0 Payment

3.1 Invoicing

Supplier certifies that each invoice issued by it shall be based solely on Services actually performed by Supplier ordered pursuant to a PO, and that no part or portion of any invoice represents or is attributable to any payment, gift, gratuity or other thing of value given to any person, organization, entity or governmental body (except for those payments required by law). RTI shall make any payments due under this Purchase Order within thirty (30) calendar days after its receipt of a proper invoice from Supplier provided Supplier complied with requirements of PO and such invoice from Supplier complies with all requirements, which may be amended from time to time after this Agreement’s execution, delineated at the following link: http://www.rti.org/page.cfm/Supplier_Invoice/Payment_Instructions. All taxes applicable to the proceeds received by Supplier shall be the liability of Supplier, and RTI shall not withhold nor pay any amounts for federal, state or municipal income tax, social security, unemployment or workman’s compensation unless required by law. RTI shall withhold and remit any amount, regardless of its description as a tax or otherwise, in countries where local laws require that such amounts be withheld and timely remitted by RTI. In accordance with law, RTI shall annually file with the Internal Revenue Service, or any other tax agency, whether domestic or not, any applicable tax forms reflecting the gross annual payments made by RTI to Supplier. Gross annual payments shall be the total compensation for labor and reimbursement of expenses; therefore, it is the Supplier’s responsibility to retain copies of expenses incurred during the performance of services under this Purchase Order for tax reporting purposes. It is the Supplier’s responsibility to determine if a value added tax (VAT) is applicable to services provided to RTI, and to timely remit the VAT charged to RTI per the invoicing instructions included herein. The invoice tendered to RTI for payment shall comply with the applicable local country’s VAT regulations. Supplier will keep records to validate invoices hereunder for a period not less than five (5) years from the date of the relevant invoice. RTI reserves the right to audit all invoices, and Supplier shall afford reasonable access to all supporting documentation to enable RTI to do so.

3.2 Inspection and Reporting

RTI and Client have the right to inspect and evaluate the work performed or being performed under the Agreement, and the premises where the work is being performed, at all reasonable times and in a manner that will not unduly delay the work. If either RTI or the Client performs inspection or evaluation on the premises of Supplier or its lower tier subcontractors, the Supplier shall furnish and require its subcontractors to furnish all reasonable facilities and assistance for the safe and convenient operation of these duties. Supplier shall maintain books, records, documents, program and individual service records and other evidence of its accounting and billing procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature incurred in the performance of the Agreement. Supplier agrees that these records shall be subject at all reasonable times to monitoring, inspection, review or audit by authorized delegates of RTI or Client. Supplier shall retain all such records concerning the Agreement for a period of three (3) years after the completion of the Agreement. If any litigation, claim or audit is started before the expiration date of this three-year period, Supplier will retain such records until all litigation, claims or audit findings involving the records have been resolved. Supplier shall submit annually an “Interim” and “Final” report (pursuant to timeframes specified by RTI and including Supplier name, contact information, PO number, amount of foreign taxes assessed for each foreign government, and amount of any foreign taxes reimbursed by each foreign government) on the amount of foreign taxes, as of the date of each report, charged by a foreign government on commodity purchase transactions valued at \$500 (US Dollars) or more financed with U.S. Government funds under the PO during the prior U.S.

Government fiscal year, and the amount reimbursed by the foreign government. Negative reports are required for each period.

4.0 Warranties

Supplier warrants that it is not aware of any facts or circumstances that might indicate the existence of or give rise to actual or potential organizational conflicts of interest, where due to such organizational conflict, Supplier is unable to render impartial assistance or advice. Supplier warrants that it has all the rights necessary to perform Services and supply Products under the Agreement and that it shall perform its responsibilities under the Agreement in a professional and highly skilled manner and to standards not less than those generally accepted in Supplier's industry. Supplier warrants that Products and Services are merchantable, fit for use for the particular purpose specified by RTI, and comply with the warranties, specifications and requirements of the Agreement. Supplier warrants that Products supplied hereunder will remain fully functional and operational for at least twelve (12) months after delivery to RTI, and any longer periods pursuant to the manufacturer's warranty period applicable to such Products. The price/budget amount contained in this PO does not exceed that charged by Supplier to any other customers or clients, including the U.S. Government, for similar quantities of like items or services to be rendered.

5.0 Intellectual Property

Supplier grants RTI all rights and licenses necessary for RTI to use the Products or Services. The parties acknowledge and agree that all Services shall be deemed to be "works for hire", with all intellectual property rights therein vesting in RTI, unless otherwise mutually agreed. Supplier agrees to irrevocably transfer and assign all such rights to RTI, and comply with all reasonable requests by RTI to affect such transfer and assignments.

6.0 Compliance

6.1 Laws

Supplier shall comply with all laws and regulations of Federal, State, or local governments, as well as all U.S. statutes, regulations, and administrative requirements regarding relationships with non-U.S. governmental and quasi-governmental entities including but not limited to the export control regulations of the Department of State and the International Traffic in Arms Regulations ("ITAR"), the Department of Commerce and the Export Administration Act ("EAA"), the anti-boycott and embargo regulations and guidelines issued under the EAA, and the regulations of the U.S. Department of the Treasury, Office of Foreign Assets Control. Supplier shall give all notices and obtain all permits and licenses required under such laws. The anti-bribery provisions of the Foreign Corrupt Practices Act of 1977 ("FCPA"), 15 U.S.C. 78dd-2", et seq., make it unlawful for U.S. concerns, as well as their officers, directors, employees, and agents, to corruptly offer or make a corrupt payment of money or anything of value to a foreign official for the purpose of obtaining or retaining business. Supplier acknowledges and understands that Supplier must comply fully with the anti-bribery provisions of the FCPA. Specifically, Supplier understands and agrees that it shall be unlawful for Supplier to pay, promise to pay (or authorize to pay or offer) money or anything of value to a foreign official in order to assist RTI in obtaining or retaining business for or with, or directing business to, RTI. A "foreign official" means any officer or employee of a foreign government, a public international organization, or any department or agency thereof, or any person acting in an official capacity. Supplier understands all applicable laws relating to kickbacks. Supplier agrees to periodically verify its compliance with such laws and to inform RTI immediately of any violations thereof. RTI, as well as the United States Government, has adopted a zero tolerance policy prohibiting trafficking in persons, including any trafficking-related activities. Additional information regarding trafficking in persons may be found at the website for the U.S. Department of State's Office to Monitor and Combat Trafficking in Persons at <http://www.state.gov/j/tip/>. Additionally, in the event this Agreement is funded in whole or in part via Federal contract funds, the provisions set forth in FAR 52.222-50 (Combating

Trafficking in Persons) shall also be applicable to this Agreement, as well as FAR 52.222-56 (Certification Regarding Trafficking in Persons Compliance Plan), if and as applicable. Supplier is reminded that U.S. Executive Orders and U.S. law prohibit transactions with, and the provisions of resources and support to, individuals and organizations associated with terrorism. It is the legal responsibility of Supplier to ensure compliance with these Executive Orders and laws.

6.2 Equal Opportunity (Applicable to Purchase Orders funded via Federal Contracts)

During the performance of this Purchase Order, Supplier agrees to comply with all Federal, state and local laws respecting discrimination in employment and non-segregation of facilities including, but not limited to, applicable provisions of Executive Order (herein "E.O.") 11246, Rehabilitation Act of 1973, Vietnam Era Veterans' Readjustment Assistance Act of 1974, E.O. 13496 and respective regulations including 41 CFR 60-1.4, 41 CFR 61-300.10, 29 CFR Part 471 Appendix A to Subpart A, 41 CFR 60-300.5 (Supplier and lower-tier subcontractors and Suppliers shall abide by the requirements of 41 CFR 60-300.5(a) if/when a Purchase Order exceeds \$100,000. This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors, subcontractors, lower-tier subcontractors and Suppliers to employ and advance in employment qualified protected veterans) and 41 CFR 60-741.5 (Supplier and lower-tier subcontractors and Suppliers shall abide by the requirements of 41 CFR 60-741.5(a) if/when a Purchase Order exceeds \$10,000. This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors, subcontractors, lower-tier subcontractors and Suppliers to employ and advance in employment qualified individuals with disabilities.). The above-mentioned referenced regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors, subcontractors, lower-tier subcontractors and Suppliers take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability. These equal opportunity clauses, and the employee notification clause, are hereby incorporated by reference.

6.3 International Trade Compliance (Export and Import)

"ITC Laws" mean the import, customs, export control, sanctions and U.S. anti-boycott laws, regulations, and orders applicable at the time of the import, export, re-export, transfer, disclosure, or provision of technical data, goods or Services including, without limitation, the (i) Export Administration Regulations ("EAR") administered by the Bureau of Industry and Security, U.S. Department of Commerce, 15 Code of Federal Regulations (C.F.R.) Parts 730-774; (ii) International Traffic in Arms Regulations (the "ITAR") administered by the Directorate of Defense Trade Controls, U.S. Department of State, 22 C.F.R. Parts 120-130; (iii) Foreign Assets Control Regulations and associated Executive Orders administered by the Office of Foreign Assets Control, U.S. Department of the Treasury, 31 C.F.R. Parts 500-598; (iv) Internal Revenue Code, 26 U.S.C. § 999, enforced by the U.S. Department of Treasury; (v) International Emergency Economic Powers Act ("IEEPA"), 50 U.S.C., § 1701 et. Seq.; (vi) Customs regulations administered by U.S. Customs and Border Protection, 19 United States Code (U.S.C.) and Title 19 C.F.R.; and (vii) applicable import, customs and export laws and regulations of other countries, except to the extent they are inconsistent with the U.S. laws.

Supplier shall comply with all applicable laws and regulations including, but not limited to, the ITC Laws. If this Agreement requires either Party to obtain government-approved export authorization to facilitate activities and obligations set forth under this Agreement, the Parties shall mutually exercise reasonable efforts to support the preparation and management of the authorization in full compliance with applicable government regulations. The Parties shall without delay respond to requests for supporting documentation, including clarifying questionnaires or any other requested information necessary to secure government

authorization. Each Party, as applicable, shall be individually responsible for obtaining required documentation or other information from any third party required by such Party to perform its obligations under this Agreement. Failure to obtain any required documentation or information from a third party shall result in the third party's exclusion from the government authorization. The Parties shall exchange copies of all government export authorizations related to the Technical Data, or Services, and all provisions or conditions or information relating to the authorization, including but not limited to, any restriction on sublicensing, retransfer, resale or re-export, any requirement for non-disclosure agreements, and any limitation on individuals having access to Technical Data, or Services. Each Party, as applicable, shall be individually responsible for compliance with all government export authorizations, including without limitation ensuring that all export-related paperwork and documentation (e.g., Destination Control Statements, Electronic Export Information filed via Automated Export System) are properly completed and timely filed.

In the event an individual Purchase Order issued pursuant to this Agreement is likely to involve export-controlled items, additional requirements and information may be included in such a Purchase Order, including affirmatively stating whether the export-controlled item are to be regulated by the U.S. Department of State or the U.S. Department of Commerce. Supplier shall notify RTI if any deliverable under this Agreement or an individual Purchase Order is controlled for export under a classification other than EAR99. Supplier shall immediately notify RTI (i) if Supplier or a lower-tier subcontractor is, or becomes listed in any Denied or Restricted Parties List or if Supplier's or a lower-tier subcontractor's export privileges are otherwise denied, suspended or revoked in whole or in part by any U.S. Government entity or agency, or (ii) of any pending administrative enforcement action concerning Supplier or a lower-tier subcontractor that may result in inclusion on any such list. If Supplier is engaged in the business of either exporting or manufacturing (whether exporting or not) defense articles or furnishing defense services, Supplier represents that it is registered with the Office of Defense Trade Controls, as required by the ITAR, and it maintains an effective export/import compliance program in accordance with the ITAR. Where Supplier is a signatory under an RTI export license or export agreement, Supplier shall provide prompt notification to the RTI personnel identified in the SOW or the PO in the event of changed circumstances including but not limited to, ineligibility, a violation or potential violation of the ITAR, and the initiation or existence of a U.S. Government investigation, that could affect Supplier's performance under this Agreement or a Purchase Order. Supplier shall be responsible for all losses, costs, claims, causes of action, damages, liabilities, and expense, including attorney's fees, all expense of litigation and/or settlement, and court costs, arising from any act or omission of Supplier, its officers, employees, agents, or subcontractors at any tier, in the performance of any of its obligations under this Article. Supplier shall include the substance of this clause in all lower-tier agreements.

If Supplier is to make shipment where RTI will be the importer or exporter of record, before departure of the cargo, Supplier must furnish RTI's Logistics Management Office [logistics@rti.org, tel. 919-541-6000] copies of all export documentation including certificates, inspections and permits to allow for final checking and approval of the documents, as well as for RTI records retention in the event of audit.

6.4 Environment

Supplier must operate in a manner that complies with national and local environmental laws, regulations and standards including, but not limited to, laws related to air emissions, waste management, recycling, water discharge, toxic substances and hazardous waste disposal.

6.5 RTI Requirements

Supplier will ensure that its employees, agents, or designees, when in or upon RTI's premises, shall obey all ethics and business conduct, workplace health, safety and security rules and regulations established by RTI, regarding the conduct of its own employees and any additional rules and regulations established by RTI for non-employees, including without limitation, security rules, and regulations. Supplier shall certify

that their company has a practice and a process to verify the legal status of all employees and by certifying assures RTI that all employees assigned to support RTI with access to our facilities are legally able to work in accordance with the laws applicable to such location. Supplier will obtain and track citizenship and immigration status of employees performing work for RTI. Supplier shall maintain records of employees' citizenship or immigration status described above for all employees or the employees of Supplier's subcontractors assigned to perform work for RTI at any RTI location. The records shall be kept current at all times and shall be available and accessible for review and audit upon request.

6.6 Standards of Ethics and Business Conduct

RTI has established very high ethical standards for our employees. RTI considers adherence to the RTI Code of Conduct as well as strict observance of all applicable U.S. and non U.S. laws and regulations to be not only a legal requirements but more than that, an ethical obligation for all. While performing as an RTI Supplier, Supplier is expected to adopt and comply with these same standards. As a result, this Agreement incorporates by reference, with the same force and effect as if it was given in full text, RTI's "Code of Conduct." The applicable standards can be accessed on the RTI website at https://www.rti.org/pubs/codeofconduct_english.pdf. Upon request, RTI can provide paper copies of these standards. If Supplier has a good faith reason to believe that any violation of the Code of Conduct has been committed by an employee(s) of RTI, Consultant shall report such violation to RTI by calling the RTI's Ethics Helpline toll-free at 1-877-212-7220 or sending an e-mail to Ethics@rti.org.

6.7 Representations and Certifications (Applicable to Purchase Orders funded via Federal Contracts)

As set forth below, and then renewed on an annual basis for the duration of this Agreement, Supplier shall provide current, accurate and complete representations and certifications. It shall be Supplier's responsibility to complete the RTI-provided Representations and Certifications form on annual basis as measured from the date the Representations and Certifications were initially made, and also to ensure the continued accuracy of Supplier's Representations and Certifications. In the event the status of any item which Supplier represented or certified changes prior to Supplier's required annual renewal, Supplier shall promptly notify RTI, which shall be no later than five (5) business days after said change in status. Supplier shall be required to complete an RTI-provided Representations and Certifications form at the earlier of following events: During the initial proposal with RTI in response to a U.S. Government solicitation; or prior to Agreement execution.

6.8 Anti-Kickback (Applicable to Purchase Orders funded via Federal Contracts)

Supplier warrants that neither it nor any of its employees, agents, or representatives have offered or given, or will offer or give, any gratuities to RTI's employees, associates, agents or representatives for the purpose of securing this Agreement, an individual Purchase Order or securing favorable treatment under this Agreement. The Anti-Kickback Act of 1986, as referenced in FAR 52.203-7, is hereby incorporated into this Agreement as a condition of acceptance. If you have reasonable grounds to believe that a violation, as described in paragraph (b) of FAR 52.203-7, may have occurred, you should report this suspected violation to Research Triangle Institute's Ethics Hotline at 1-877-212-7220 or by sending an e-mail to Ethics@rti.org. Supplier may report a suspected violation anonymously. As prescribed in FAR 52.203-7 (Anti-Kickback Procedures), and as later as amended, Supplier shall adhere to the following requirements and regulations for all Purchase Orders exceeding \$150,000 which are funded via Federal Contracts:

A. Definitions

"Kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided to any prime Contractor, prime Contractor employee, subcontractor, subcontractor employee, Supplier, Supplier employee or consultant for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

“Person,” as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

“Prime Contract,” as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

“Prime Contractor” as used in this clause, means a person who has entered into a prime contract with the United States.

“Prime Contractor employee,” as used in this clause, means any officer, partner, employee, or agent of a prime Contractor.

“Subcontract,” as used in this clause, means a contract or contractual action, including purchase orders, task orders and consultant contracts, entered into by a Prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

“Subcontractor,” as used in this clause, (1) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (2) includes any person, Supplier or consultant who offers to furnish or furnishes general supplies to the prime Contractor or a higher tier subcontractor.

“Subcontractor employee,” as used in this clause, means any officer, partner, employee, or agent of a subcontractor, Supplier or consultant.

B. Regulation and Supplier Obligation

The 41 U.S.C. chapter 87, Kickbacks, prohibits any person from (1) Providing or attempting to provide or offering to provide any kickback; (2) Soliciting, accepting, or attempting to accept any kickback; or (3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.

C. Administrative Procedures and Considerations

- (1) The Supplier shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in Paragraph B of this clause in its own operations and direct business relationships.
- (2) When the Supplier has reasonable grounds to believe that a violation described in Paragraph B of this clause may have occurred, the Supplier shall promptly report in writing the possible violation to RTI.
- (3) The Supplier shall cooperate fully with RTI and any Federal agency investigating a possible violation described in Paragraph B of this clause.
- (4) RTI may (i) offset the amount of the kickback against any monies owed by the United States under the Subcontract and/or (ii) direct that the Supplier withhold from sums owed a lower-tier subcontractor under the Subcontract the amount of the kickback. RTI may order that monies withheld under subdivision (C)(4)(ii) of this clause be paid over to the Government unless the Government has already offset those monies under subdivision (C)(4)(i) of this clause. In either case, the Supplier, via RTI, shall notify the Contracting Officer when the monies are withheld.
- (5) The Supplier agrees to incorporate the substance of this clause, including subparagraph (C)(5) in all subcontracts under this Subcontract which exceed \$150,000.

6.9 Employment Eligibility Verification (Applicable to Purchase Orders funded via Federal Contracts)

As prescribed in FAR 52.222-54 (Employment Eligibility Verification), and as later as amended, Subcontractor shall adhere to the following requirements and regulations for all Purchase Orders exceeding \$3,000 which are funded via Federal Contracts:

A. Definitions (as used in this clause)

“Commercially available off-the-shelf (COTS) item”—(1) Means any item of supply that is— (i) A commercial item (as defined in paragraph (1) of the definition at 2.101); (ii) Sold in substantial quantities in the commercial marketplace; and (iii) Offered to the Government, without modification, in the same form in which it is sold in the commercial marketplace; and (2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4) such as agricultural products and petroleum products. Per 46 CFR 525.1(c)(2), “bulk cargo” means cargo that is loaded and carried in bulk onboard ship without mark or count, in a loose unpackaged form, having homogenous characteristics. Bulk cargo loaded into intermodal equipment, except LASH or Seabee barges, is subject to mark and count and, therefore, ceases to be bulk cargo.

“Employee assigned to the Subcontract” means an employee who was hired after November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), who is directly performing work, in the United States, under a Subcontract that is required to include the clause prescribed at 22.1803. An employee is not considered to be directly performing work under a Subcontract if the employee— (1) Normally performs support work, such as indirect or overhead functions; and (2) Does not perform any substantial duties applicable to the Subcontract.

“Subcontract” means any contract, as defined in 2.101, entered into by a subcontractor to furnish supplies or services for performance of a subcontract. It includes but is not limited to purchase orders, task orders, consultant contracts and changes and modifications to purchase orders, task orders and consultant contracts.

“Subcontractor” means any supplier, distributor, Supplier, consultant or firm that furnishes supplies or services to or for a prime contractor or another subcontractor.

“United States,” as defined in 8 U.S.C. 1101(a)(38), means the 50 States, the District of Columbia, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands.

B. Enrollment and Verification Requirements

- (1) If the Subcontractor is not enrolled as a Federal Contractor in E-Verify at time of Subcontract award, the Subcontractor shall—(i) *Enroll*. Enroll as a Federal Contractor in the E-Verify program within 30 calendar days of Subcontract award; (ii) *Verify all new employees*. Within 90 calendar days of enrollment in the E-Verify program, begin to use E-Verify to initiate verification of employment eligibility of all new hires of the Subcontractor, who are working in the United States, whether or not assigned to the Subcontract, within 3 business days after the date of hire (but see paragraph B (3) of this section); and (iii) *Verify employees assigned to the Subcontract*. For each employee assigned to the Subcontract, initiate verification within 90 calendar days after date of enrollment or within 30 calendar days of the employee’s assignment to the Subcontract, whichever date is later (but see paragraph B (4) of this section).
- (2) If the Subcontractor is enrolled as a Federal Contractor in E-Verify at time of Subcontract award, the Subcontractor shall use E-Verify to initiate verification of employment eligibility of (i) *All new employees*. (A) *Enrolled 90 calendar days or more*. The Subcontractor shall initiate verification of all new hires of the Subcontractor, who are working in the United States, whether or not assigned to the Subcontract within 3 business days after the date of hire (but see paragraph B (3) of this section); or (B) *Enrolled less than 90 calendar days*. Within 90 calendar days after enrollment as a Federal Contractor in E-Verify, the Subcontractor shall initiate verification of all new hires of the Subcontractor, who are working in the United States, whether or not assigned to the Subcontract, within 3 business days after the date of hire (but see paragraph B (3) of this section); or (ii) *Employees assigned to the Subcontract*. For each employee assigned to the Subcontract, the Subcontractor shall initiate verification within 90 calendar days after date of Subcontract award

or within 30 days after assignment to the Subcontract, whichever date is later (but see paragraph B (4) of this section).

- (3) If the Subcontractor is an institution of higher education (as defined at 20 U.S.C. 1001(a)); a State or local government or the government of a Federally recognized Indian tribe; or a surety performing under a takeover agreement entered into with a Federal agency pursuant to a performance bond, the Subcontractor may choose to verify only employees assigned to the Subcontract, whether existing employees or new hires. The Subcontractor shall follow the applicable verification requirements at B (1) or B (2), respectively, except that any requirement for verification of new employees applies only to new employees assigned to the Subcontract.
- (4) *Option to verify employment eligibility of all employees.* The Subcontractor may elect to verify all existing employees hired after November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), rather than just those employees assigned to the Subcontract. The Subcontractor shall initiate verification for each existing employee working in the United States who was hired after November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), within 180 calendar days of— (i) Enrollment in the E-Verify program; or (ii) Notification to E-Verify Operations of the Subcontractor's decision to exercise this option, using the contact information provided in the E-Verify program Memorandum of Understanding (MOU).
- (5) The Subcontractor shall comply, for the period of performance of this Subcontract, with the requirement of the E-Verify program MOU. (i) The Department of Homeland Security (DHS) or the Social Security Administration (SSA) may terminate the Subcontractor's MOU and deny access to the E-Verify system in accordance with the terms of the MOU. In such case, the Subcontractor will be referred to a suspension or debarment official. (ii) During the period between termination of the MOU and a decision by the suspension or debarment official whether to suspend or debar, the Subcontractor is excused from its obligations under paragraph B of this clause. If the suspension or debarment official determines not to suspend or debar the Subcontractor, then the Subcontractor must reenroll in E-Verify.

C. Web Site

Information on registration for and use of the E-Verify program can be obtained via the Internet at the Department of Homeland Security Web site: <http://www.dhs.gov/E-Verify> .

D. Individuals Previously Verified

The Subcontractor is not required by this clause to perform additional employment verification using E-Verify for any employee—(1) Whose employment eligibility was previously verified by the Subcontractor through the E-Verify program; (2) Who has been granted and holds an active U.S. Government security clearance for access to confidential, secret, or top secret information in accordance with the National Industrial Security Program Operating Manual; or (3) Who has undergone a completed background investigation and been issued credentials pursuant to Homeland Security Presidential Directive (HSPD) - 12, Policy for a Common Identification Standard for Federal Employees and Contractors.

E. Subcontracts

The Subcontractor shall include the requirements of this clause, including this paragraph E (appropriately modified for identification of the parties), in each subcontract that— (1) Is for— (i) commercial or noncommercial services (except for commercial services that are part of the purchase of a COTS item, or an item that would be a COTS item, but for minor modifications), performed by the COTS provider, and are normally provided for that COTS item); or (ii) Construction; (2) has a value of more than \$3,000; and (3) includes work performed in the United States.

6.10 Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms (Applicable to Purchase Orders funded via Federal Assistance Agreements)

If issuance of a subcontract is approved by the RTI Contract Administrator, Contractor must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

Affirmative steps must include:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- (6) Requiring the subcontractor to take the affirmative steps listed in paragraphs (1) through (5) of this section for any lower-tier subcontracts.

6.11 Contract Provisions for Non-Federal Entity Contracts Under Federal Assistance Awards (Applicable to Purchase Orders funded via Federal Assistance Agreements)

The Code of Federal Regulations (CFR) provisions contained in Appendix II of 2 CFR 200, which may be amended from time to time, are hereby incorporated by reference, as applicable, into all Purchase Orders which are funded via Federal Assistance Awards. The full text of the referenced CFR provisions may be found at <http://www.ecfr.gov/>. Supplier agrees to flow down all applicable CFR clauses to any lower-tier contractors.

7.0 Exchange of Information

7.1 Confidentiality

Confidential Information means any information made available to, disclosed to or otherwise made known to Supplier as a result of the services under the Agreement that (i) is marked as confidential or (ii) is designated as such at the time of disclosure, or (iii) that given the nature of the information or the circumstances surrounding its disclosure, reasonably should be considered as confidential. Confidential Information may be used by Supplier or its employees only for purposes of performing the obligations hereunder, and such persons shall be advised of the obligations set forth in this Agreement and shall agree to be obligated in like manner. Supplier shall not reveal, publish or otherwise disclose Confidential Information to any third party without the prior written consent of the disclosing party and shall use at least the same degree of care in safeguarding the Confidential Information as the party uses in safeguarding its own confidential information but in no event less than a reasonable standard of care.

Nothing herein shall be construed or interpreted to limit or in any way restrict the rights of any RTI client including without limitation the federal government of the United States regarding data such client owns or has a right to use, including the right to authorize Supplier's use of such data in direct contracts between Supplier and such client.

7.2 Publicity

Notwithstanding the foregoing, Supplier shall not, without RTI's prior written approval: (1) disclose or use, in any advertising, sales promotion materials, press releases, or any other publicity matters, the name "RTI International", or any variation thereof or language from which the connection of said names may be implied, (2) disclose or advertise in any manner the nature of the Agreement or any of any of the transactions between the parties, or, (3) disclose any business personal information relating to RTI employees for any purpose other than its responsibilities under the Agreement. The restrictions in this Section 7.0 shall survive the termination or expiration of the Agreement.

8.0 Insurance

As a minimum, Supplier shall, at its sole cost and expense, provide and maintain the following insurance coverage and insurance coverage limits: (1) Worker's Compensation: Supplier shall provide and maintain worker's compensation insurance as required by the laws of the applicable jurisdiction, as well as employer's liability coverage with minimum limits of \$1,000,000 (or an equivalent value in the local currency), covering all of Supplier's employees who are engaged in any work under the Agreement; and if any work is subcontracted, Supplier shall require the subcontractor to provide the same coverage for any of its employees engaged in any work under the Agreement, (2) Commercial General Liability: Supplier shall maintain general liability coverage on a comprehensive broad form on an occurrence basis in the minimum amount of \$1,000,000 (or an equivalent value in the local currency) combined single limit (where the defense is in excess of the limit of liability); (3) Automobile: Supplier shall maintain automobile liability insurance to include liability coverage, covering all owned, hired and non-owned vehicles used in connection with the Agreement, and the minimum combined single limit shall be \$1,000,000 (or an equivalent value in the local currency) bodily injury and property damage, including: (a) \$500,000 (or an equivalent value in the local currency) uninsured/underinsured motorist; and (b) \$5,000 (or an equivalent value in the local currency) medical payment. Providing and maintaining adequate insurance coverage is a material obligation of the Supplier under the Agreement. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage in accordance with the governing jurisdiction(s). Supplier shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with applicable laws or the Agreement. The limits of coverage under each insurance policy maintained by Supplier shall not be interpreted as limiting the Supplier's liability and obligations under the Agreement. In addition, Supplier represents and warrants that, it shall maintain insurance and limits as stipulated above and RTI shall be listed as an "additional insured" on the Supplier's certificate of insurance. At RTI's request, Supplier shall furnish RTI with a certificate of insurance depicting the insurance requirements set forth in this section. RTI reserves the right at any time to immediately terminate the Agreement, or any portion thereof, if in RTI's opinion such insurance coverage is inadequate.

9.0 Liability

Supplier shall indemnify, defend and hold RTI and RTI's Client free and harmless from any losses, damages, liabilities and costs (including, without limitation, legal fees and disbursements), which are attributable to any act or omission of Supplier and/or any of Supplier's employees, subcontractors, or subcontractors' employees, and which are in any way connected with or related to the Agreement. To the extent permitted, in no event will RTI be liable to Supplier for incidental or consequential damages. Supplier is solely liable to third parties for all costs incurred by Supplier.

10.0 Term and Termination

10.1 Term

The term of the PO shall commence on the date specified at the top of the PO and shall continue until such time Supplier completes all its responsibilities under the PO, unless sooner terminated as provided hereinafter. All obligations and liabilities which, by their nature, are intended to survive the expiration or the earlier termination of the PO shall remain in effect beyond any expiration or termination.

10.2 Termination for Convenience

Upon thirty (30) days written notice to Supplier, RTI may terminate this Agreement in whole or in part, whether or not Supplier is in default of any of its obligations hereunder. Upon such cancellation, Supplier agrees to waive any claim for damages, including loss of anticipated profits on account hereof. However, RTI agrees that Supplier shall be paid an amount which when added to all installments previously paid will equal the sum of all costs properly incurred up to the date of cancellation, plus earned profit on such incurred costs, and any reasonable cost incurred as a result of such cancellation as agreed to between RTI and Supplier. In no event shall such payments be greater than the original Prices. All earned profit shall bear the same relationship to such incurred costs as the profit increment of the purchase price bears to the cost increment of such purchase price. Supplier shall provide RTI and RTI's client any supporting information necessary to document the reasonableness of Supplier's termination for convenience claim. RTI and RTI's client reserve the right to verify the amounts of any cost and profit increments claimed by Supplier, through an audit of Supplier's records.

10.3 Termination for Default

If either party shall be in default of the Agreement and such default shall continue for more than twenty (20) days after notice thereof is given to the party in default, the party not in default shall be entitled to immediately terminate the Agreement upon written notice. The election to terminate shall not be construed to be an election of remedies or a waiver thereof, and the party not in default shall be entitled to each and every other remedy available at law and/or in equity. The failure to object to an act of default shall not be deemed a waiver thereof.

10.4 Bankruptcy

If Supplier shall be declared insolvent or bankrupt, or if any assignment of its property shall be made for the benefit of creditors or otherwise, or if its interest herein shall be levied upon under execution or seized by virtue of any writ of any court, or if a petition is filed in any court to declare Supplier bankrupt and not dismissed within sixty (60) days, or if a trustee in bankruptcy, receiver or receiver-manager or similar officer is appointed for Supplier or for any of Supplier's assets, then RTI may, at its option, terminate, without charge, the Agreement or a portion thereof and shall thereupon be free from all liability under the Agreement. The ability of RTI to terminate in such instances shall be subject to the applicable bankruptcy and insolvency statutes.

10.5 Stop-Work Order

RTI may, by written order to Supplier, require Supplier to stop all, or any part, of the work called for by the Agreement. The order shall be specifically identified as a stop-work order. Upon receipt of the order, Supplier 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. At the expiration of the work stoppage period, RTI shall either terminate in accordance with the provisions of this Agreement or provide notice to Supplier to continue work. In the event notice is given to continue work, Supplier and RTI shall agree on any equitable adjustments to Prices or delivery schedules for Products or Services affected by the work stoppage.

10.6 Disputes

- A. Any dispute arising under this Agreement shall be settled by mutual agreement of the parties or pursuant to Paragraph B below.
- B. If the parties cannot resolve the dispute amongst themselves within a reasonable time, the parties may, by mutual agreement, settle such dispute by arbitration in accordance with the Rules of the American Arbitration Association in the City of Raleigh, North Carolina, and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction. Except as expressly set forth in this Agreement, Supplier shall not acquire any direct claim of action against any RTI client including without limitation the federal government of the United States without the express, prior written

consent of the client's contracting officer. Any dispute involving the federal government of the United States shall be heard in a federal court.

- C. Pending completion of the Agreement under dispute, or final resolution of a dispute which releases Supplier from performance hereunder, Supplier shall, at all times, proceed diligently with the performance of the Agreement.

11.0 General

11.1 Assignment and Subcontracts

Supplier shall not assign or subcontract any portion of its rights, duties, and/or obligations under the Agreement unless RTI, in its sole discretion, grants Supplier written permission to do so. Notwithstanding any such consent, Supplier shall continue to be fully responsible and liable for full performance of all obligations assumed by it hereunder.

11.2 Excusable Delays

Neither Party shall be in default because of any failure to perform under the terms of this Agreement if the failure arises from any incident or circumstance beyond the affected Party's control and without the fault or negligence of the affected Party, such as but not limited to the following acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the affected Party. "Default" includes failure to make progress in the work so as to endanger performance. If any such case occurs, the Party claiming relief shall notify the other party in writing of the circumstances causing such delay or failure and provide an estimate of the impact on performance.

11.3 Relationship

Supplier acknowledges that the Agreement may have been issued by RTI under a contract with Client, but does not bind nor purport to bind the Client. In all respects and in the conduct of the work hereunder, Supplier is acting in the capacity of an independent contractor. The execution of the Agreement shall not (a) create the relationship of principal and agent, employer and employee, joint venture, or partnership between RTI and the Supplier; and (b) establish any privity of contract between the Supplier and Client. All communications regarding the Agreement must be directed to RTI and not to the Client. Any dispute arising under this Agreement shall be settled by mutual agreement of the parties. If the parties cannot resolve the dispute amongst themselves within a reasonable time, the parties may, by mutual agreement, settle such dispute by arbitration in accordance with the Rules of the American Arbitration Association in the City of Raleigh, North Carolina, and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction. Pending completion of the Agreement or final resolution of a dispute which releases Supplier from performance hereunder, the Supplier shall, at all times, proceed diligently with the performance of the Agreement.

11.4 Interpretation

The Agreement and these Terms shall be construed and interpreted in accordance with the laws of the State of North Carolina, excluding its principles of choice of laws, except as to any provisions hereof which are governed by the laws of the United States of America, as to which such laws of the United States shall govern. If any Term herein is found to be unenforceable in any respect, the validity of the remaining Terms will be unaffected, provided that such unenforceability does not materially affect the parties' rights under Agreement. The failure of a party to enforce any provision herein, it shall not constitute a waiver of such provision or the right of such party to enforce such provision and every other provision. The Agreement and any documents incorporated specifically by reference including the Terms represent the entire agreement between the parties and supersede all prior oral or written statements or agreement. The Terms may be amended only by written amendments duly executed by RTI and Supplier. The Agreement shall inure to the benefit of and be binding upon the parties hereto and their successors and permitted assigns.

11.5 Controlling Language

Although a non-English version has been provided, this Agreement has been executed in the English language, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Agreement. Additionally, the Agreement and all notices, communications and submittals between the parties pursuant to the implementation of this Agreement shall be in the English language, unless otherwise directed in writing by RTI. All translation services, to include the physical presence of qualified translators, necessary for written or oral communications shall be provided by Supplier.

11.6 Order of Precedence

In the event of a conflict of terms in this Agreement, the order of precedence shall be as follows: (i) the relevant provisions of applicable law including without limitation the FAR and the DFAR; (ii) the incorporated FAR and DFAR clauses, if any; (iii) text on the face of the PO; (iv) terms set forth in a signed statement of work or task order; (v) terms set forth in a signed document under which this PO was issued; (vi) the terms in this document; (vii) Supplier's proposal, if incorporated in the purchase order by reference or otherwise.