

Terms and Conditions-Government Subcontracts

Except as may be set forth in the following terms and conditions with the Government Contracting Officer's express consent, the subcontractor shall not acquire any direct claim or direct course of action against the United States Government ("**Government**"). None of the following terms and conditions shall be construed in a manner that would adversely affect the interests of the Government, and in no event shall the terms of this subcontract give the Subcontractor the ability to directly pursue a claim or course of action against the Government.

Subcontractor, as identified in a Purchase Order ("**PO**"), agrees to provide to Battelle Memorial Institute ("**Battelle**") technical/research services and/or goods in accordance with the PO and, if applicable, a Statement of Work ("**SOW**") and/or other similar documents such as a task order, under the following terms and conditions. Headings are for convenience only and shall not be deemed to limit or otherwise affect the construction of any provision hereof.

1. INVOICING AND PAYMENT

- a) Payment terms are net forty-five (45) days from Battelle Accounts Payable's receipt of the Subcontractor's properly completed and documented invoice unless otherwise identified on the face of the PO. Subcontractor shall not invoice Battelle more frequently than once per month. Invoices shall be submitted via email to: accountspayable@battelle.org. All invoices shall contain an invoice number, the PO number, PO line numbers where associated costs should be applied, and the time period for which services were performed or goods were shipped. All invoices shall be accompanied by satisfactory supporting documentation as required by the flow-downs, subcontract type, and/or the Battelle Procurement Representative (e.g., detailed expense reports for travel, materials, and ODCs; receipts may be required upon request). Failure to include the required invoice information will result in non-payment until such time as a properly itemized invoice is received by Battelle. All invoices must be submitted to Battelle within ninety (90) days from the end of the month following the month in which the services and goods were provided; invoices submitted after this date will not be paid by BATTELLE. The final invoice shall be marked "Final Invoice." Invoices that do not contain the requisite information or are not accompanied by documentation required by this clause will be returned unpaid to the Subcontractor for revision.
- b) For subcontracts where labor hour reporting is required (e.g., time-and-materials, labor-hour, Cost Plus Fixed Fee, other cost type, or firm-fixed-price level-of-effort subcontracts), in addition to the foregoing requirements, invoices shall contain a breakdown of labor provided during the invoice period. This labor breakdown shall include the number of hours worked by each labor category/personnel, the applicable hourly rate, and the total labor charge for each category/personnel. These invoices shall include the following signed certification: "By submission of this invoice, Subcontractor certifies that all labor charges identified in this invoice were performed by named individual(s) or personnel that met all requirements, including but not limited to, the education and experience requirements of specified labor classifications applicable to this subcontract between Subcontractor and Battelle.
- c) Each payment made shall be subject to reduction by any amounts which are found by Battelle, Battelle's Client, or Subcontractor not to have been properly payable. Subcontractor shall promptly notify Battelle of any overpayments and remit the overpayment amount to Battelle along with a description of the overpayment, including the circumstances of the overpayment, affected PO and delivery order number, if applicable, and affected PO line item or subline item if applicable. Battelle, and any affiliate of Battelle, may withhold, deduct, and/or setoff all money due, or which may become due, from Battelle or any affiliate of Battelle, arising out of Subcontractor's performance under this PO or any other transaction Battelle and its affiliates may have with Subcontractor.

2. TAXES

- a) Battelle is currently exempt from sales tax on items delivered to, or taxable services performed in CO, CT, DC, FL, IN, KY, ME, MD, MA, MI, MO, NJ, NY, OH, RI, TN, TX, UT, VT, WV and WI; in NM and VA, Battelle is currently exempt only for purchase of tangible personal property and not purchased services; in UT, Battelle can issue an exemption certificate only if the total invoice exceeds \$1,000 USD. Sales tax will not be paid by Battelle on such subcontracts.
- b) California Form 590 Withholding Exemption Certificate - California Revenue and Taxation Code Section 18662 requires withholding of income tax on payments of California source service income made to nonresidents of California. Withholding is not required for goods and materials. The [CA590](#) is used to certify an exemption from nonresident withholding. Failure to properly complete a [CA590](#) will subject vendor payments to the required withholding which will then be paid directly to the State of California. For partial performance within the State of California by vendors who do not qualify for an exemption, the vendor may complete a Form [CA587](#) to establish the amount of income allocation subject to California withholding by Battelle. For questions on California Withholding, See FTB Publication 1017.
- c) All Subcontractors shall be solely responsible and liable for the payment of all current or future federal, state or local taxes, taxes related to wages paid to Subcontractor's employees, duties, tariffs, fees and any other charges, interest, penalties or assessments imposed by the government of any country or political subdivision thereof arising from this Agreement. Subcontractor shall indemnify, defend and hold Battelle and its officers, directors, agents, and employees harmless from any claims, actions, assessments and damages, including but not limited to, reasonable attorneys' fees, interest, and penalties, asserted or assessed against Battelle and its officers, directors, agents, and employees by any person, entity or government of any country or political subdivision thereof relating to Subcontractor's responsibilities under this clause.
- d) All payments made to Subcontractor for services performed or goods provided under this Agreement may be subject to the tax withholding requirements of an applicable jurisdiction. Subcontractors shall cooperate with Battelle in completing the appropriate tax withholding forms required by an applicable jurisdiction. If required by an applicable jurisdiction, Battelle will withhold from Subcontractor's payment the applicable tax withholding amount.

3. BATTELLE TECHNICAL REPRESENTATIVE

A Battelle Technical Representative may be identified in a PO and/or SOW or similar document such as a task order and may, from time to time, render assistance, give technical advice, or discuss or affect an exchange of information with Subcontractor's personnel concerning the services or goods to be provided hereunder. No such action shall be deemed to be a change under the "Changes" clause of these Terms and Conditions and shall not be the basis of an equitable adjustment. Only the applicable Battelle Procurement Representative has the authority to make changes to any PO and/or SOW or similar document such as a task order. Except as otherwise provided herein, all notices to be furnished by the Subcontractor shall be sent to the applicable Battelle Procurement Representative.

4. CHANGES

- a) The Battelle Procurement Representative may at any time, by written notice, and without notice to sureties or assigns, make changes to a PO and/or SOW or similar document such as a task order regarding one or more of the following: (i) description of services; (ii) drawings, designs, or specifications; (iii) method of shipping or packing; (iv) place of inspection, acceptance, or point of delivery; (v) time of performance; and (vi) place of performance.
- b) If any such change causes a change in the labor mix or the time required for performance, Subcontractor may request an equitable adjustment to price and/or delivery schedule.
- c) Subcontractor must request any equitable adjustment within seven (7) calendar days of receipt of the written change. If the Subcontractor's proposal includes the cost of property made obsolete or excess by the change, Battelle shall have the right to prescribe the manner of disposition of the property.

- d) Disagreement over any adjustment shall be resolved in accordance with the "Disputes" clause of these Terms and Conditions. However, nothing contained in this "Changes" clause shall excuse Subcontractor from proceeding without delay in its performance as directed.
- e) All changes, modifications, and amendments to these Terms and Conditions, any PO's and/or SOW's or similar documents such as a task order will be in writing.

5. GOVERNMENT CONTRACT REQUIREMENTS

Referenced within and/or attached to a PO and/or SOW or similar documents such as a task order, are flow down provisions of the Government Prime Contract (collectively, the "**Government Clauses**") which are hereby incorporated into these Terms and Conditions by reference. For purposes of these Terms and Conditions, terms contained therein, such as "client", "Buyer", a company name, "Government", "State of _____", and equivalent terms referring to Battelle's Client (hereinafter referred to as "**Client**"), shall be deemed to mean Battelle; and terms such as "Contractor", "Subcontractor", "Vendor," and equivalent terms shall be deemed to mean Subcontractor. Subcontractor shall include in each lower-tier subcontract the appropriate flow down clauses as required by the FAR and DFARS.

6. GOVERNMENT PROPERTY

Battelle or Client may provide Government-furnished property, as specified in the PO and/or SOW or similar document such as a task order, to the Subcontractor. The Subcontractor is responsible for notifying the Battelle Procurement Representative of any additional Government-furnished property provided for use in the performance of this subcontract. The Subcontractor is also responsible for obtaining prior approval from the Battelle Procurement Representative for the purchase of any property, equipment, or material for use in the performance of its services or provision of goods that was not previously proposed. If the Subcontractor has a Government approved property system, then Subcontractor shall notify Battelle of any changes in the status of its system. All Government property shall be administered in accordance with the provisions of FAR 52.245-1 or any referenced language in the Government Clauses.

7. COMMUNICATION WITH CLIENT

Battelle shall be solely responsible for all liaison and coordination with Client, with the sole exception of permitting small businesses to discuss payment or utilization matters with the Government Contracting Officer. Under no circumstances will Subcontractor act upon directions given to it by representatives of Client. If Subcontractor receives such directions from a representative of Client, Subcontractor will notify the Battelle Technical Representative as soon as possible and obtain written authorization from the Battelle Procurement Representative before taking any action based upon Client's directions. Battelle will not be liable for the cost of work performed by Subcontractor without written authorization by the Battelle Procurement Representative.

8. TIME IS OF THE ESSENCE

Time is of the essence related to any dates or schedules related to Subcontractor's performance.

9. CONFLICT OF INTEREST

In addition to any specific conflict of interest requirements contained in any PO and/or SOW or similar documents such as a task order and those pursuant to the provisions of FAR 9.5, Subcontractor warrants that it is and shall remain free of any obligation or restriction, which would interfere or be inconsistent with or present a conflict of interest concerning the work to be furnished by Subcontractor hereunder.

10. PUBLICITY

No public releases including those for news, advertising, information, technical or scientific purposes relating to any PO and/or SOW or other document such as a task order shall be issued by Subcontractor or by any second or lower tier subcontractor without Battelle's prior written consent. Battelle does not endorse products or services. Accordingly, Subcontractor shall not use or imply Battelle or Client's name, or use Battelle or Client's information or reports, for advertising, promotional purposes, raising of capital, recommending investments, sale of securities, or in any way that implies endorsement by Battelle or Client.

11. INDEPENDENT CONTRACTOR

Subcontractor is an independent contractor and not an employee, agent, or representative of Battelle. Subcontractor shall be solely responsible for all employment-related wages, benefits, FICA, federal and state unemployment and other taxes and payments as required by law, for itself and any persons it employs. Subcontractor shall be solely responsible for its own financial obligations to third parties and to its employees and contractors. Further, Subcontractor agrees that it shall not be covered by any Battelle insurance or benefits. Subcontractor shall indemnify, defend, and hold Battelle and its officers, directors, agents, and employees harmless from any claims, actions, assessments, and damages including, but not limited to, reasonable attorneys' fees, interest, and penalties asserted or assessed against Battelle and its officers, directors, agents, and employees by any person or governmental entity relating to Subcontractor's responsibilities under this clause.

12. CONFIDENTIALITY

Subcontractor agrees to keep confidential the existence and terms of any PO and/or SOW and similar documents such as a task order, any information or material obtained by Subcontractor or of which Subcontractor may become aware in its performance hereunder, and work product and deliverables which Subcontractor conceives or creates for Battelle (the "**Confidential Information**"). Subcontractor shall not use such Confidential Information for any purpose other than to perform its obligations hereunder, nor disclose Confidential Information to any third parties without Battelle's prior written consent. Subcontractor shall be responsible for ensuring its personnel and third parties under contract with Subcontractor comply with the terms of this clause. Subcontractor shall protect the Confidential Information to the same standard of care it uses to safeguard its own confidential information, but not less than a commercially reasonable standard of care. These obligations with respect to handling Confidential Information do not apply to: (i) Information in the public domain through no fault of Subcontractor; (ii) Information already lawfully known to Subcontractor outside of Battelle's disclosure; and (iii) Information lawfully received from other sources, without a breach of this Confidentiality clause. Any combination of information shall not be considered public merely because individual elements thereof are in the public domain, unless the combinations and its elements are in the public domain. Upon request at any time and at the expiration or termination of any PO and/or SOW or similar document such as a task order, Subcontractor agrees to return to Battelle all items furnished by Battelle or developed by Subcontractor during or as a result of Subcontractor's performance hereunder, which are the sole property of Battelle.

13. COMPLIANCE WITH LAWS

Subcontractor agrees to comply with all applicable laws, orders, rules, regulations, ordinances and ethical and professional standards of behavior and conduct. Without limiting the foregoing, Subcontractor specifically acknowledges the importance of strict adherence to those laws and professional standards related to doing business with the Government, adhering to ethical business practices, complying with anti-fraud requirements and assuring scientific integrity. Subcontractor shall procure all licenses/permits, pay all fees and other required charges, and shall comply with all applicable guidelines and directives of any local, state and/or federal governmental entity. Subcontractor shall indemnify, defend, and hold harmless Battelle and its officers, directors, agents, and employees harmless from any claims, actions, assessments, and damages including, but not limited to, reasonable attorneys' fees, interest, and penalties asserted or assessed against Battelle and its officers, directors, agents, and employees by any person or governmental entity relating to any failure by Subcontractor to comply with this clause.

14. INSURANCE

- a) Unless the Government Prime Contract contains a specific Government Clause regarding insurance, Subcontractor shall purchase and maintain, at its own expense, insurance in amounts reasonable and customary for the industry in which Subcontractor is engaged. Subcontractor shall maintain all insurance which is required by any law, statute, ordinance or regulation of any jurisdiction having authority in whole or in part over the Subcontractor's operations or subcontract activities, including without limitation any non-United States jurisdictions. Notwithstanding the foregoing, the following minimum insurance coverage shall be maintained:

	<u>Coverage</u>	<u>Limits</u>
(i)	Workers' Compensation	Statutory
(ii)	Employer's Liability	\$1,000,000 per occurrence
(iii)	Commercial General Liability	\$3,000,000 per occurrence (Including Contractual and Products and Completed Operations Liability)
(iv)	Business Auto Liability	\$1,000,000 per occurrence (Owned and Non-owned)
(v)	Professional Liability Insurance (if applicable)	\$3,000,000 per occurrence
(vi)	Property Insurance	Full replacement value covering any and all supplies and equipment owned by Battelle or Client which is under the control of Subcontractor
(vii)	Any other insurance which may be required by the Client.	

- b) The insurance coverage shall be with insurer(s) that are satisfactory to Battelle. Battelle shall be designated as an Additional Insured under the Commercial General Liability, Business Auto Liability and any umbrella coverage. Subcontractor's insurance shall be primary and non-contributing over any and all insurance that may be maintained by Battelle. Subcontractor and its insurer(s) shall waive all rights of subrogation against Battelle, its officers, directors, agents, trustees and employees. If any of the required insurance is maintained on a claims-made basis, Subcontractor shall maintain such insurance for a period of three (3) years after termination or expiration of a PO and/or SOW or similar document such as a task order.
- c) Subcontractor shall furnish to Battelle Certificates of Insurance evidencing compliance with the insurance requirements herein. These certificates shall provide for at least thirty (30) days prior notice to Battelle of any cancellation, non-renewal or material reduction of coverage. Certificates shall be provided prior to the initiation of subcontract activities and upon each renewal in subsequent periods for a period of three (3) years after termination or expiration of any PO and/or SOW or similar document such as a task order. Failure of Battelle to notify Subcontractor of any non-compliance with this clause shall not constitute a waiver of Subcontractor's obligations.
- d) Such minimum insurance limits shall not limit Subcontractor's liability under this clause.
- e) Subcontractor shall require any lower tier subcontractors to satisfy the requirements of this clause.

15. WARRANTY

- a) **Goods:** Subcontractor warrants that all goods furnished hereunder will be free from defects for a period of one (1) year from final acceptance by Battelle or for the standard warranty period provided by Subcontractor, whichever is longer, will conform with all requirements of the PO and/or SOW, and, unless manufactured solely in accordance with Battelle-certified manufacturing designs, will be free from defects in design. The warranty period will be extended for another one (1) year or for the standard warranty period provided by Subcontractor,

whichever is longer, for those goods corrected or replaced under Subcontractor's warranty. Subcontractor agrees to notify Battelle immediately upon becoming aware of a potential problem with goods previously delivered to Battelle. Such notification shall include a recommended course of action.

- b) **Services:** Subcontractor warrants that all services performed hereunder will be performed with the standard of a fully qualified professional, conform to the requirements of the PO and/or SOW or similar document such as a task order, and be performed in strict compliance with any applicable regulatory or international standards. Any services corrected or re-performed will be covered by this warranty.
- c) The warranties provided in a) and b) above shall apply unless a more extensive warranty(s) is/are specified in the Government Clauses, in which case the greater warranty shall apply.
- d) If Subcontractor breaches any warranty, Battelle may elect, at its sole discretion and with no increase in price, to:
 - (i) Require Subcontractor either to repair or replace, at Battelle's election, defective or nonconforming goods promptly; or
 - (ii) Require Subcontractor promptly to furnish materials or parts and installation instructions required to successfully accomplish the correction of defective or nonconforming goods, and equitably reduce the price to account for the cost of correction including, without limitation, removal and installation; or
 - (iii) Require Subcontractor to promptly redesign defective or nonconforming goods and require Subcontractor promptly to repair or replace goods manufactured in accordance with such defective design; or
 - (iv) Require Subcontractor either to correct or re-perform defective or nonconforming services promptly; or
 - (v) Equitably reduce the price of the goods and/or services; or
 - (vi) Correct or have corrected the nonconformity or defect at Subcontractor's expense.

16. INDEMNIFICATION

- a) Notwithstanding anything to the contrary contained herein, Subcontractor agrees to indemnify, defend and hold Battelle, its officers, directors, agents, and employees harmless from and against any and all direct losses, liabilities, damages, claims, causes of action, judgments, and all expenses and costs of any kind, including reasonable attorneys' fees arising out of: (i) issues that are caused, in whole or in part, by Subcontractor's negligence, wrongful acts, omissions, or willful misconduct or the negligence, wrongful acts, omissions, or willful misconduct of anyone employed by or under contract with Subcontractor; (ii) allegations of or actual infringement of any patent, copyright, or trademark by Subcontractor or anyone employed by or under contract with Subcontractor; and (iii) any bodily injury, property damage, or death caused, in whole or in part, by Subcontractor's negligence, wrongful acts, omissions, or willful misconduct or the negligence, wrongful acts, omissions, or willful misconduct of or anyone employed by or under contract with Subcontractor.
- b) In addition, Subcontractor agrees to hold Battelle harmless from any and all liability, claims, suits, demands, or other consequences, and all costs relating to Subcontractor's failure to provide current, complete and/or accurate cost and pricing data or relating to any improper, unallocable, unreasonable or unallowable labor or other charge(s) for which Subcontractor has requested payment or has been paid.
- c) Further, Subcontractor agrees to waive its immunity as an employer under *O.R.C. Section 4123.74 and Article 2, Section 35, of the Ohio Constitution* in order to fulfill its obligation to indemnify Battelle from claims by Subcontractor's employees. Except for in cases of Battelle's gross negligence or willful misconduct, Subcontractor waives any and all claims against Battelle and its officers, directors, agents and employees

arising out of personal injury (including death) or damage to property occurring in connection with Subcontractor's performance hereunder, including, but not limited to, claims of subrogation under *O.R.C. Section 4123* or any other section of the Ohio Revised Code or the laws of any other jurisdiction relating to workers' compensation.

17. INTELLECTUAL PROPERTY

- a) Unless otherwise expressly agreed in a PO and/or SOW or similar document such as a task order and subject to sub paragraph b) below, any inventions, concepts, computer codes, technical data, drawings, works of authorship, and other discoveries or intellectual property (collectively, "**Intellectual Property**") first made or conceived by Subcontractor in its performance hereunder or which is derived from or based on the use of information supplied by Battelle shall be the property of Battelle. Subcontractor shall execute such documents necessary to perfect Battelle's title to the Intellectual Property. Unless otherwise expressly agreed in a PO and/or SOW or similar document such as a task order and subject to sub paragraph b) below, any work performed hereunder which includes any copyright interest shall be considered a "work made for hire." Subject to sub paragraph b) below, to the extent any such works do not qualify as a "work made for hire," Subcontractor hereby assigns to Battelle all its intellectual property rights, including its copyright rights, in such works effective immediately upon creation of such works, including when they are first fixed in a tangible medium.
- b) Government Clauses shall, when applicable, take precedence over any conflicting provision of this Section 17, to the extent that such flow down provisions so require. The incorporation by reference of such Government regulations dealing with subcontractors' rights in Technical Data, subject inventions, copyrights, software and similar intellectual property are not intended to, and shall not, unless otherwise required by applicable law, obviate or modify any greater rights which Subcontractor may have previously granted to Battelle pursuant to prior agreements between the Subcontractor and Battelle.
- c) Nothing in these Terms and Conditions shall be construed or interpreted to limit or in any way restrict the rights of the Government in regard to data, tooling and other information it owns or has a right to use, including the right to authorize the Subcontractor's use of such data, tooling or other information in direct contracts between the Subcontractor and the Government.

18. PATENT INDEMNIFICATION

Notwithstanding anything to the contrary contained herein, Subcontractor warrants that the services performed, and goods delivered hereunder will not infringe or otherwise violate the intellectual property rights of any third party in the United States or any foreign country. In addition, Subcontractor agrees to defend, indemnify and hold harmless Battelle, its officers, directors, agents, and employees, and Client from and against any direct claims, damages, losses, costs and expenses, including reasonable attorney's fees, arising out of any action by a third party that is based upon a claim that the services performed and/or goods delivered hereunder infringes or otherwise violates the intellectual property rights of any person or entity. This agreement to indemnify and hold harmless for infringement claims shall not be considered an allowable cost except with regard to allowable insurance costs.

19. COUNTERFEIT PARTS

- a) For the purposes of this clause, (i) the meaning of "Counterfeit Electronic Part" and "Electronic Part" are as defined in DFAR 252.246-7007, Contractor Counterfeit Electronic Part Detection and Avoidance System (August 2016); and (ii) "Work" means parts delivered hereunder that are the lowest level of separately identifiable items (e.g., articles, components, goods, and assemblies).
- b) Subcontractor warrants that the Work delivered hereunder shall not be or contain Counterfeit Electronic Parts. Subcontractor shall obtain and retain all documentation required to fully trace the distribution and sale of the Work delivered hereunder back to the relevant original manufacturer, and, on request of Battelle, shall provide such authenticating documentation. Battelle shall have the right to audit, inspect, and/or approve Subcontractor's counterfeit parts processes and supporting documentation at any time before or after delivery of the Work ordered hereunder.

- c) Should Subcontractor become aware of a confirmed or suspected Counterfeit Electronic Part that, by any means, has been delivered to Battelle, or acquired for use hereunder whether or not delivered to Battelle, Subcontractor shall provide notification to Battelle's Procurement Representative as soon as possible but not later than seven (7) days after discovery. Subcontractor shall quarantine any suspect Counterfeit Electronic Part and make them available for investigation by appropriate government authorities.
- d) In the event Work delivered under this subcontract constitutes or includes a Counterfeit Electronic Part, Subcontractor shall, at its expense, promptly replace the Work from authorized sources conforming to the requirements hereunder. Notwithstanding any other provision herein, Subcontractor shall be liable for all costs relating to the inclusion, removal, and replacement of Counterfeit Electronic Parts, including, without limitation, Battelle's costs of removing the Counterfeit Electronic Parts, of reinserting replacement components, and of any testing necessitated by the reinstallation of components after the Counterfeit Electronic Parts have been exchanged. The remedies in this paragraph are in addition to any remedies Battelle may have at law, equity, or under other provisions of this subcontract. Subcontractor shall flow down the substance of this clause, including this sentence, in all lower-tier subcontracts related to the provision of goods and services hereunder.

20. INSPECTION

Battelle shall have the right, at all reasonable times, to inspect or otherwise evaluate the work performed or being performed hereunder. If any inspection or evaluation is made by Battelle on the premises of Subcontractor, Subcontractor must provide, and shall require all lower-tier contractors to provide, access to all reasonable facilities and assistance for the safety and convenience of Battelle representatives in the performance of their duties. Inspections and tests by Battelle do not relieve Subcontractor of its responsibility for defects or other failures.

21. ENVIRONMENT SAFETY AND HEALTH REQUIREMENTS

During its performance hereunder, Subcontractor shall comply with all applicable Federal, state, and local environment, safety, and health laws and regulations. Subcontractor shall also perform work safely, in a manner that ensures adequate protection for employees, the public, and the environment, and shall be accountable for the safe performance of work. Subcontractor shall exercise a degree of care commensurate with the work and the associated hazards. Subcontractor shall ensure the management of environment, safety, and health functions and activities becomes an integral, visible part of the Subcontractor's work planning and execution process. Subcontractor is also responsible for its subcontractors' compliance with the environment, safety, and health requirements of this subcontract. Subcontractor shall be held accountable for a failure to maintain safety and environmental compliance.

22. EXPORT CONTROL

Subcontractor agrees that it shall comply with all United States export laws and regulations. Subcontractor agrees not to export or re-export any defense articles, products, materials, items and/or technical data, or the product(s) thereof, received from Battelle, unless Subcontractor has obtained in advance all required licenses, agreements or other authorizations from the Government. Exports of technical data include, without limitation, the sending or taking of any technical data out of the United States in any manner; disclosing or transferring technical data to a Foreign Person (i.e. any person who is not a lawful permanent resident of the United States or is not a protected individual as defined by 8 U.S.C. Sections 1101 and 1324) whether in the United States or abroad; or performing services for a foreign party, whether in the United States or abroad.

23. ACCESS

Subcontractor shall comply with all the rules and regulations regarding conduct, security and safety established by Battelle and/or Client for access to and activities in and around Battelle and/or Client's buildings and properties.

Subcontractor also agrees that all Subcontractor's employees will execute, upon request, an access agreement permitting access to a Battelle and/or Client facility. Client-issued assets (Badges, CAC Cards, Decals, etc.), are property of the Government. Upon voluntary or involuntary termination, Subcontractor shall surrender the asset(s) to the manager, facility security officer, or person who is debriefing you. Possession and attempted use of these assets after separation with Battelle may be considered a security violation or violation of criminal law, Section 793 and/or 1924, Title 18, United States Code.

24. NOTICE OF DEBARMENT OR SUSPENSION

Subcontractor shall provide immediate notice to the applicable Battelle Procurement Representative in the event of being suspended, debarred, or declared ineligible by any agency or department of the Government, or upon receipt of a notice of proposed debarment from any agency or department of the Government, during performance hereunder.

25. ASSIGNMENT AND CONSENT TO SUBCONTRACT

Subcontractor may not assign, transfer or delegate its rights or obligations hereunder, in whole or in part, without the prior written approval of Battelle. Any assignment (or attempted assignment) in violation of this Section 25 shall be void and of no force or effect. These Terms and Conditions and any PO and/or SOW or similar documents such as a task order shall be binding upon, inure to the benefit of, and be enforceable by and against the parties, their successors, assigns and legal representatives. No portion of the services and/or goods to be supplied hereunder, other than purchase of necessary materials to be incorporated into the services and/or goods, may be subcontracted by Subcontractor, in whole or in part, without the prior written consent of the Battelle Procurement Representative. Prior written consent is not necessary if the proposed lower tier subcontractor(s) had been identified by the Subcontractor in Subcontractor's proposal submitted to Battelle prior to award of any PO and/or SOW or similar document such as a task order.

26. FORCE MAJEURE

Neither party shall be responsible to the other for its temporary non-performance or delay in performance due to any act of God, accident, strike, court order, flood, fire, act of Government, war, riots, or any other cause not within that party's reasonable control that could not be avoided through the exercise of reasonable care and diligence (a "**Force Majeure Event**"). In the event of a Force Majeure Event, then the non-performing party will: (i) promptly notify the other party as soon as practicable and take reasonable steps to resume performance as soon as possible; and (ii) not be considered in breach of this Agreement for the duration of the Force Majeure Event. In the event the Force Majeure Event continues for a period of fifteen (15) business days, Battelle may immediately terminate the applicable PO and/or SOW or similar document such as a task order by providing written notice to Subcontractor. Upon receiving such a termination notice, Subcontractor shall follow the conditions set forth in Section 28.

27. STOP WORK

Battelle shall have the right to issue a stop work notice in accordance with the procedures set forth in FAR 52.242-15 or any referenced language in the Government Clauses. In the referenced clause(s), "Contracting Officer" shall be the Battelle Procurement Representative and "Contractor" shall be the Subcontractor herein.

28. TERMINATION FOR CONVENIENCE

- a) Battelle may immediately terminate part or all of any PO and/or SOW for its convenience by giving written notice to Subcontractor. In the event Battelle terminates for its convenience after performance has commenced, Battelle will compensate Subcontractor for the actual, allowable, and reasonable expenses incurred by Subcontractor for work in process up to and including the date of termination provided Subcontractor has used reasonable efforts to mitigate Battelle's liability.

- b) Upon termination, in accordance with Battelle's written direction, Subcontractor will immediately: (i) cease work; (ii) prepare and submit to Battelle an itemization of all completed and partially completed deliverables and services; (iii) deliver to Battelle deliverables satisfactorily completed up to the date of termination at the agreed upon prices in the relevant PO and/or SOW or similar document such as a task order; (iv) deliver upon request any work in process; and (v) take reasonable steps to mitigate costs and/or damages caused by the termination.
- c) In no event shall Battelle be liable for lost or anticipated profits, unabsorbed indirect costs or overhead, or for any sum in excess of the total PO and/or SOW or similar document such as a task order's price. Subcontractor's termination claim must be submitted within ninety (90) calendar days from the effective date of the termination; claims submitted after this date will not be paid by Battelle.
- d) Subcontractor shall continue all work not terminated by Battelle.

29. TERMINATION FOR DEFAULT

- a) Battelle, by written notice, may immediately terminate any PO and/or SOW or similar document such as a task order for default, in whole or in part, if Subcontractor: fails to comply with any of the material terms of a PO and/or SOW or similar document such as a task order; fails to make progress so as to endanger performance of a PO and/or SOW or similar document such as a task order; fails to provide adequate assurance of future performance; or becomes insolvent or makes a general assignment for the benefit of creditors.
- b) Battelle, at its discretion, may require Subcontractor to deliver to Battelle any services and goods, or other items that Subcontractor has specifically produced or acquired for the terminated portion of the PO and/or SOW or similar document such as a task order. Subcontractor shall only be compensated for the services and goods requested and accepted by Battelle. Subcontractor shall not be entitled to termination claim amount other than for services and goods requested and accepted by Battelle.
- c) Subcontractor shall continue all work not terminated.
- d) Subcontractor shall be liable to Battelle for cover costs, in addition to Battelle's other rights and remedies at law or in equity.
- e) If after termination under sub paragraph a) above, it is determined that Subcontractor was not in default, such termination shall be converted to a Termination for Convenience in accordance with Section 28.

30. DISPUTES

Until final resolution of any dispute hereunder, Subcontractor shall diligently proceed with the performance of all PO's and/or SOW's or similar document such as a task order as directed by Battelle. Subcontractor must raise a dispute within one (1) year of its accrual.

31. APPLICABLE LAW

This Subcontract shall be construed in accordance with the laws and enforced within the jurisdiction of the State of Ohio, without regard to its principles of conflicts of law with the expectation that the federal common law of government contracts, as enunciated and applied by federal judicial bodies, boards of contracts appeals, and quasi-judicial agencies of the Government, shall be used to construe and interpret any Government contract clauses and certifications.

32. RIGHTS AND REMEDIES

The rights and remedies of Battelle set forth in this subcontract are cumulative and are in addition to any other rights or remedies that Battelle may have at law and/or in equity. A party's failure to enforce any rights under this agreement will not be deemed to be a waiver of that party's rights.

33. DISCLAIMER OF CONSEQUENTIAL DAMAGES; LIMITATION OF LIABILITY

NEITHER PARTY SHALL HAVE ANY LIABILITY OF ANY TYPE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF OPPORTUNITY, OR LOSS OF REVENUE OR PROFIT ARISING OUT OF OR RELATED TO ANY PO AND/OR SOW OR SIMILAR DOCUMENT SUCH AS A TASK ORDER OR THE SERVICES AND GOODS PROVIDED HEREUNDER. EACH PARTY IS RESPONSIBLE FOR ITS OWN ACTS AND OMISSIONS AND THE RESULTS THEREOF AND SHALL NOT BE RESPONSIBLE FOR THE ACTS AND OMISSIONS OF THE OTHER PARTY. BATTELLE'S TOTAL CUMMULATIVE LIABILITY UNDER THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT PROPERLY DUE AND OWED TO SUBCONTRACTOR UNDER A PO AND/OR SOW OR SIMILAR DOCUMENT SUCH AS A TASK ORDER REGARDLESS OF THE CAUSE OF ACTION OR THEORY OF LAW ASSERTED.

34. CLOSEOUT ACTIONS AND REPORTS

- a) **Final Invoice.** Subcontractor shall submit a final invoice, marked or stamped "Final," promptly upon completion of its work, but no later than ninety (90) days from the subcontract or task order completion date. A longer period may be approved by Battelle upon written application by the Subcontractor stating good and sufficient reason why such extension is necessary.

Upon approval of Subcontractor's final invoice, and Subcontractor's compliance with all terms and conditions of the PO and/or SOW or similar documents such as a task order and this provision, Battelle shall pay within forty-five (45) days the balance of allowable costs and that part of the fee (if any) not previously paid. In no event will payment be made until an acceptable final invoice and all required closeout information listed in sub paragraph b) below has been received.

- b) **Required Closeout Information.** Within the same time period as submission of its final invoice, or within thirty (30) days of a request from Battelle, Subcontractor shall complete and return to the applicable Battelle Procurement Representative the following documentation:

- Property Closeout Certificate
- Report of Inventions and Subcontracts
- Quick Closeout
- Release of Claims and Assignment of Refunds, Rebates and Credits

The above documentation is available at the "Doing Business with Battelle" page of the Battelle.org website, and it is the Subcontractor's responsibility to obtain and correctly complete and sign the necessary certificates.

- c) **Quick Closeout.** The Subcontractor agrees that, if so requested by Battelle, the Quick Closeout procedure authorized by FAR 42.708, or any deadline stated in the referenced language in the Government Clauses, or as required by Battelle's prime contract with its Client, shall be the basis for closing any PO and/or SOW or similar documents such as a task order, as applicable, and shall return the Quick Closeout Questionnaire, as provided to Subcontractor by Battelle, within thirty (30) days after the date of Battelle's request. In addition to the above, Subcontractor agrees, pursuant to FAR 42.708(a), to the Quick Closeout procedure if the amount of unsettled indirect costs, including indirect costs allocable to materials as described in FAR 52.232-7(b)(5), is less than \$150,000 USD.
- d) **Unilateral Closeout.** Pursuant to and consistent with the provisions of FAR Clauses 42.705 and 52.216-7, unilateral closeout will occur in the event Subcontractor fails to submit the closeout information required in sub paragraphs (a) and (b) within one hundred twenty (120) days of a PO and/or SOW or similar documents such as a task orders' expiration date unless such failure is due to (i) the Government's pending settlement of Subcontractor's final indirect rates and Battelle has not requested Quick Closeout as per sub paragraph c) above, or (ii) an extenuating circumstance is present as agreed upon in writing by Battelle and Subcontractor.

Such failure shall constitute Subcontractor's express agreement that the amounts paid pursuant to a PO and/or SOW or similar documents such as a task order, as applicable, by Battelle to Subcontractor up to the date Subcontractor's submissions are due as set forth herein and as determined by the Battelle records, constitute the full, complete and final extent of Battelle's financial obligation to Subcontractor. Further, Subcontractor does forever fully and finally remise, release and discharge Battelle, its officers, directors, agents and employees of and from any and all liabilities, obligations, claims, and demands whatsoever arising under or relating to a PO and/or SOW or similar documents such as a task order, and Subcontractor expressly authorizes Battelle to rely on the foregoing representations and release in connection with the closeout of or other actions taken with respect to Battelle's contract with the Government.

- e) **Refunds, Rebates, and Credits.** Subcontractor shall pay to Battelle any refunds, rebates, credits or other amounts (including interest, if any) accruing to or received by Subcontractor or any assignee under a PO and/or SOW or similar documents such as a task order to the extent that those amounts are properly allocable to costs for which Subcontractor has been reimbursed by Battelle. Reasonable expenses incurred by Subcontractor for securing refunds, rebates, credits or other amounts shall be allowable costs if approved by Battelle.

35. AUDIT

- a) During the term of any PO and/or SOW or similar documents such as a task order, or for three (3) years following the completion or termination of any PO and/or SOW or similar documents such as a task order, Battelle and/or, if applicable, any cognizant government audit agency, shall have access to Subcontractor's records and documentation for audit purposes during normal business hours and upon ten (10) calendar days notice. Subcontractor shall promptly reimburse Battelle for any amounts for which Subcontractor cannot provide adequate documentation or substantiation or are otherwise unallowable or not properly chargeable.
- b) If Subcontractor is subject to the audit requirements of OMB Circular A-133, Subcontractor agrees to comply with those requirements. Upon completion of its required audit, Subcontractor agrees to provide Battelle with a copy of the audit report and disclose any adverse findings which may impact a PO and/or SOW or similar document such as a task order.
- c) Subcontractor shall comply with DFARS 252.204-7012, Safeguarding Covered Defense Information and Cyber Incident Reporting, and any other cybersecurity requirements applicable to this subcontract. Battelle reserves the right to audit and assess Subcontractor's compliance with DFARS 252.204-7012, NIST SP 800-171 requirements, and any other cybersecurity requirements applicable to this subcontract. Failures by Subcontractor to comply with these requirements shall constitute a material breach of any PO and/or SOW or similar document such as a task order.

36. SURVIVAL

If a PO and/or SOW or similar document such as a task order expires, is completed, or is terminated, Subcontractor shall not be relieved of those obligations contained in the following provisions: 1, 2(c), 10-18, 22, and 30-37.

37. NO WAIVER; SEVERABILITY

Failure of Battelle to insist on strict performance of any of these Terms and Conditions or those that may be mutually agreed in any PO and/or SOW or similar documents such as a task order shall not constitute or be construed as a waiver or relinquishment of Battelle's right to subsequently require strict compliance with such terms and conditions. No course of dealing or usage of trade shall be construed to modify or otherwise alter any of these Terms and Conditions or those that may be mutually agreed in any PO and/or SOW or similar documents such as a task order. If any provision of a PO and/or SOW or similar document such as a task order shall for any reason be prohibited, held invalid or unenforceable in any jurisdiction, such invalidity or unenforceability shall not affect or invalidate any remaining provisions and no such prohibition or unenforceability in any jurisdiction will invalidate such provision in any other jurisdiction.

38. ORDER OF PRECEDENCE

In the event of any conflict between these Terms and Conditions and any PO and/or SOW or similar document such as a task order, these Terms and Conditions will govern, except in cases where the parties have mutually agreed to different term(s) and have expressly identified such term(s) in a PO and/or SOW or similar documents such as a task order as controlling. Any change, amendment or modification to this Agreement must be in writing and signed by an authorized representative of each party.

39. ENTIRE AGREEMENT

These Terms and Conditions including any PO and/or SOW or similar document such as a task order represent the entire agreement of Battelle and Subcontractor and supersede any prior discussions or understandings, whether written or oral, relating to the subject matter hereof.