

## **Appendix B: Standard Subcontract Terms and Conditions**

### **Article 1. Independent Contractor**

The relationship of Subrecipient to RTI is that of an independent contractor, and nothing in this Subaward shall be construed as creating any other relationship. Subrecipient shall comply with all laws and assume all risks incident to its status as an independent contractor. This includes, but is not limited to, responsibility for all applicable federal and state income taxes, associated payroll and business taxes, licenses and fees, and such insurance as is necessary for Subrecipient's protection in connection with work performed under this Agreement. Neither Subrecipient nor anyone employed by it shall be, represent, act, purport to act, or be deemed to be an agent, representative, employee, or servant of RTI.

### **Article 2. Privity of Contract**

No privity between Subrecipient and RTI's client is established by this Subaward. All communications regarding this Subaward must be directed to RTI and not to RTI's Client.

### **Article 3. Statement of Work/Budget**

Subrecipient shall furnish the necessary personnel, materials, services, equipment and facilities, and all other items necessary to accomplish all tasks specified in Subrecipient's *Statement of Work/Budget*, which is hereby incorporated and made a part of this Subaward.

### **Article 4. Period of Performance and Delays**

Subrecipient shall strictly adhere to the period of performance set forth in the Appendix A, Special Contract Requirements. Any changes to the period of performance shall only be authorized by RTI through the issuance of a written and fully executed Subaward modification. In the event of any anticipated or actual delay in performance, Subrecipient shall: (i) promptly notify RTI in writing (within 5 business days) of the reasons for the delay and the actions being taken to overcome or minimize the delay; (ii) provide RTI with a written recovery schedule; and (iii) if requested by RTI, expedite performance or delivery to avoid or minimize delay to the maximum extent possible, unless Subrecipient is excused from prompt performance as provided in the "Excusable Delays" article of this Subaward.

### **Article 5. Consultants/Lower-Tier Subcontracts**

- A. PRIOR WRITTEN approval of the RTI Subaward Administrator is required for obtaining services of consultants and lower-tier Subrecipients. Costs for consultants and lower-tier subcontracts who have not received PRIOR WRITTEN approval in accordance with this Article will not be reimbursed. Inclusion in the Subrecipient's budget or proposal does not constitute request or approval of consultants or lower-tier Subrecipients.
- B. When requesting the use of consultants or a lower-tier Subrecipient, the Subrecipient shall furnish information concerning the need for such services, the reasonableness of the fees or costs, a copy of the proposed consulting agreement/Subaward, and any additional information required to make a determination of acceptability, including, as applicable, FAR 52.244-2. Cost-plus-a-percentage-of-cost subcontracts or purchase orders are prohibited.

### **Article 6. Assignment, Delegation and Subcontracting**

Subrecipient shall not assign or novate any of its rights or interests in this Subaward without prior written consent of the RTI Subaward Administrator. Subrecipient shall not delegate any of its duties or obligations under this Subaward. Subrecipient may not assign its right to monies due or to become due. No assignment, delegation or subcontracting by Subrecipient, with or without the RTI Subaward Administrator's written consent, shall relieve Subrecipient of any of its obligations under this Subaward or prejudice any of RTI's rights against Subrecipient whether arising before or after the date of any assignment. This Article does not limit Subrecipient's ability to purchase standard commercial supplies or raw materials.

RTI shall be entitled to assign this Subaward to any of its subsidiaries or other affiliates (including by operation of law, judicial process or otherwise) or any successor to RTI's business or operations without prior notice to or consent from Subrecipient. RTI shall further be entitled to assign this Subaward to its Prime Sponsor of the agreement under which

this Subaward is issued without prior notice to or consent from Subrecipient. Any other assignment by RTI shall require Subrecipient consent.

**Article 7. Technical Direction**

- A. The RTI Principal Investigator/Project Manager identified in Appendix A, *Special Contract Requirements*, does not have the authority to direct the Subrecipient to make changes in scope, period(s) of performance, place(s) of performance, cost, funding, or any other express Provisions of this Subaward. All matters affecting the terms of this Subaward and the administration thereof shall be referred to the RTI Subaward Administrator. The RTI Subaward Administrator is the only person with the authority to direct changes under this Subaward. Any changes to the provisions of this Subaward must be made by written modification in accordance with the Changes and Modifications Provision of this Subaward.
- B. When, in the opinion of Subrecipient, technical direction calls for effort outside the scope of the Statement of Work, Subrecipient shall notify the RTI Subaward Administrator and the RTI Principal Investigator/Project Manager of the technical direction in writing in accordance with the Changes and Modifications Article of this Subaward.

**Article 8. Inspection and Acceptance**

- A. Acceptance of the work set forth in this Subaward will be made by the RTI Principal Investigator/Project Manager as identified in Appendix A: *Special Contract Requirements* or his/her authorized designee. RTI has the right to inspect and test all work performed or being performed under this Subaward, and the premises where the work is being performed, at all reasonable times and places during the term of the Subaward. RTI shall perform inspections and tests in a manner that will not unduly delay the work.
- B. If RTI performs any inspection or test on the premises of the Subrecipient or a lower-tier Subrecipient, the Subrecipient shall furnish, and shall require lower-tier Subrecipients to furnish, without additional charge, all reasonable facilities and assistance for the safe and convenient performance of these duties. Upon RTI's request, Subrecipient shall provide RTI the records of inspection/test for any products and/or services furnished hereunder at any time during performance and any applicable warranty period.

**Article 9. Changes and Modifications**

- A. The RTI Subaward Administrator may, at any time, without notice to sureties, if any, and in writing, direct changes within the general scope of this Subaward in any of the following-- (i) technical requirements and descriptions, specifications, statement of work, drawings or designs; (ii) shipment or packing methods; (iii) place of delivery, inspection or acceptance; (iv) reasonable adjustments in quantities or delivery schedules or both; (v) amount of RTI-furnished property; and, if this Subaward includes services; (vi) description of services to be performed; (vii) time of performance (i.e., hours of the day, days of the week, etc.); and (viii) place of performance. Subrecipient shall comply immediately with such direction.
- B. If any change under this Article causes an increase or decrease in the Subrecipient's cost of, or the time required for, the performance of any part of this Subaward, the parties shall negotiate an equitable adjustment in the price or schedule, or both, and the RTI Subaward Administrator shall modify the Subaward in writing accordingly.
- C. Subrecipient must assert its right to an adjustment under this Article to the RTI Subaward Administrator in writing within 25 calendar days from the date of Subrecipient's receipt of the written change order from the RTI Subaward Administrator. In support of the claim for adjustment, Subrecipient shall provide a written statement describing the general nature of the requested adjustment, as well as a fully supported proposal with the total dollar amount of the requested adjustment. RTI may, at its sole discretion, consider any claim regardless of when asserted. RTI, or mutually agreeable third-party, may examine Subrecipient's pertinent books and records to verify the amount of Subrecipient's claim. Failure of the parties to agree upon any adjustment shall not excuse Subrecipient from performing previously agreed upon work.
- D. Notwithstanding the foregoing provisions of this article, the Subaward ceiling and funded amount shall not be increased or deemed to be increased except by specific written modification of this Subaward indicating the new Subaward ceiling and authorized funded amount. Until such modification is made, Subrecipient shall not continue performance or incur costs beyond the period of performance or the authorized funded amount as set forth in the Special Contract Requirement (SCR) Appendix of this Subaward.

**Article 10. Invoicing**

- A. RTI shall make any payments due under this Subaward within thirty (30) calendar days after its receipt of a proper invoice from Subawardee provided Supplier complied with requirements of Subaward and such invoice from Subawardee 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](http://www.rti.org/page.cfm/Supplier_Invoice/Payment_Instructions)
- B. In addition to the invoice instructions set forth in Paragraph A of this Article, Subrecipient shall submit an invoice summary page as incorporated herein with each invoice submission. Subrecipient may use its own invoice summary format if such is substantially similar to the template provided in this Subaward.

**Article 11. Final Payment and Closeout**

Subrecipient's final invoice and release and assignment shall be submitted to RTI within 90 calendar days following completion of the period of performance of this Subaward. In the event that quick closeout is requested by RTI, Subrecipient shall comply with FAR Part 42.708 to complete Subaward closeout. Payment of the **final invoice** will be withheld pending:

- Completion, submission, and acceptance by RTI of all work performed under the Statement of Work;
- Completion of Subrecipient's Release Form, including patent/invention report, and property report; and
- Clear, visible, and proper marking of "**final invoice**" on the actual final invoice.

**Article 12. Taxes**

All taxes applicable to the proceeds received by Subrecipient shall be the liability of Subrecipient, 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 Subrecipient. Gross annual payments shall be the total compensation for labor and reimbursement of expenses; therefore, it is the Subrecipient's responsibility to retain copies of expenses incurred during the performance of services under this Subaward for tax reporting purposes. It is the Subrecipient'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 in Article 10. The invoice tendered to RTI for payment shall comply with the applicable local country's VAT regulations.

**Article 13. Record Retention and Access**

Subrecipient shall maintain books, records, documents, program and individual service records and other evidence of its compliance with laws and regulations as well as accounting and billing procedures with respect to this Agreement and the Scope of Work set forth herein. These records shall be subject at all reasonable times to monitoring, inspection, review or audit by authorized employees or agents of RTI, or by the United States government, as applicable. Subrecipient shall retain all such records concerning this contract for a period of three (3) years after the completion of the Subaward. If any litigation, claim or audit is started before the expiration date of this three-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

**Article 14. Confidential Information**

- A. During the term of this Subaward, Subrecipient and its employees may receive or have access to data and information that is confidential and proprietary to RTI or its Client. All such data and information ("Confidential Information") made available to, disclosed to, or otherwise made known to Subrecipient as a result of services under this Subaward shall be considered confidential and shall be considered the sole property of RTI and/or RTI's Client. Confidential Information may be used by Subrecipient 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. Subrecipient 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.
- B. Confidential and/or proprietary information includes trade secrets, the structure, sequence and organization of the Products, marketing plans, blueprints, techniques, processes, procedures and formulae, price lists, specifications,

prints, and Product plans. Intellectual Property may include, without limitation, information relating to research and development, formulations, inventions, discoveries, improvements, methods, and processes, techniques, methodologies, know-how, algorithms, compositions, works, concepts, designs, ideas, prototypes, models, samples, writings, notes, patent applications, and trade secrets. Business practices may include, without limitation, information relating to business plans, financial information, products, services, manufacturing processes and methods, costs, sources of supply, strategic marketing plans, customer lists, sales profits, pricing methods, personnel, and business relationships ("Confidential Information").

The foregoing obligations shall not apply to Confidential Information which:

- is or becomes generally available to the public other than as a result of a disclosure by Subrecipient;
  - becomes available to Subrecipient on a non-confidential basis from a third party source which is not prohibited from disclosing such information by a legal, contractual or fiduciary agreement to a third party;
  - Subrecipient develops independently without use of the disclosing party's Confidential Information, as demonstrated by written records and evidence;
  - was in Subrecipient's possession or known to it prior to its receipt from the disclosing party; or
  - is required by law to be disclosed, provided Subrecipient notifies the disclosing party promptly and gives the disclosing party an opportunity to seek an appropriate protective order.
- C. These obligations of confidentiality and non-disclosure shall remain in effect for a period of five (5) years after the termination of this Subaward and indefinitely for any Trade Secrets. Subrecipient shall return or destroy all copies of any Confidential Information it has received from RTI within thirty (30) business days after the effective date of the termination. At the request of RTI, an authorized officer of the Subrecipient will certify in writing that it has complied with its obligations hereunder.
- D. The provisions of this Article apply in addition to the terms of any Non-Disclosure Agreement (NDA) between the parties related to this program. In the event of a conflict between this Article and the NDA, the terms of the NDA control, except that as to the duration of the obligations of confidentiality and non-disclosure, the longer duration applies.

#### **Article 15. Right to Publish/Release of Information**

- A. Subrecipient agrees that it will not publish, have published or otherwise disseminate any information of whatever nature resulting from the work being performed under this Agreement except as may be approved by the Subaward Administrator; provided, however, that Subrecipient may for internal use only and without the approval of RTI disseminate such information within its own organization on a "need-to-know" basis.
- B. Subrecipient and RTI mutually agree not to use the other party's name or make reference to the other party or any of its employees in publications, news releases, advertising, speeches, technical papers, photographs, sales promotions, or publicity purposes of any form related to this work or data developed hereunder, unless such materials have received prior written approval of the other party. Approvals shall not be unreasonably withheld. Unless specifically restricted in the Subaward, use of either party's name may be made in internal documents, annual reports, and data bases which are not available to the public and which identify the existence of the research project by title, principal investigator, sponsor, period of funding, amount of award and abstract of the project.
- C. Subrecipient shall not use or duplicate any proprietary information including trade secrets belonging to or supplied by RTI, except as authorized by RTI in the performance of services or work under this Agreement.
- D. Any program, document, data or information supplied by Subrecipient to Client through RTI may be used, copied or disclosed by Client as necessary in the normal course of its business, subject to any copyright of Subrecipient in such materials and any notices or legends appearing thereon, provided (1) Subrecipient is entitled to place such notices or legends and (2) no other provisions of this Subaward (including, if applicable, any FAR Clauses set forth in, or incorporated into, this agreement) prohibit or limit the effectiveness of such copyright or notice or legend.

#### **Article 16. Indemnification**

- A. Subrecipient shall defend, indemnify, and hold harmless RTI from any loss, damage, liability, claims, demands, suits, or judgments ("Claims") including any reasonable attorney's fees, and costs, as a result of any damage or injury to RTI or its employees, directors, officers, or agents, or properties, or for any injury to third persons

(including, but not limited to Claims by Subrecipient's employees, directors, officers or agents) or their property which is directly or indirectly caused by the negligence, willful misconduct, breach of this Subaward, or violation of statutory duties of Subrecipient, or its employees, officers, directors, or agents, arising out of or in connection with the performance of this Subaward unless such Claim is caused by, or resulting from, a material breach of this Agreement by RTI.

- B. RTI shall promptly notify Subrecipient of any claim which is covered by this provision. Subrecipient shall, in a diligent and timely manner, (i) brief RTI on all material information pertaining to a Claim and Subrecipient's efforts to defend against the Claim; and (ii) respond to reasonable inquiries by RTI regarding such Claim or defense. Any cooperation which an Indemnitee provides Subrecipient at Subrecipient's request with regard to defending against a Claim shall be at the sole expense of Subrecipient. RTI may, in its sole discretion, participate in any defense or settlement of a Claim and/or appoint adequate counsel, at Subrecipient's sole expense, to defend an Indemnitee against a Claim. Subrecipient shall not enter into any settlement, consent or other like resolution of a Claim without RTI's written approval, which RTI shall not unreasonably withhold. The issuance of such approval shall not waive or otherwise limit the indemnity rights of an Indemnitee under this Article.

**Article 17. Infringement Representation**

Subrecipient represents (a) that in preparing or presenting any deliverables under this Subaward, Subrecipient will not knowingly infringe any intellectual property rights held by others; (b) that all deliverables developed by Subrecipient personnel under this Subaward will be original works, and that Subrecipient will not incorporate any material not developed by Subrecipient personnel in preparing or presenting such works without clearly indicating such third party materials; and (c) that Subrecipient will notify RTI of any third party rights of which Subrecipient is aware that are necessary for RTI and RTI's Client(s) to use any such deliverables in accordance with the Subaward.

**Article 18. Governing Law**

This Subaward shall be governed by and construed 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 provisions such laws of the United States shall govern. If this Subaward involves the sale of good, then this Subaward excludes the application of the 1980 United Nations Convention on Contracts for the International Sale of Goods.

**Article 19. Disputes**

- A. Any dispute arising under this Subaward 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.
- C. Pending completion of the Subaward or final resolution of a dispute which releases Subrecipient from performance hereunder, the Subrecipient shall, at all times, proceed diligently with the performance of the Subaward.

**Article 20. Notice of Litigation and Labor Disputes**

- A. Subrecipient shall provide written notice to RTI of any litigation that relates to the services directly or indirectly financed under this contract or that has the potential to impair the ability of the Subrecipient to fulfill the terms and conditions of this Subaward, including but not limited to financial, legal or any other situation which may prevent the Subrecipient from meeting its obligations on the Subaward.
- B. Whenever Subrecipient has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Subaward, Subrecipient shall immediately (within 5 calendar days) give notice thereof, including all relevant information, to RTI.

**Article 21. Insurance**

- A. Upon execution of the Subaward, Subrecipient certifies that it maintains and also that it shall require any lower-tier Subrecipient to maintain throughout this Subaward the following insurance at, or in excess of, the limits detailed below.
- B. Worker's compensation and employer's liability insurance as required by the state or province where the work is performed.
- Comprehensive automobile and vehicle liability insurance covering claims for injuries to members of the public and/or damages to property of others arising from use of motor vehicles, including on-site and off-site operations, and owned, non-owned, or hired vehicles, with \$1,000,000 combined single limits.
  - Commercial general liability insurance covering claims for injuries to members of the public or damage to property of others arising out of any negligent act or omission of the Subrecipient or of any of its employees, agents, or lower-tier Subrecipients, with \$1,000,000 combined single limits.
  - The required levels of insurance coverage for work performed outside of the United States by non-U.S. vendors shall be based on the customary insurance practices in the country of the vendor and the country where the work is being performed, as directed by the RTI Subaward Administrator.
- C. Subrecipient's insurance policy shall name as an additional insured:
- "RTI International and its subsidiaries, affiliates, officers, directors, and employees"
- D. Subrecipient shall provide to RTI, upon Subaward execution and upon each renewal or replacement thereof a certificate of insurance depicting the insurance requirements set forth in this Article. Subrecipient shall send the insurance certificate or renewal certificate(s) via mail or electronic mail (preferred). If the mail is used, please send certificates to the following address:

RTI International  
Global Supply Chain  
3040 Cornwallis Road  
Research Triangle Park, NC 27709  
Attention: [INSERT SUBCONTRACT SPECIALIST NAME]  
Email: [INSERT]

**Article 22. Stop Work Order**

- A. RTI may at any time, by written notice to Subrecipient, require Subrecipient to stop all or any part of the work called for by this Subaward. Upon receipt of the notice, Subrecipient shall immediately cease all work in accordance with the written notice and shall take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the written notice during the period of work stoppage.
- B. Once the Stop Work order is no longer necessary, RTI shall either terminate in accordance with the Termination/Cancellation Article of this Subaward or cancel the stop work order by written notice to Subrecipient. Subrecipient shall resume work upon cancellation or expiration of any stop work order. In the event Subrecipient is given notice to continue performing work on the Subaward, an equitable adjustment in accordance with the principles of the Changes and Modifications Article of this Subaward shall be made to the Subaward price, the delivery schedule, or both, if applicable, provided that the claim for equitable adjustment is made as soon as possible but no later than twenty-five (25) calendar days after date of notice to continue.

**Article 23. Termination/Cancellation**

*Termination for Default*

- A. If Subrecipient should persistently or repeatedly refuse or should fail, except in cases for which extension of time is provided, to supply enough properly skilled staff or proper materials, or if Subrecipient should fail to make prompt payment to Subrecipients for material or labor, or otherwise is guilty of a violation on any provision of this Subaward, including delivery delays beyond fifteen (15) calendar days after specified delivery date, or as otherwise specified in the Subaward, then RTI, without prejudice to any of the other rights or remedies expressly provided by law, may cancel this Subaward, or any part hereof, by written notice to Subrecipient and shall have the right thereafter to take possession of all materials, equipment and the like, the cost of which has been reimbursed by RTI to Subrecipient, in such cases of termination, RTI shall be relieved of all further obligations hereunder. In the

event that RTI incurs any additional costs as a result of the default by Subrecipient, RTI shall have the right to hold Subrecipient accountable for any such additional costs or damages incurred by RTI.

*Termination for Bankruptcy*

- B. If either party shall be adjudged bankrupt, or become insolvent or file for voluntary bankruptcy or be subjected to involuntary bankruptcy proceedings, or enter receivership proceedings, or make an assignment for the benefit of creditors, then the other party, without prejudice to any of the other rights or remedies expressly provided by law, may cancel this Subaward, or any part hereof, by written notice to the bankrupt party and shall have the right there to retain possession of all materials, equipment and the like, the cost of which has not been reimbursed by the bankrupt party to the other party. In such cases of termination, the other party shall be relieved of all further obligations hereunder.

*Termination for Convenience*

- C. RTI reserves the right, at any time, in its own best interest or at the direction of any client or government customer, and without liability may, upon written notice to Subrecipient, terminate this Subaward in whole or in part, at any time, whether or not Subrecipient is in default of any of its obligations hereunder. Upon such cancellation, Subrecipient agrees to waive any claim for damages, including loss of anticipated profits on account hereof. However, RTI agrees that Subrecipient 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, and any reasonable cost incurred as a result of such cancellation as agreed to between RTI and Subrecipient. In no event shall such payments be greater than the original Subaward price or authorized funding, whichever is less. 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.
- D. Subrecipient shall provide RTI any supporting information necessary to document the reasonableness of Subrecipient's termination for convenience claim. RTI reserves the right to verify the amounts of any cost and profit increments claimed by Subrecipient, through an audit of Subrecipient's records.

**Article 24. Compliance with Laws**

Subrecipient, in the performance of this Subaward, shall comply with all applicable local, state, and federal laws, orders, rules, regulations, and ordinances of the United States and all countries where Subrecipient will be performing the Subaward.

**Article 25. Standards of Ethics and Business Conduct**

- A. RTI has established high ethical standards for its employees, Subrecipients and vendors. RTI considers adherence to the RTI Code of Conduct as well as strict observance of all U.S. and non U.S. laws and regulations to be both a legal requirement and an ethical obligation for its employees. All RTI Subrecipients are required to maintain a Code of Business Ethics and Conduct in compliance with FAR 52.203-13.
- B. If Subrecipient has a good faith reason to believe that any violation of its Code of Business Ethics and Conduct has been committed by an employee(s) of either RTI or Subrecipient or anyone affiliated with Subrecipient, Subrecipient 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.

**Article 26. Executive Order on Terrorism Financing**

Subrecipient is reminded that U.S. Executive Orders and U.S. law prohibits transactions with, and the provisions of resources and support to, individuals and organizations associated with terrorism. It is the legal responsibility of Subrecipient to ensure compliance with these Executive Orders and laws. This provision must be included in all subcontracts/subawards issued under this Subaward.

**Article 27. Export Controls**

- A. Definition. "Export-controlled items," as used in this clause, means items subject to the Export Administration Regulations (EAR) (15 CFR Parts 730-774) or the International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120-130). The term includes: (1) "Defense items," defined in the Arms Export Control Act, 22 U.S.C. 2778(j)(4)(A), as defense articles, defense services, and related technical data, and further defined in the ITAR, 22 CFR Part 120; and (2) "Items," defined in the EAR as "commodities", "software", and "technology," terms that are also defined in the EAR, 15 CFR 772.1.

- B. The Subrecipient shall comply with all applicable laws and regulations regarding export-controlled items, including, but not limited to, the requirement for contractors to register with the U.S. Department of State in accordance with the ITAR. The Subrecipient shall consult with the U.S. Department of State regarding any questions relating to compliance with the ITAR and shall consult with the U.S. Department of Commerce regarding any questions relating to compliance with the EAR.
- C. The Subrecipient's responsibility to comply with all applicable laws and regulations regarding export-controlled items exists independent of, and is not established or limited by, the information provided by this clause.
- D. Nothing in the terms of this Subaward adds, changes, supersedes, or waives any of the requirements of applicable Federal laws, Executive orders, and regulations, including but not limited to—
- (1) The Export Administration Act of 1979, as amended (50 U.S.C. App. 2401, et seq.);
  - (2) The Arms Export Control Act (22 U.S.C. 2751, et seq.);
  - (3) The International Emergency Economic Powers Act (50 U.S.C. 1701, et seq.);
  - (4) The Export Administration Regulations (15 CFR Parts 730-774);
  - (5) The International Traffic in Arms Regulations (22 CFR Parts 120-130); and
  - (6) Executive Order 13222, as extended.
- E. In the event this Subaward is likely to involve Export-controlled items, additional requirements and information will be included in in this Subaward, 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.
- F. Supplier shall notify RTI if any deliverable under this Agreement or an individual Subcontract/Subaward/Contract is controlled for export under a classification *other than* EAR99.”
- G. Subrecipient shall immediately notify the RTI Subcontract Administrator if Subrecipient is, or becomes listed in any Denied Parties List or if Subrecipient’s export privileges are otherwise denied, suspended or revoked in whole or in part by any U.S. Government entity or agency.
- H. If Subrecipient is engaged in the business of either exporting or manufacturing (whether exporting or not) defense articles or furnishing defense services, Subrecipient 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.
- I. Where Subrecipient is a signatory under a RTI export license or export agreement, Subrecipient shall provide prompt notification to the RTI Subcontract Administrator 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 Subrecipient’s performance under this Subaward.
- J. Subrecipient 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 Subrecipient, its officers, employees, agents, or subcontractors at any tier, in the performance of any of its obligations under this Article.
- K. **If Subrecipient is to make shipment where RTI will be the importer or exporter of record, before departure of the cargo, Subrecipient 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.**
- L. The Subrecipient shall include the substance of this clause in all lower-tier Subawards.



**Article 28. Foreign Corrupt Practices Act**

Subrecipient represents and warrants that it shall comply fully with the anti-bribery provisions of the U.S. Foreign Corrupt Practices Act, as amended ("FCPA"), as well as the a) UN Convention against Corruption (UNICAC), b) OECD Convention on the Bribery of Foreign Public Officials (OECD Convention); and c) any other applicable local anti-corruption laws, rules, and regulations if any part of this Subaward will be performed outside of the United States of America. Specifically, Subrecipient understands and agrees that it shall be unlawful for the Subrecipient and/or any officer, director, employee or agent of the Subrecipient to make any kind of offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to:

- (a) any foreign official (or foreign political party) for purposes of either influencing any act or decision of such foreign official in his official capacity, or inducing such foreign official to do or omit to do any act in violation of the lawful duty of such official, or securing any improper advantage, or inducing such foreign official to use his influence with a foreign government, or instrumentality thereof, to affect or influence any act or decision of such government or instrumentality in order to assist such person in obtaining or retaining business for or with, or directing business to any person; or
- (b) any person, while knowing that all or a portion of such money or thing of value will be offered, given, or promised, directly or indirectly, to any foreign official (or foreign political party), or to any candidate for foreign political office, for any of the prohibited purposes described above.

For purposes of this Agreement "foreign official" means any appointed, elected, or honorary official or employee of a) a foreign government (or if this Subaward is to be performed outside the United States than of the Host Country) or political party, or b) of a public international organization, or any person acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality, or for or on behalf of any such public international organization (e.g., the UN, DFID, or WHO, or the World Bank). For purposes of this Article, the "government" includes any agency, department, embassy, or other governmental entity, and any company or other entity owned or controlled by the government.

**Article 29. Validity and Waiver**

The invalidity in whole or in part of any provision of this Agreement shall not affect the validity of other provisions. A waiver of a breach of any provision of this Agreement shall not constitute a waiver of any subsequent breach of that provision or a breach of any other provision of this Agreement. The failure of RTI to enforce at any time or from time to time any provision of this Agreement shall not be construed as a waiver thereof.

**Article 30. Electronic Contracting**

The parties agree that if this Subaward is transmitted electronically neither party shall contest the validity of this Subaward, or any Acknowledgement thereof, on the basis that this Subaward or Acknowledgement contains an electronic signature.

**Article 31. Combating Trafficking in Persons**

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 Subaward 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 Subaward, as well as FAR 52.222-56 (Certification Regarding Trafficking in Persons Compliance Plan), if and as applicable.

**Article 32. Conflicts of Interest**

- A. Subrecipient warrants that, to the best of the Subrecipient's knowledge and belief, there are no relevant facts or circumstances which could give rise to a conflict of interest or that the Subrecipient has disclosed all such relevant information.
- B. Subrecipient agrees that if an actual or potential conflict of interest is discovered after execution of this Subaward, the Subrecipient will make a full disclosure in writing to the RTI Subaward Administrator. This disclosure shall

include a description of activities that the Subrecipient has taken or proposes to take, after consultation with the RTI Subaward Administrator, to avoid, mitigate, or neutralize the actual or potential conflict.

**Article 33. Institutional Review Board**

Institutional Review Board approval must be obtained before any contact with human subjects. All research involving human subjects, or data from or about human subjects, must be conducted in accordance with applicable federal regulations (45 CFR 46 and 21 CFR 50 and 56) and the protocol approved by the IRB. Research activities include contacting Human Subjects, conducting the survey and the collecting and storing of any Human Subject data resulting from this survey. Upon notice of IRB approval, RTI will provide notice to the Subrecipient to commence work. Once this notice is provided to Subrecipient, the Subrecipient may commence with the research activities.

**Article 34. Travel**

To the extent travel is not restricted by the Subaward, costs incurred for lodging, meals and incidental expenses shall be considered to be reasonable, allowable, and allocable under this Subaward only to the extent that they do not exceed on a daily basis the maximum per diem rates in effect on the day of travel as set forth in the current version of the Federal Travel Regulations (FTR).

**Article 35. Excusable Delays**

- A. Neither Party hereto shall be in default because of any failure to perform under the terms of this Subaward if the failure arises from any incident or circumstance beyond the affected Party's control. A United States (U.S.) government shutdown and any interruption in the U.S. government's operations shall constitute an incident or circumstance beyond the affected Party's control if the Party affected informs the other Party immediately in accordance with the requirements of Paragraph (B) below.
- B. If any such case occurs, the Party affected shall inform the other Party immediately indicating the presumable duration and extent of such contingency. Moreover, the Party affected shall promptly use all reasonable efforts to settle such contingencies so that the performance of its obligations under this Subaward can be resumed as soon as possible.

**Article 36. Debarment and Suspension**

In accepting this Subaward, the Subrecipient 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 Subrecipient during the life of this Subaward must be reported immediately to RTI. The Subrecipient agrees to incorporate the Debarment and Suspension certification into any lower-tier Subaward that they may enter into as a part of this Subaward.

**Article 37. Survivability**

- A. If this Subaward expires, is completed, or is terminated, Subrecipient shall not be relieved of those obligations contained in the following Articles:
  - Independent Contractor
  - Governing Law
  - Indemnification
  - Confidential Information
  - Right to Publish/Release of Information
  - Insurance
  - Export Controls
  - Electronic Contracting
- B. Those U.S. Government Code of Federal Regulations (CFR) and Agency Supplementary Regulation(s) that by their nature should survive.

**Article 38. Order of Precedence**

In the event of any inconsistency between or among the provisions, articles, attachments, or requirements which constitute this Subaward, the following order of precedence shall apply:

1. all Special Contract Requirements (SCRs) as set forth in Appendix A, including any attachments referenced or incorporated by those SCRs
2. incorporated CFR and Agency Supplementary clauses, Appendix C
3. the General Provisions contained in these Standard Subaward Terms, Appendix B
4. the Statement of Work, Appendix D; and
5. all other attachments incorporated herein by reference.

**Article 39. Sustainability**

Subrecipient shall operate in a manner that complies with United States (U.S.), national, and local environmental laws, regulations and standards including, but not limited to, laws related to energy conservation, greenhouse gas emissions, air emissions, waste management, recycling, water discharge, toxic substances, and hazardous waste disposal. Subrecipient agrees to flow down this requirement in any lower-tier Subaward that it may enter into under this Subaward.

**Article 40. Entire Agreement**

Both parties acknowledge that they have read this Subaward, understand it, and agree to be bound by its terms and further agree that it is the entire agreement between the parties hereto which supersedes all prior agreements, written or oral, relating to the subject matter hereof. No modification or waiver of any provision shall be binding unless in writing signed by an Authorized Representative of the Party against whom such modification or waiver is sought to be enforced.

**Article 41. Language Requirements**

The official text of this Subaward is the English language text, whether or not counterparts hereof are written, executed, or translated into any other language. All notices, communications, and submittals between the parties pursuant to the implementation of this Subaward shall be in the English language, unless otherwise directed in writing by RTI. In the event that this Subaward is translated into another language, the English version shall prevail.

**Article 42. HIPAA Business Associate Training Addendum**

In the event Subrecipient has been designated as a Business Associate, as defined by 45 CFR 160.103, via operation of another provision contained in this Subaward, Subrecipient certifies that it has completed, or will complete, a training course as described in 45 CFR 164.530(b) for all employees associated with the work issued under this Subaward and prior to such employees engaging in any work which involves Protected Health Information ("PHI"), as defined in 45 CFR 160.103.