

Effective Date: May 1, 2017

Terms and Conditions

Government Subcontracts

None of the following terms and conditions shall be construed in a manner that would adversely affect the interests of the United States 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 United States Government.

Headings are for convenience only and shall not be deemed to limit or otherwise affect the construction of any provision hereof. Subcontractor, as identified in the Schedule, agrees to provide to Battelle Memorial Institute (“Battelle”) technical/research services and/or goods in accordance with the Statement of Work, as provided as an attachment to the Schedule, under the following terms and conditions together with those set forth on the Schedule:

1. INVOICING AND PAYMENT.....	2
2. TAXES.....	2
3. BATTELLE TECHNICAL REPRESENTATIVE	3
4. CHANGES.....	3
5. GOVERNMENT CONTRACT REQUIREMENTS	3
6. GOVERNMENT PROPERTY.....	3
7. COMMUNICATION WITH CLIENT	4
8. TIME IS OF THE ESSENCE	4
9. CONFLICT OF INTEREST.....	4
10. PUBLICITY.....	4
11. INDEPENDENT CONTRACTOR	4
12. CONFIDENTIALITY	4
13. COMPLIANCE WITH LAWS	5
14. INSURANCE	5
15. WARRANTY.....	6
16. INDEMNIFICATION	6
17. INTELLECTUAL PROPERTY	7
18. PATENT INDEMNIFICATION	7
19. COUNTERFEIT PARTS.....	7
20. INSPECTION.....	8
21. ENVIRONMENT SAFETY AND HEALTH REQUIREMENTS.....	8
22. EXPORT CONTROL.....	8
23. ACCESS.....	9
24. NOTICE OF DEBARMENT OR SUSPENSION.....	9
25. ASSIGNMENT AND CONSENT TO SUBCONTRACT.....	9
26. FORCE MAJEURE.....	9
27. STOP WORK.....	9
28. TERMINATION FOR CONVENIENCE	10
29. TERMINATION FOR DEFAULT.....	10
30. DISPUTES.....	10
31. APPLICABLE LAW.....	11
32. RIGHTS AND REMEDIES	11
33. CONSEQUENTIAL DAMAGES.....	11
34. CLOSEOUT ACTIONS AND REPORTS	11
35. AUDIT.....	12
36. SURVIVABILITY.....	12
37. ENTIRE AGREEMENT	13

1. INVOICING AND PAYMENT

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 Subcontract (Purchase Order) number, the time period for which services were performed or materials were shipped. All invoices shall be accompanied by satisfactory supporting documentation as required by the flow-downs, Subcontract type, and/or the Battelle Subcontracting Representative. 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.

For subcontracts where labor hour reporting is required (e.g., time-and-materials, labor-hour, 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.

Payment terms are NET 30 unless otherwise identified on the face of the Subcontract. Payment is from the latest of the following events: (i) Account Payable's receipt of the Subcontractor's properly completed and documented invoice, (ii) scheduled delivery date of the Work, or (iii) actual delivery of the Work.

2. TAXES

- a) United States Tax Exemption Status under a Purchase Order or Subcontract - 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 USD \$1,000. Subcontractors should note that sales tax on such Subcontracts will not be paid.
- b) California Form 590 Withholding Exemption Certificate - California Revenue and Taxation Code (R&TC) 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/suppliers shall be solely responsible and liable for the payment of all current or future federal, state or local taxes, duties, tariffs, fees and any other charges, interest, penalties or assessments imposed by the government of any country or political subdivision thereof on this Agreement or on the wages paid to Subcontractor's employees. Subcontractor shall protect, defend, indemnify and hold Battelle harmless from any claims, actions, assessments or damages, including but not limited to reasonable attorney fees, interest, and penalties, asserted or assessed against Battelle by any person, entity or government of any country or political subdivision thereof or incurred by Battelle relating to Subcontractor's responsibilities under this paragraph.
- d) All payments made to the subcontractors/suppliers for services performed under this Agreement may be subject to the tax withholding requirements of an applicable jurisdiction. Subcontractors/Suppliers 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

The Battelle Technical Representative identified in Article IV of the Schedule may from time to time render assistance, give technical advice, or discuss or affect an exchange of information with Subcontractor's personnel concerning the work hereunder. No such action shall be deemed to be a change under the "Changes" clause of this Subcontract and shall not be the basis of an equitable adjustment. Only the Battelle Subcontracting Representative has authority to make changes to this Subcontract.

Except as otherwise provided herein, all notices to be furnished by the Subcontractor shall be sent to the Battelle Subcontracting Representative.

4. CHANGES

- (a) The Battelle Subcontracting Representative may at any time, by written notice, and without notice to sureties or assigns, make changes within the general scope of this Subcontract to any one or more of the following: 1) description of services; 2) drawings, designs, or specifications; 3) method of shipping or packing; 4) place of inspection, acceptance, or point of delivery; 5) time of performance; and 6) place of performance.
- (b) If any such change causes a change in the labor mix, or the time required for performance of any part of this subcontract, Subcontractor may request an equitable adjustment in this Subcontract 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 this Subcontract. However, nothing contained in the "Changes" clause of this Subcontract shall excuse Subcontractor from proceeding without delay in the performance of this Subcontract as directed.
- (e) All changes, modifications and amendments will be in writing.

5. GOVERNMENT CONTRACT REQUIREMENTS

Referenced within and/or attached to this Subcontract, and hereby incorporated by reference, are flow down provisions of the Government Prime Contract (collectively, the "Government Clauses"). For purposes of this Subcontract, 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.

6. GOVERNMENT PROPERTY

Battelle or Client may provide Government-furnished property, as specified in the Subcontract Schedule, to the Subcontractor. The Subcontractor is responsible for notifying the Battelle Subcontracting 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 Subcontracting Representative for the purchase of any property (equipment or material) for use in the performance of this Subcontract 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 their system. All Government property shall be administered in

accordance with the provisions of Federal Acquisition Regulation (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 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 Battelle before taking any action based upon Client's directions. Battelle will not be liable for the cost of work done by Subcontractor without written authorization by the Battelle Subcontracting 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 obligation made part of this Subcontract and/or may be 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 under this Subcontract.

10. PUBLICITY

No public releases including those for news, advertising, information, technical or scientific purposes relating to this Subcontract shall be issued by Subcontractor or by any second or lower tier contractor. Battelle does not endorse products or services. Accordingly, Subcontractor shall not use or imply the Battelle or Client's name, or use the 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 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 under this clause.

12. CONFIDENTIALITY

Subcontractor and its employees shall maintain in strict confidence all information received from Battelle and/or generated by Subcontractor including, but not limited to, proposals, specifications, business and marketing plans, test plans, protocols, test results, results of analyses, project notebooks, project documentation, notebooks and other technical, business, proprietary and trade secret information. Subcontractor agrees that all employees, contractors, consultants, or agents working under this Subcontract shall comply with these obligations of confidentiality.

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 Federal 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 and hold harmless Battelle for any failure to comply with this clause.

14. INSURANCE

- (a) Unless the Government Prime Contract contains a specific flow down regarding insurance, Subcontractor shall purchase and maintain during the term of this Subcontract, 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 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. Nevertheless, the following minimum insurance coverage shall be maintained:

	Coverage	Limits
(i)	Workers' Compensation	Statutory
(ii)	Employer's Liability	\$1,000,000 per occurrence
(iii)	Commercial General Liability (Including Contractual, and Products and Completed Operations Liability)	\$3,000,000 per occurrence
(iv)	Business Auto Liability	\$1,000,000 per occurrence (Owned and Non-owned)
(v)	Professional Liability Insurance	\$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 Battelle or 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 this Subcontract.
- (c) 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 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 this Subcontract. Failure of Battelle to notify Subcontractor of any non-compliance with the provisions of this Subcontract shall not constitute a waiver of Subcontractor's obligations under this Subcontract.

- (d) Such minimum insurance limits shall not limit Subcontractor's liability under this Subcontract.
- (e) Subcontractor shall require any lower tier subcontractors to satisfy the requirements of this provision.

15. WARRANTY

- (a) **Goods:** Subcontractor warrants that all goods furnished under this Subcontract 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 this Subcontract, and, unless manufactured solely in accordance with Battelle-certified manufacturing designs, will be free from defects in design. Any goods corrected or replaced will be covered by this 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.
- (a) **Services:** Subcontractor warrants that all services performed under this Subcontract will be performed with the standard of a fully qualified professional, conform to the requirements of the Subcontract, and be performed in strict compliance with any regulatory or international standards specified in the Statement of Work for this Subcontract. Any services corrected or re-performed will be covered by this warranty.
- (b) The warranties provided in (a) and (b) above shall apply unless a more extensive warranty(s) is/are specified as in the Government Clauses, or regularly offered by Subcontractor, in which case the greater warranty shall apply.
- (c) If Subcontractor breaches any warranty, Battelle may elect, at its sole discretion and with no increase in the Subcontract price, to:
 - (i) Require Subcontractor either to repair or replace, at the Battelle 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 Subcontract 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, at the Battelle election, defective or nonconforming services promptly; or
 - (v) Equitably reduce the Subcontract price; or
 - (vi) Correct or have corrected the nonconformity at Subcontractor's expense.

16. INDEMNIFICATION

Subcontractor shall indemnify and save harmless Battelle, its officers, directors, employees and agents from and against any and all liabilities, losses, costs, claims, causes of action, damages and expenses for injury (including death) to persons (including but not limited to Subcontractor's employees) or damage to property caused wholly or in part by any act or omission of the Subcontractor, its agents, subcontractors or employees, including any and all expenses, legal or otherwise, incurred in the investigation or defense of any such claim or suit arising out of

work done under this Subcontract. This indemnification shall not include such injuries to any person or persons or damage to or destruction of any property due to the sole negligence or omission of Battelle or its employees.

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.

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. Subcontractor waives any and all claims against Battelle and its officers, trustees, and employees arising out of personal injury (including death) or damage to property occurring in connection with Subcontractor's performance of this Subcontract, 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 contemporaneous or subsequent writing to the contrary signed by both parties or otherwise expressly set forth in this Subcontract and subject to Paragraph (b) below, any invention or intellectual property first made or conceived by Subcontractor in the performance of this Subcontract or which is derived from or based on the use of information supplied by Battelle shall be considered to be the property of Battelle; and Subcontractor shall execute such documents necessary to perfect Battelle's title thereto. Unless otherwise expressly agreed in a contemporaneous or subsequent writing to the contrary or otherwise expressly set forth in this Subcontract and subject to Paragraph (b) below, any work performed pursuant to this Subcontract which includes any copyright interest shall be considered a "work made for hire." Subject to Paragraph (b) below, to the extent any of 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) United States Government flow down provisions incorporated into this Subcontract shall, when applicable, take precedence over any conflicting provision of this Section 7, to the extent that such flow down provisions so require. The incorporation by reference of such United States 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.

18. PATENT INDEMNIFICATION

Subcontractor warrants that the work performed or delivered under this Subcontract will not infringe or otherwise violate the intellectual property rights of any third party in the United States or any foreign country. Subcontractor agrees to defend, indemnify and hold harmless Battelle and Client from and against any 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 work performed or delivered under this Subcontract infringes or otherwise violates the intellectual property rights of any person or entity. This agreement to indemnify and hold Battelle harmless for infringement claims shall not be considered an allowable cost under any provision of this Subcontract except with regard to allowable insurance costs.

19. COUNTERFEIT PARTS

For the purposes of this clause, (i) the meaning of "Counterfeit Electronic Part" and "Electronic Part" are as defined in the Defense Acquisition Regulation Supplement clause 252.246-7007, Contractor Counterfeit Electronic Part Detection and Avoidance System (August 2016); and (ii) "Work" means parts delivered under this

Subcontract that are the lowest level of separately identifiable items (e.g., articles, components, goods, and assemblies).

Subcontractor warrants that the Work delivered under this Subcontract 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.

Should Subcontractor become aware of a confirmed or suspect Counterfeit Electronic Part that, by any means, has been delivered to Battelle, or acquired for this Subcontract whether or not delivered to Battelle, Subcontractor shall provide notification to Battelle's Procurement Representative as soon as possible but not later than 7 days of discovery. This requirement will survive this Subcontract. Subcontractor shall quarantine suspect Counterfeit Electronic Parts and make them available for investigation by appropriate government authorities.

In the event that Work delivered under this Subcontract constitutes or includes Counterfeit Electronic Parts, Subcontractor shall, at its expense, promptly replace such unauthorized Work with Work from authorized sources conforming to the requirements of this Subcontract. Notwithstanding any other provision in this Subcontract, Subcontractor shall be liable for all costs relating to the inclusion, removal, and replacement of the 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 the substance of this clause, including this sentence, in all lower-tier subcontracts or Subcontracts performed under this Subcontract involving Electronic Parts.

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 responsibility for defects or other failures to meet contract requirements.

21. ENVIRONMENT SAFETY AND HEALTH REQUIREMENTS

In performing work under this Subcontract at its own facilities or any other location that is not a government owned or leased facility, 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.

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 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 United States 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 client, 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.

Government issued assets (Badges, CAC Cards, Decals, etc.), are property of the United States 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 the credential after your separation with Battelle may be considered a security violation or violation of criminal law, Section 793 and/or 1924, Title 18, United States Code.

Battelle will notify the Client or prime contractor when a person for whom Battelle owns the clearance has been debriefed or who is no longer needed on the program.

24. NOTICE OF DEBARMENT OR SUSPENSION

Subcontractor shall provide immediate notice to the Battelle Subcontracting Representative in the event of being suspended, debarred, or declared ineligible by any agency or Department of the United States Government, or upon receipt of a notice of proposed debarment from any agency or department of the United States Government, during the performance of this Subcontract.

25. ASSIGNMENT AND CONSENT TO SUBCONTRACT

This Subcontract may not be assigned in whole or in part without the prior written approval of both parties. In any event, however, this Subcontract shall be binding upon, inure to the benefit of, and be enforceable by and against the successors, assignees and transferees of the parties. Subcontractor shall not assign any money due or to become due to Subcontractor under this Subcontract without the prior written consent of the Battelle Subcontracting Representative.

No portion of the work or services to be supplied under this Subcontract, other than purchase of necessary goods and materials to be incorporated into the work, may be subcontracted by Subcontractor in whole or in part without the prior written consent of the Battelle Subcontracting Representative. Prior written consent is not necessary if the proposed second tier subcontractor had been identified by the Subcontractor in Subcontractor's proposal submitted to Battelle prior to award of this Subcontract.

26. FORCE MAJEURE

Neither Subcontractor nor Battelle shall be liable in any way for failure to perform any provision of this Subcontract (except payment of monetary obligations) if such failure is caused by any law, rule, or regulation, or any cause beyond the control of the party in default. Should such acts or events occur, the parties shall use commercially reasonable efforts to overcome all difficulties and to resume work as soon as reasonably possible.

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 Subcontracting Representative and "Contractor" shall be the Subcontractor herein.

28. TERMINATION FOR CONVENIENCE

- (a) Battelle may terminate part or all of this Subcontract 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 the Battelle liability under this clause.
- (b) Upon termination, in accordance with the Battelle written direction, Subcontractor will immediately:
 - 1) cease work; 2) prepare and submit to Battelle an itemization of all completed and partially completed deliverables and services; 3) deliver to Battelle deliverables satisfactorily completed up to the date of termination at the agreed upon prices in the relevant Statement of Work; 4) deliver upon request any work in process; and 5) Subcontractor shall 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 subcontract price. Subcontractor's termination claim shall be submitted within ninety (90) calendar days from the effective date of the termination.
- (d) Subcontractor shall continue all work not terminated.

29. TERMINATION FOR DEFAULT

- (a) Battelle, by written notice, may terminate this Subcontract for default, in whole or in part, if Subcontractor fails to comply with any of the terms of this Subcontract, fails to make progress so as to endanger performance of this Subcontract, or fails to provide adequate assurance of future performance. Subcontractor shall have ten (10) calendar days (or such longer period as Battelle may authorize in writing) to cure any such failure(s) after receipt of notice from Battelle. Default involving performance delays shall not be subject to the cure provision.
- (b) Subcontractor shall be compensated only for the work actually delivered and accepted. Battelle may require Subcontractor to deliver to Battelle any supplies and materials, or other items that Subcontractor has specifically produced or acquired for the terminated portion of this Subcontract. Battelle and Subcontractor shall agree on the amount of payment for these other deliverables.
- (c) Subcontractor shall continue all work not terminated.
- (d) In the event of a termination for default, Subcontractor shall be liable to Battelle for cover costs, in addition to the Battelle other rights and remedies at law or in equity.
- (e) If after termination under subpart (a) above, it is determined that Subcontractor was not in default, such termination shall be converted to a Termination for Convenience.

30. DISPUTES

All disputes under this Subcontract which are not resolved by mutual agreement may be decided by recourse to an action at law or in equity. Until final resolution of any dispute hereunder, Subcontractor shall diligently proceed with the performance of this Subcontract as directed by Battelle. Any such dispute must be raised 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.

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 of rights under this agreement will not be deemed to be a waiver of that party's rights.

33. CONSEQUENTIAL DAMAGES

In no event shall either Subcontractor or Battelle be liable for any special, incidental, or consequential damages of any type or nature, except as otherwise expressly provided in this Subcontract.

34. CLOSEOUT ACTIONS AND REPORTS

- (a) **Final Invoice.** Subcontractor shall submit a final invoice, marked or stamped "Final," promptly upon completion of the work, but no later than 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 of this Subcontract and this provision, Battelle shall promptly pay 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 subparagraph (b) below has been received.

- (b) **Required Closeout Information.** Within the same time period as for submission of its final invoice, or within 30 days of a request from Battelle, Subcontractor shall complete and return to the Battelle Subcontracting 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 certificates included.

- (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 this Subcontract and any task orders, as applicable, and shall return the Quick Closeout Questionnaire, as provided to Subcontractor by Battelle, within thirty (30) days after the date of the Battelle 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.

- (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 Paragraphs (a) and (b) within one hundred twenty (120) days of the Subcontract expiration date unless such failure is due to (i) the United States Government's pending settlement of Subcontractor's final indirect rates and Battelle has not requested Quick Closeout as per paragraph (c) above, or (ii) an extenuating circumstance as agreed upon in writing by Battelle and Subcontractor. Such failure shall constitute Subcontractor's express agreement that the amounts paid pursuant to this Subcontract and any 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 the Battelle financial obligation to Subcontractor. Further, Subcontractor does forever fully and finally remise, release and discharge Battelle, its officers, agents and employees, of and from any and all liabilities, obligations, claims, and demands whatsoever arising under or relating to this Subcontract and any task order, applicable, and Subcontractor expressly authorizes Battelle to rely on the foregoing representations and release in connection with the Battelle closeout of or other actions taken with respect to the Battelle contract with the United States 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 this Subcontract 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

For three (3) years following the completion or termination of this Subcontract, 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.

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 this Subcontract.

36. SURVIVABILITY

If this Subcontract expires, is completed, or is terminated, Subcontractor shall not be relieved of those obligations contained in the following provisions:

- Independent Contractor
- Confidentiality
- Insurance (as applicable)
- Warranty (as applicable)
- Indemnification (General and Patent)
- Intellectual Property
- Counterfeit Parts
- Export Control
- Disputes
- Applicable Law
- Consequential Damages
- Audit (as applicable)
- Survivability

37. ENTIRE AGREEMENT

This Subcontract represents the entire agreement of Battelle and Subcontractor and supersedes any prior discussions or understandings, whether written or oral, relating to the subject matter hereof. In case of any conflict or inconsistency, the following order of precedence shall apply: 1) Schedule; 2) the terms and conditions of this Subcontract; 3) terms and conditions of individual Task Order(s), if applicable; 4) Government Clauses; and 5) Statement of Work.

No course of dealing, usage of trade, waiver or non-enforcement shall be construed to modify or otherwise alter the terms and conditions of this Subcontract. If any part of this Subcontract shall be held invalid or unenforceable, such invalidity and unenforceability shall not affect any other part of this Subcontract.