

Effective Date: January 6, 2015

## Commercial Terms and Conditions

This Agreement entered into by and between Battelle Memorial Institute, Corporate Operations, which is a corporation organized and existing under the laws of the State of Ohio (hereinafter referred to as "Battelle") and **[Subcontractor Name]** (hereinafter referred to as the "Subcontractor").

Battelle desires to utilize the services of the Subcontractor and the Subcontractor desires to provide those services, and in consideration Battelle and the Subcontractor do agree as follows:

### Firm Fixed Price (FFP)

1. The Subcontractor shall perform the services as more specifically outlined in the Statement of Work of this Agreement.
2. Services shall commence **TBD** and end on **TBD**.
3. This Agreement is issued on a Firm Fixed Price (FFP) basis for a total price of \_\_\_\_\_ Dollars and No Cents (**\$\$\$\$\$\$\$\$**). Payment by Battelle under this Agreement shall not exceed this amount.

### Time and Materials (T&M)

1. The Subcontractor, acting as an independent contractor and not as an agent, representative, or employee of Battelle, shall perform the services as more specifically outlined in the Statement of Work of this Agreement.
2. This Agreement is issued on a Time and /Materials (T&M) basis.

Services shall commence **M/D/Y** and end on **M/D/Y**. Battelle maximum obligation under this Agreement shall not exceed \_\_\_\_\_ Dollars and No Cents (**\$\$\$\$\$\$\$\$**) unless this amount shall be revised by mutual agreement of the parties as set forth in a written modification of this Agreement.

The Subcontractor shall be paid for direct labor applied to the performance of this Agreement in accordance with the fixed hourly rates established for each category of direct labor as set forth in the schedule below. Materials, travel, subcontracts, and other direct costs of this Agreement shall be reimbursed at the net cost to the Subcontractor.

The Subcontractor shall submit invoices as noted in Article 3 below. Payments shall be made no more than on a monthly basis upon presentation of invoices. The Subcontractor shall structure its invoices so that the labor hours expended for each category of direct labor set forth in the schedule below shall be shown along with the fixed rates for the various categories. Material and other direct costs shall be itemized separately.

Labor Category	Rate *
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\*For T&M: (1) It is understood and agreed that rates include wages, fringe benefits, overheads, general and administrative expenses, burdens, other indirect costs, and profit

3. Reserved

For both FFP and T&M the following applies:

4. Submit invoices electronically to [accountspayable@battelle.org](mailto:accountspayable@battelle.org). If unable to submit invoices electronically please send by mail (least preferred) to: Battelle Memorial Institute, Corporate Operations, 505 King Avenue, Columbus, Ohio 43201-2693, and Attention: Accounts Payable. Invoices shall reflect the agreement number. Invoice terms are net 30 days from invoice date. The final invoice should be marked "Final Invoice".

5. This Agreement may be terminated, in whole or in part, by written notice of Battelle for any reason. The notice of termination shall specify the extent to which performance is terminated and the effective date of such termination.

6. Battelle may at any time, by written order, require the Subcontractor to stop all, or any part, of the work. Upon receipt of such an order the Subcontractor shall take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Battelle shall either: (i) cancel the stop work order, or (ii) terminate the work covered by such order.

7. Any dispute arising under this Agreement or the performance thereof which is not settled by agreement between the parties shall be settled by appropriate legal, equitable, or administrative proceedings. Pending any decision, appeal or judgment the Subcontractor shall proceed diligently with the performance of this Agreement unless otherwise directed by Battelle.

8. Subcontractor and its employees shall maintain in strict confidence all information received from Battelle and/or generated by the Subcontractor including, but not limited to Battelle client information, specifications, business and market plans & procedures, test plans, protocols, test results, results of analyses, project notebooks, project documentation, notebooks, and other technical, business, and trade secret information. Subcontractor agrees that it has required all employees working under this Agreement to have signed an agreement of confidentiality and that it will allow no employee to work under this Agreement who have not signed such an agreement. Subcontractor's employees' obligations of confidentiality are in effect both during their employment and thereafter.

9. Subcontractor agrees to indemnify and hold Battelle harmless from any and all liability, claims, demands, and damages, and all costs and expenses in connection therewith, for or arising out of Subcontractor's negligence or willful misconduct under this Agreement.

10. Battelle shall be the exclusive owner of all inventions, concepts, computer codes and other writings and discoveries made or conceived by the Subcontractor in the course of work under this Agreement and all those inventions, concepts, computer codes and other writings and discoveries made during the period of this Agreement, provided they result from information gained by the Subcontractor from Battelle under this Agreement.

The Subcontractor agrees to immediately disclose to Battelle any such inventions, concepts, computer codes and other writings and discoveries. All copyrightable works shall be deemed works for hire under the Copyright Law, but to the extent that by operation of law or otherwise that they are not works for hire, then the Subcontractor shall assign to Battelle, and does hereby assign to Battelle, all right, title and interest in the copyrightable work and the copyright therein, including the right to apply for and receive copyright registrations and other similar protection which may then be available in the name of Battelle.

The Subcontractor agrees to assign to Battelle, and does hereby assign to Battelle, all right, title and interest in such inventions, concepts, computer codes and other writings and discoveries. Battelle shall have the right to file applications in its own name as assignee or applicant for patent, copyright, trademark and/or other intellectual property protections which may then be available in the United States and foreign countries. In countries where necessary, the Subcontractor shall, at the request and expense of Battelle, make such application and/or execute any papers and do all such things as may be reasonably required to assign and protect the rights of Battelle or its transferees or designees in all such properties.

11. Subcontractor shall purchase and maintain, during the term of this Agreement, at its own expense, and any extensions thereof, insurance in amounts reasonable and customary for the industry in which Subcontractor is engaged. Subcontractor shall maintain all insurance which is required by 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-U.S. jurisdictions. Nevertheless, the following minimum insurance coverage shall be maintained:

Coverage	Limits
i. Workers Compensation	Statutory
ii. Employers' Liability	\$1,000,000 per occurrence/aggregate
iii. Commercial General Liability (Including Products & Completed Operations and Contractual Liability)	\$1,000,000 per occurrence/aggregate
iv. Comprehensive Auto Liability (Owned and Non-owned)	\$1,000,000 per occurrence/aggregate

Such minimum insurance limits shall not limit Subcontractor's liability under this Subcontract.

Subcontractor shall require any lower-tier subcontractors to satisfy the requirements of this provision.

Battelle shall be designated as an Additional Insured under the Commercial General Liability coverage.

Subcontractor shall furnish to Battelle Certificates of Insurance evidencing compliance with the insurance requirements herein. These certificates shall provide for at least 30 days prior notice to Battelle of any cancellation, non-renewal or relevant reduction of coverage.

12. 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 perform the services and provide the necessary facilities, personnel, materials, equipment, and shall otherwise do all things necessary for the performance of the Statement of Work, and 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, including but not limited to Worker's Compensation, Professional Liability, General Liability, Employer's Liability, Automotive Liability, and Unemployment Compensation. Subcontractor shall protect, defend and hold Battelle harmless from any claims or penalties asserted or assessed against Battelle by any person or governmental entity relating to Subcontractor's responsibilities as an independent contractor.

13. Subcontractor agrees that it shall comply with all U.S. laws and regulations applicable to exports. Subcontractor agrees not to export or re-export any products, materials, items and/or technical data, or the product(s) thereof, received from Battelle or developed under this Agreement unless Subcontractor has obtained, in advance, Battelle's approval and all required licenses, agreements or other authorizations from the U.S. Government. Exports include, without limitation, the sending or taking of any products, materials, items or 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 U.S. 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 client, whether in the United States or abroad.

Subcontractor understands and agrees to comply with the United States Foreign Corrupt Practices Act, which prohibits Battelle and Subcontractor from providing anything of value to a foreign public official in order to obtain or retain business. Subcontractor agrees not to give anything of value, including but not limited to business gratuities and reimbursement of travel, to any foreign government officials. Subcontractor agrees to insure that it complies with all requirements relevant to its business arrangement with Battelle, including any registration requirements, and warrants that this Agreement is in compliance with all applicable laws and regulations of the country or countries in which it performs any services for Battelle.

14. Title to all property, equipment, materials or other tangible property (hereinafter referred to as "Property") furnished to Subcontractor or paid for by Battelle shall remain the Property of Battelle. Subcontractor shall not alter or use such Property for any purpose other than that specified by Battelle without the prior written consent of Battelle. Subcontractor shall keep adequate records, which shall be made available to Battelle upon request, and shall store, protect, preserve, repair, and maintain such Property in accordance with sound commercial practice, all at Subcontractor's expense. Property made in accordance with Battelle provided specifications and/or drawings shall not be furnished or quoted by Subcontractor to any other person or concern without Battelle's prior written consent.

15. No public releases including those for news, advertising, information, technical or scientific purposes relating to this Agreement shall be issued by Subcontractor. Battelle does not endorse products or services. Accordingly, Subcontractor shall not use or imply Battelle's name or use Battelle'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.

16. This Agreement contains all of our understandings and agreements relating to the services and may be changed only in writing signed by Battelle's authorized representative. This Agreement shall be governed by the laws of, and enforced within the jurisdiction of, the State of Ohio, without regard to its principles of conflicts of law.