

RTI Subcontracts: Standard Terms and Conditions

Note: These Terms and Conditions represent the standard contractual provisions normally found in subcontracts issued by RTI, whether federally or commercially funded. Any particular subcontract may contain different and/or additional provisions appropriate to the particular type and size of subcontract being issued, and may include additional clauses required by RTI's Federal or commercial Client. Furthermore, these Terms and Conditions are subject to changes based on requirements in the prime contract under which the subcontract will be issued.

These Terms and Conditions are written for inclusion into a subcontract, however they also apply in subawards issued under Federal Grants and Cooperative Agreements. In such cases, "Subgrantee" or "Subrecipient" should be substituted for "Subcontractor," "Subgrant" or "SubAgreement" should be substituted for "Subcontract," etc.

Article 1. Independent Contractor

The relationship of Subcontractor to RTI is that of an independent contractor, and nothing in this Subcontract shall be construed as creating any other relationship. Subcontractor 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 Subcontractor's protection in connection with work performed under this Agreement. Neither Subcontractor 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 Subcontractor and RTI's Client, or the Government, is established by this Subcontract. All communications regarding this Subcontract must be directed to RTI and not to RTI's Client.

Article 3. Statement of Work/Budget

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

Article 4. Period of Performance and Delays

Subcontractor 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 properly executed Subcontract modification. In the event of any anticipated or actual delay in performance, Subcontractor shall: (i) promptly notify RTI in writing (within 5 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 Subcontractor is excused from prompt performance as provided in the "Excusable Delays" article of this Subcontract.

Article 5. Consultants/Lower-Tier Subcontracts

- A. PRIOR WRITTEN approval of the RTI Subcontract Administrator is required for obtaining services of consultants and lower-tier subcontractors. 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 Subcontractor's budget or proposal does not constitute request or approval of consultants or lower-tier Subcontractors.
- B. When requesting the use of consultants or a lower-tier subcontractor, the Subcontractor shall furnish information concerning the need for such services, the reasonableness of the fees or costs, a copy of the proposed consulting agreement/subcontract, 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

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

RTI shall be entitled to assign this Subcontract 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 Subcontractor. RTI shall further be entitled to assign this Subcontract to its Prime Sponsor of the agreement under which this Subcontract is issued without prior notice to or consent from Subcontractor. Any other assignment by RTI shall require Subcontractor consent.

Article 7. Technical Direction

- A. The RTI Technical Monitor/Project Manager identified in Appendix A, Special Contract Requirements, does not have the authority to direct the Subcontractor to make changes in scope, period(s) of performance, place(s) of performance, cost, funding, or any other express Provisions of this Subcontract. All matters affecting the terms of this Subcontract and the administration thereof shall be referred to the RTI Subcontract Administrator. The RTI Subcontract Administrator is the only person with the authority to direct changes under this Subcontract. Any changes to the

provisions of this Subcontract must be made by written modification in accordance with the Subcontract Changes and Modifications Provision of this Subcontract.

- B. When, in the opinion of Subcontractor, technical direction calls for effort outside the scope of the Statement of Work, Subcontractor shall so notify the RTI Subcontract Administrator and the originator of the technical direction in writing in accordance with the Changes and Modifications Article of this Subcontract.

Article 8. Inspection and Acceptance

- A. Acceptance of the work set forth in this Subcontract will be made by RTI's Technical Representative or his or her authorized representative. RTI has the right to inspect and evaluate the work performed or being performed under this Subcontract, 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 RTI performs inspection or evaluation on the premises of Subcontractor or its lower tier subcontractors, the Subcontractor shall furnish and requires its subcontractors to furnish all reasonable facilities and assistance for the safe and convenient operation of these duties.
- B. If inspection and test are made on Subcontractor's premises, Subcontractor shall, without additional charge, provide reasonable facilities and assistance for the safety and convenience of the inspectors performing these duties. Subcontractor shall furnish RTI the records of inspection/test for any products and/or services furnished hereunder at any time, during performance and any applicable warranty period, upon RTI's request.

Article 9. Changes and Modifications

- A. The RTI Subcontract Administrator may, without notice to sureties and in writing, direct changes within the general scope of this Subcontract 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 Subcontract 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. Subcontractor shall comply immediately with such direction.
- B. If such change increases or decreases the cost or time required to perform this Subcontract, the parties shall negotiate an equitable adjustment in the price or schedule, or both, to reflect the increase or decrease. RTI will modify this Subcontract in writing accordingly. Subcontractor must assert any claim for adjustment to the RTI Subcontract Administrator in writing within 25 days and deliver a fully supported proposal to the RTI Subcontract Administrator within 30 days after Subcontractor's receipt of such direction. RTI may, at its sole discretion, consider any claim regardless of when asserted. RTI, or mutually agreeable third-party, may examine Subcontractor's pertinent books and records to verify the amount of Subcontractor's claim. Failure of the parties to agree upon any adjustment shall not excuse Subcontractor from performing previously agreed upon work.
- C. Notwithstanding the foregoing provisions of this article, the cost of this Subcontract and, if this contract is incrementally funded, the funds allotted for the performance thereof shall not be increased or deemed to be increased except by specific written modification of this Subcontract indicating the new Subcontract cost and the new amount of funding allotted to this Subcontract. Until such modification is made, Subcontractor shall not be obligated to continue performance or incur costs beyond the point established, if applicable, in the "Limitation of Cost" and "Limitation of Funds" articles of this Subcontract.

Article 10. Final Payment and Closeout

Subcontractor's final invoice and release and assignment shall be submitted to RTI within 90 days following completion of the period of performance of this Subcontract. Payment of the **final invoice** will be withheld pending:

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

RTI shall pay all subcontractor invoices on a Net 30 basis.

Article 11. Taxes

Unless the Subcontract specifies otherwise, Subcontractor is liable for and shall pay, all taxes, impositions, charges and exactions imposed on or measured by this Subcontract except for applicable sales and use taxes that are separately stated on Subcontractor's invoice. Prices shall not include any taxes, impositions, charges or exactions for which Subcontractor has furnished a valid exemption certificate or other evidence of exemption.

Article 12. Record Retention and Access

Subcontractor shall maintain books, records, documents, program and individual service records and other evidence of its 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. Subcontractor shall retain all such records concerning this contract for a period of three (3) years after the completion of the Subcontract. 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 13. Confidential Information

- A. During the term of this Subcontract, Subcontractor 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 Subcontractor as a result of services under this Subcontract shall be considered confidential and shall be considered the sole property of RTI and/or RTI's Client. Confidential Information may be used by Subcontractor 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.

Subcontractor 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..

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").

- B. 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 Subcontractor;
 - becomes available to Subcontractor 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;
 - Subcontractor develops independently without use of the disclosing party's Confidential Information, as demonstrated by written records and evidence;
 - was in Subcontractor's possession or known to it prior to its receipt from the disclosing party; or
 - is required by law to be disclosed, provided Subcontractor 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 Subcontract and indefinitely for any Trade Secrets. Subcontractor shall return or destroy all copies of any Confidential Information it has received from RTI within thirty (30) days after the effective date of the termination. At the request of RTI, an authorized officer of the Subcontractor 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 14. Right to Publish/Release of Information

- A. Subcontractor 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 Subcontract Administrator; provided, however, that Subcontractor 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. Subcontractor 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 Subcontract, use of either party's name may be made in internal documents, annual reports, and data bases which are 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. Subcontractor 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 Subcontractor 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 Subcontractor in such materials and any notices or legends appearing thereon, provided (1) Subcontractor is entitled to place such notices or legends and (2) no other provisions of this Subcontract (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 15. Assumption of Liability: Waiver and Release

In consideration of the mutual covenants, terms and conditions contained in this Subcontract, it is understood and agreed that Subcontractor hereby assumes full responsibility for any and all claims, causes of action, demands, liabilities, fines, penalties, losses, damages, costs and expenses of whatsoever nature, including attorneys' fees, resulting from but not limited to, death, bodily injury, and damage to property and the environment, arising out of or connected with any act or omission of the Subcontractor and/or performance of services pursuant to this Subcontract by Subcontractor, its agents, subcontractors, employees or assigns, and hereby releases and discharges RTI from any responsibility whatsoever for any such claims, demands, losses or expense, unless caused by or resulting from a material breach of this Subcontract by RTI which is not cured within a reasonable period of time following actual receipt by RTI of written notice describing the nature of such breach.

Article 16. Indemnification

- A. Subcontractor shall defend, indemnify and hold RTI harmless 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 or their property which is directly or indirectly caused by the negligence, willful misconduct, breach of this Subcontract, or violation of statutory duties of Subcontractor, or its employees, officers, directors, or agents, arising out of or in connection with the performance of this Subcontract.
- B. RTI shall promptly notify Subcontractor of any claim which is covered by this provision. Subcontractor shall, in a diligent and timely manner, (i) brief RTI on all material information pertaining to a Claim and Subcontractor'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 Subcontractor at Subcontractor's request with regard to defending against a Claim shall be at the sole expense of Subcontractor. RTI may, in its sole discretion, participate in any defense or settlement of a Claim and/or appoint adequate counsel, at Subcontractor's sole expense, to defend an Indemnitee against a Claim. Subcontractor 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 Indemnity

In addition to any other warranty by Subcontractor against infringement, statutory or otherwise, Subcontractor shall defend at its expense, any suit against RTI or RTI's Client based on a claim that any item furnished by Subcontractor under this Subcontract or the normal use or sale thereof infringes any intellectual property right, including but not limited to patent or copyright, and shall pay costs and damages finally awarded in any such suit, provided that Subcontractor is notified in writing of the suit and given authority, information, and assistance at Subcontractor's expense for the defense of same. If the use or sale of said item is enjoined as a result of such suit, Subcontractor, at no expense to RTI, shall obtain for RTI and RTI's Client the right to use and sell said item or shall substitute an equivalent item reasonably acceptable to RTI and extend this indemnity thereto.

[Subcontracts or Subawards Issued by RTI will include applicable Intellectual Property provisions.]

Article 18. Governing Law

This Subcontract 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 Subcontract involves the sale of good, then this Subcontract excludes the application of the 1980 United Nations Convention on Contracts for the International Sale of Goods.

[Subcontracts or Subawards issued by RTI will include an Alternative Dispute Resolution clause.]

Article 19. Notice of Litigation and Labor Disputes

- A. Subcontractor 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 Subcontractor to fulfill the terms and conditions of this Subcontract, including but not limited to financial, legal or any other situation which may prevent the Subcontractor from meeting its obligations on the Subcontract.
- B. Whenever Subcontractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Subcontract, Subcontractor shall immediately (within 5 calendar days) give notice thereof, including all relevant information, to RTI.

Article 20. Insurance

- A. Upon execution of the Subcontract, Subcontractor certifies that it maintains and also that it shall require any lower-tier Subcontractor to maintain throughout this Subcontract the following insurance at, or in excess of, the limits detailed below.
- 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 Subcontractor or of any of its employees, agents, or lower-tier subcontractors, with \$1,000,000 combined single limits.
- B. 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 Subcontract Administrator.
- C. Subcontractor's insurance policy shall name as an additional insured:
"RTI International and its subsidiaries, affiliates, officers, directors, and employees"
- D. Subcontractor shall provide to RTI, upon Subcontract execution and upon each renewal or replacement thereof a certificate of insurance depicting the insurance requirements set forth in this Article.

Article 21. Stop Work Order

- A. In the event that RTI initiates a "Stop Work" order under this Subcontract, Subcontractor shall immediately stop Work in accordance with written notice received from RTI. Subcontractor shall take all reasonable steps to minimize the incurrence of costs allocable to the Work during the period of Work stoppage.
- B. Once the Stop Work order is no longer necessary, RTI shall either terminate in accordance with the provisions of this Subcontract or lift the Stop Work order by written notice to Subcontractor. In the event Subcontractor is given notice to continue performing work on the Subcontract, an equitable adjustment in accordance with the principles of the "Changes and Modifications" clause above shall be made to the price, delivery schedule, or other provision(s) affected by the Work stoppage, if applicable, provided that the claim for equitable adjustment is made within thirty (30) days after date of notice to continue.

Article 22. Termination/Cancellation

Termination for Default.

- A. If Subcontractor should persistently or repeatedly refuse or should fail, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials, or if Subcontractor should fail to make prompt payment to subcontractors for material or labor, or otherwise is guilty of a violation on any provision of this Subcontract, including delivery delays beyond fifteen (15) days after specified delivery date, or as otherwise specified in the Subcontract, then RTI, without prejudice to any of the other rights or remedies expressly provided by law, may cancel this Subcontract, or any part hereof, by written notice to Subcontractor 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 Subcontractor, 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 Subcontractor, RTI shall have the right to hold Subcontractor 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 Subcontract, 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 ultimate government customer, and without liability may, upon written notice to Subcontractor, terminate this Subcontract in whole or in part, at any time, whether or not Subcontractor is in default of any of its obligations hereunder. Upon such cancellation, Subcontractor agrees to waive any claim for damages, including loss of anticipated profits on account hereof. However, RTI agrees that Subcontractor 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 Subcontractor. In no event shall such payments be greater than the original Subcontract 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. Subcontractor shall provide RTI any supporting information necessary to document the reasonableness of Subcontractor's termination for convenience claim. RTI reserves the right to verify the amounts of any cost and profit increments claimed by Subcontractor, through an audit of Subcontractor's records.

Article 23. Compliance with Laws

Subcontractor shall comply with all applicable statutes and government rules, regulations, policies and orders.

Article 24. Standards of Ethics and Business Conduct

- A. RTI has established very high ethical standards for its employees, subcontractors 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 Subcontractors are required to maintain a Code of Business Ethics and Conduct in compliance with FAR 52.203-14
- B. If Subcontractor 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 Subcontractor or anyone affiliated with Subcontractor, Subcontractor 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 25. Executive Order on Terrorism Financing

Subcontractor 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 Subcontractor to ensure compliance with these Executive Orders and laws. This provision must be included in all subcontracts/subawards issued under this Subcontract.

Article 26. Export Controls

- A. Subcontractor shall comply with all U.S. export control laws and regulations, specifically including but not limited to, 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; the Arms Export Enforcement Act ("AECA"), the International Emergency Economic Powers Act ("IEEPA") the U.S. Export Administration Regulations ("EAR"), U.S. sanctions programs contained in 31 C.F.R. Parts 500-599, and any other Laws applicable to exports promulgated by any Government Agency; including the requirement for obtaining any export license or agreement, if applicable. Without limiting the foregoing, Subcontractor agrees that it will not transfer any export controlled item, data, or services, to include transfer to foreign persons employed by or associated with, or under contract to Subcontractor or Subcontractor's lower-tier subcontractors, without the authority of an export license, agreement, or applicable exemption or exception.
- B. Subcontractor shall notify RTI if any deliverable under this Subcontract is restricted by export control laws or regulations.
- C. Subcontractor shall immediately notify the RTI Subcontract Administrator if Subcontractor is, or becomes listed in any Denied Parties List or if Subcontractor's export privileges are otherwise denied, suspended or revoked in whole or in part by any U.S. Government entity or agency.
- D. If Subcontractor is engaged in the business of either exporting or manufacturing (whether exporting or not) defense articles or furnishing defense services, Subcontractor 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.

- E. Where Subcontractor is a signatory under a RTI export license or export agreement, Subcontractor 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 Subcontractor's performance under the Subcontract.
- F. Subcontractor 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 Subcontractor, its officers, employees, agents, or subcontractors at any tier, in the performance of any of its obligations under this Article.
- G. If the technical data required to perform this Subcontract is subject to ITAR, Subcontractor shall comply with the following:
- (i) The technical data shall be used only in the performance of work under this Subcontract; and
 - (ii) The data shall not be disclosed to any other person without written approval from the RTI Subcontract Administrator; and
 - (iii) Any rights in the data may not be acquired by any foreign person; and
 - (iv) Subcontractor, including lower-tier subcontractors, shall return, or at RTI's direction, destroy all of the technical data exported to Subcontractor pursuant to this Subcontract upon fulfillment of its terms; and
 - (v) Unless otherwise directed by RTI, Subcontractor shall deliver the work only to RTI or to an agency of the U.S. Government.
 - (vi) Subcontractor shall include the terms of this paragraph (g) in all lower-tier subcontracts issued when technical data subject to ITAR is provided to the lower-tier subcontractor.

Article 27. Foreign Corrupt Practices Act

Subcontractor 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 Conventional 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 subcontract will be performed outside of the United States of America. Specifically, Subcontractor understands and agrees that it shall be unlawful for the Subcontractor and/or any officer, director, employee or agent of the Subcontractor 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 Subcontract 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 28. 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 29. Electronic Contracting

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

Article 30. Combating Trafficking in Persons

The United States Government has adopted a zero tolerance policy regarding trafficking in persons. Subcontractor and its employees shall not—

- (1) Engage in severe forms of trafficking in persons during the period of performance of the subcontract;
- (2) Procure commercial sex acts during the period of performance of the subcontract; or
- (3) Use forced labor in the performance of the subcontract.

Subcontractor shall notify its employees of the government's zero tolerance policy, the actions that will be taken against employees for violations of this policy (including, but not limited to, removal from the subcontract, reduction in benefits, or termination of employment), and take appropriate action, up to and including termination, against employees or subcontractors that violate this policy.

This subcontract hereby incorporates FAR 52.222-50 by reference. Subcontractor shall include the substance of FAR 52.222-50 in all subcontracts/subawards issued under this Subcontract.

Article 31. Debarment and Suspension

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

Article 32. Organizational Conflicts of Interest

If this Subcontract is federally funded:

- A. Subcontractor warrants that, to the best of the Subcontractor's knowledge and belief, there are no relevant facts or circumstances which could give rise to an organizational conflict of interest or that the Subcontractor has disclosed all such relevant information.
- B. Subcontractor agrees that if an actual or potential organizational conflict of interest is discovered after execution of this Subcontract, the Subcontractor will make a full disclosure in writing to the RTI Subcontract Administrator. This disclosure shall include a description of activities that the Subcontractor has taken or proposes to take, after consultation with the RTI Subcontract Administrator, to avoid, mitigate, or neutralize the actual or potential conflict.
- C. The RTI Subcontract Administrator may terminate this Subcontract for convenience, in whole or in part, if it deems such termination necessary to avoid an organizational conflict of interest. If the Subcontractor was aware of a potential organizational conflict of interest prior to award, or discovered an actual or potential conflict after award and did not disclose or misrepresented relevant information to the RTI Subcontract Administrator, RTI may terminate the contract for default, and/or forward the relevant information to the Government Contracting Officer, who may debar the Subcontractor from Government contracting, and/or pursue such other remedies as may be permitted by law or this Subcontract.
- D. Subcontractor further agrees to insert provisions which shall conform substantially to the language of this Section, including this paragraph (d), in any lower-tier subcontract or consultant agreement hereunder.

Article 33. Entire Agreement

Both parties acknowledge that they have read this Subcontract, understand it, and agree to be bound by its terms and further agree that it is the entire agreement between the parties hereto which supercedes 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 the party against whom such modification or waiver is sought to be enforced.