

TIME & MATERIALS AGREEMENT TERMS AND CONDITIONS

(Effective January 1, 2015)

1. **Statement of Work.** RTI agrees to exert commercially reasonable efforts to accomplish the statement of work as quoted (the "Purpose"), within the level of committed funding and during the term specified.
2. **Ceiling and Payment.**
 - a. The Time & Materials ceiling for performance by RTI is as stated in the quote, and may be amended pursuant to subsection f. below. RTI will invoice not more often than monthly in accordance with the billing rate schedule set forth in the quote. No actual receipts or other documentation will be submitted with invoices. Payment of RTI's invoices is due within forty five (45) days of receipt and shall be paid in U.S. dollars. Invoices shall be considered received by Client on the date which RTI sends the invoice.
 - b. For payment by Electronic Funds Transfer (EFT):

Research Triangle Institute
SunTrust Bank
25 Park Place
Atlanta, GA 30303
Tel: (800) 947-3786
Acct. No.: 101-434-7

ABA No.: 061000104
Swift Address: SNTRUS3A
RTI EIN No.: 56-0686338
 - c. For payment by check, make check payable to Research Triangle Institute, and direct check to:

Research Triangle Institute
Post Office Box 900002
Raleigh, NC 27675-9000
 - d. Client's transaction expenses and/or bank fees, if any, associated with payment shall not be deducted from funds owed to RTI.
 - e. Any changes to the work to be performed under this Agreement that may be required by either party shall be notified to the other party in writing and will be subject to the execution, by both parties, of a mutually agreed amendment to this Agreement. Any such amendment may also require a change in the Ceiling set out in subsection a. above.
3. **Confidentiality.**
 - a. During the Term of this Agreement, it may be necessary for either or both parties to disclose (a "Disclosing Party") to the other (the "Receiving Party") certain scientific, technical, business, and/or trade secret information that the Disclosing Party regards as Proprietary Information. "Proprietary Information" is defined as (1) all written information disclosed that is marked on its face as proprietary, and (2) all orally or visually disclosed information that is identified as proprietary at the time of disclosure and within thirty (30) days after disclosure, is summarized and confirmed in writing to the other party as proprietary. A Receiving Party will maintain confidence in all Proprietary Information made available to it during the Term of this Agreement for a period of two years from the expiration of termination of this Agreement.
 - b. The confidentiality obligations herein will not apply to any such information that:
 - i. at the time of disclosure by the Disclosing Party, is in the public domain, as evidenced by publication or similar proof; or
 - ii. after disclosure by the Disclosing Party hereunder, becomes part of the public domain by publication or otherwise, other than by an unauthorized act or omission by Receiving Party; or
 - iii. the Receiving Party can show by competent proof was in its possession at the time of disclosure and that was not directly or indirectly acquired from the Disclosing Party under confidentiality restrictions; or
 - iv. the Receiving Party rightfully received from a third party, and which, to Receiving Party's knowledge, was not directly or indirectly acquired from the Disclosing Party under confidentiality restrictions; or
 - v. was developed by the Receiving Party independently of any disclosure hereunder as shown by competent proof; or
 - vi. is disclosed by the Receiving Party under a valid order or legal process created by a court or government agency, provided that the Receiving Party provides prior written notice to the Disclosing Party of such obligation to disclose and the opportunity, if available, to oppose such disclosure; or
 - vii. is disclosed under protective order to prosecute or defend any claim arising hereunder.
 - c. The Receiving Party shall maintain in confidence all Proprietary Information received

- from the Disclosing Party hereunder and shall not disclose said Proprietary Information to third parties, including, but not limited to, subcontractors, consultants, and affiliates, without the prior written consent of the Disclosing Party.
- d. The Receiving Party shall not use Proprietary Information received from the Disclosing Party, other than for the Purpose or in relation to work that may be performed under subsequent agreement between the parties, without the prior written consent of the Disclosing Party.
- e. The Receiving Party shall be held to the same standard of care in protecting Proprietary Information as the Receiving Party normally takes to preserve and safeguard its own proprietary information of a similar type, but in no event less than reasonable care.
- f. The Receiving Party shall restrict disclosure of the Proprietary Information to those persons having a need to know such Proprietary Information for the Purpose, and such persons shall be advised of the obligations set forth in this Agreement and shall be obligated in like manner. The Receiving Party certifies that each of its officers, employees, and any approved third parties pursuant to subsection (c), who may be in a position to learn any Proprietary Information disclosed hereunder, are subject to internal company policy restrictions or other agreement that prohibits the disclosure of Proprietary Information, or the Receiving Party will execute an employment contract or other agreement protecting any and all such Proprietary Information from disclosure as stated herein.
- g. Upon written request of the Disclosing Party, the Receiving Party shall either (i) return to the Disclosing Party all complete and partial copies of Proprietary Information then in its possession or (ii) destroy such copies and certify such destruction to the Disclosing Party. Notwithstanding the above, the RTI may retain one copy of Proprietary Information solely for compliance purposes.
- h. All Proprietary Information disclosed hereunder remains the property of the Disclosing Party, and no rights are granted in such information, any intellectual or other property, or property right embodied in such information, as a result of a disclosure hereunder other than the right to review or use it for the Purpose contemplated herein. It is recognized and understood that certain pre-existing inventions and technologies are the separate property of the Client or RTI and are not affected by this Agreement. Neither party shall have any claim to nor rights in such prior, separate inventions and technologies except as may be governed by separate licensing agreements, if any.
- i. This section supersedes any prior confidentiality agreement between the parties related to the subject matter of this Agreement.
4. **Advertising and Publicity.** Each party agrees not to use the other party's name, or make any reference to the other party or any of its employees for advertising, sales promotions, or publicity purposes of any form, whether or not related to services provided hereunder, unless such advertisements or publicity materials have been previously approved in writing by the other party. However, RTI may list Client as a representative client in RTI's annual report without obtaining prior approval.
5. **Endorsements.** The provision of services by RTI under this Agreement does not constitute nor imply any endorsement by RTI of Client's business methods, processes, products, or services.
6. **Ownership of Results.** Subject to the restrictions on publication below, project data specified as deliverables in and first produced under this Agreement are owned by Client. The term "data" excludes any computer software or databases and related documentation.
7. **Publication.**
- a. Client may publish or have published in its entirety any final written report, record, account, or summary ("Final Report") produced and signed by RTI, or any of its employees, which shall have been furnished to Client by RTI in connection with this Agreement. However, RTI's prior written consent is required if Client wishes to publish (i) anything less than the full and complete Final Report, (ii) any RTI reports or summaries identified as "draft", or (iii) any RTI working notes or other works in progress. Should Client choose to have study results published, by RTI or otherwise, authorship credit shall be determined in accordance with industry recognized guidelines.
- b. Should RTI wish to independently publish on the results of services provided hereunder, RTI will make the proposed publication available to Client thirty (30) days prior to the planned publication date so that Client may take any steps it deems necessary to preserve intellectual property or to protect proprietary information that may be negatively impacted by publication of the proposed document.
- c. This section is not applicable to software used or provided by RTI.
8. **RTI Methods.** Notwithstanding anything to the contrary herein, RTI shall retain ownership of all proprietary data, concepts, methods, techniques, processes, protocols, adaptations, ideas, formulas, software, databases, know-how, tools, trade

secrets, background technologies, and standards of judgment (collectively "RTI Methods") owned, licensed, or controlled by RTI prior to this Agreement. Client expressly acknowledges that performance of this Agreement may result in the development of improvements to the RTI Methods or the development of new RTI Methods. Client agrees that any such improvements to or new RTI Methods shall belong exclusively to RTI, and Client shall not, other than as necessary to performance of this Agreement, make use of or disclose the same to any other party without the prior written consent of RTI.

9. **Choice of Law.** This Agreement shall be construed and governed in accordance with the laws of the State of North Carolina, without giving effect to its conflict of law provisions.
10. **Limitation of Liability.** THE LIABILITY OF EITHER PARTY FOR DAMAGES FROM ANY CAUSE RELATED TO OR ARISING OUT OF THIS AGREEMENT, WHETHER IN CONTRACT OR IN TORT, INCLUDING NEGLIGENCE, SHALL BE LIMITED TO ACTUAL (EXCLUDING SPECIAL, INDIRECT, PUNITIVE, LOSS PROFITS, OR CONSEQUENTIAL) DAMAGES. CLIENT'S RECOVERY OF DAMAGES FROM RTI SHALL BE LIMITED TO AN AMOUNT NO GREATER THAN THE FACE AMOUNT OF THIS AGREEMENT, AS MODIFIED.
11. **Dispute Resolution.**
 - a. In the event of any dispute arising out of this Agreement, the parties shall use good faith efforts to resolve their differences amicably within sixty (60) days of the first written notice of the dispute. During such sixty (60) day period, the parties may agree to utilize a mediator experienced in the field of commercial disputes to assist with the resolution of such dispute(s). Such sixty (60) day period may be extended by mutual agreement of the parties.
 - b. The parties will share equally the cost of any mediator and such proceedings, but both parties will be responsible for their own travel, employee, and legal costs.
12. **Termination.** Either party may terminate this Agreement at any time, in whole or in part, by providing written notice of termination to the other. Termination shall be effective ten (10) business days from receipt of the notice. Upon any termination, Client shall pay RTI for work performed prior to termination, plus all reasonable costs incurred as a result of a Client-initiated termination, on a time & materials basis, regardless of whether or not the work is at a point at which a deliverable is due. In no event will Client be obligated to pay RTI costs which exceed the amount authorized by this Agreement.

13. **Non-Solicitation.** Neither party shall knowingly solicit, recruit, hire or otherwise employ or retain any employee of the other, performing under this contract, during the term of this contract, without the prior written consent of the other party. This Article shall not restrict in any way the right of either party to solicit or recruit generally in the media, and shall not prohibit either party from hiring an employee of the other who answers any advertisement or who otherwise voluntarily applies for hire without having been personally solicited or recruited by the hiring party.

14. **Notices.** Any notice required or permitted to be given hereunder must be given (i) by delivery in person, or (ii) by a nationally recognized courier or mail service, with tracking, to the address of the other party.

Notices so given shall be effective upon the earlier of (i) the date of receipt by the party to which notice is given, or (ii) on the fifth (5th) day following the date of mailing by the sending party.

15. **Bankruptcy.** 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 terminate this Agreement, or any part hereof, by written notice to the bankrupt party and shall have the right 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 terminating party shall be relieved of all further obligations hereunder.

16. **Waiver/Severability.** Failure of either party to enforce any of its rights hereunder shall not constitute a waiver of such rights. If any provision herein is or becomes invalid, illegal, or unenforceable, such provision shall be deemed modified only to the extent necessary to conform with applicable laws so as to be valid and enforceable or such provision shall be excluded from this Agreement. This Agreement shall be enforced and construed as if such provision had been included as so modified in scope or applicability or had not been included, as the case may be.

17. **Force Majeure.** Neither party shall be liable for any failure or delay in performance under this Agreement (other than for delay in the payment of money due and payable hereunder) to the extent said failures or delays are caused by events beyond that party's reasonable control and occurring without its fault or negligence (a "Force Majeure Event"), including, but not limited to: acts of nature (including, but not limited to, ice storms), war, acts of foreign combatants, terrorist acts, nationalization, government sanction or embargo, third party labor disputes, the prolonged failure of electricity or other

vital utility service, or failure of suppliers, subcontractors, or carriers, or to substantially meet their performance obligations under this Agreement. A party asserting a Force Majeure Event as an excuse to non-performance shall give the other party prompt written notice following the occurrence of such Force Majeure Event. Dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any delay caused by such Force Majeure Event.

18. **Export Controls.** Each party agrees to comply with all U.S. export control laws and regulations, including but not limited to, the requirements of the Arms Export Control Act, 22 U.S.C. 2751-2794, including the International Traffic in Arms Regulation (ITAR), 22 C.F.R. 120 et seq.; and the Export Administration Act, 50 U.S.C. app. 2401-2420, including the Export Administration Regulations, 15 C.F.R. 730-774; and the requirement for obtaining any export license or agreement, if applicable. Without limiting the foregoing, the parties also agree that they will not transfer any U.S. export controlled item, data, information, Proprietary Information, or services, to include transfer to foreign persons employed by or associated with, or under Agreement to either party or either party's lower-tier subcontractors, without the authority of an export license, agreement, or applicable exemption or exception.

19. **Independent Contractor.**

a. RTI's relationship to Client under this Agreement will be that of an independent contractor. Personnel retained or assigned by RTI to perform services covered by this Agreement will at all times be considered agents or employees of RTI and not agents or employees of Client.

b. Client understands that RTI is an independent scientific research institute performing projects for governmental and private clients. In order to maintain its professional and scientific integrity as an independent research contractor, it is essential that the conclusions and results of its research performed under this Agreement be arrived at solely by RTI. Client shall neither direct nor control the specific conclusions and results arising from RTI's professional or scientific services and/or deliverables provided hereunder.

20. **Assignment.** Neither this Agreement nor any interest herein may be assigned, in whole or in part, by either party without the prior written consent of the other party; provided, however, either party shall have the right to assign this Agreement to any successor of such party by way of merger or consolidation or the acquisition of substantially all of the assets of such party relating to the subject matter of this Agreement and such successor shall expressly assume all of the obligations of such party under this Agreement.

21. **Entire Agreement.** This Agreement, including all attachments, constitutes the full and complete agreement of the parties and may only be modified in a written amendment signed by both parties. Reference by RTI to any purchase order number supplied by Client shall be for accounting identification purposes only, and any terms or conditions therein or in any acknowledgment, confirmation, or other communication by Client in addition to or in conflict with this Agreement are rejected.

22. **Facsimile or Electronic Versions.** Facsimile or electronic (e.g., .pdf) versions shall have the same legal effect as originals, and all of which, when fully executed, shall constitute one and the same instrument.