

## Commercial Terms and Conditions

Seller, as identified in the Schedule, agrees to provide to Battelle Memorial Institute (“Battelle”) 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. Battelle shall pay Seller, upon the submission of proper invoices or vouchers, the prices stipulated in the Schedule for items delivered and accepted or services rendered and accepted, less any deductions provided for in the Schedule. 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. Payment terms are net 45 days from Accounts Payable’s receipt of the invoice. The final invoice should be marked "Final Invoice".

2. 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. Sellers should note that sales tax on such Agreements will not be paid.

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.

All payments made to Seller for services performed under an Agreement may be subject to the tax withholding requirements of an applicable jurisdiction. Seller 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 Seller’s payment the applicable tax withholding amount.

Goods and Services acquired under this Agreement by Battelle in Canada may be subject to Goods and Services Tax (GST), Harmonized Sales Tax (HST), and/or Provincial Sales Taxes (PST/QST). Seller shall clearly and separately set out the GST/HST and/or PST/QST payable, to the extent applicable, on any invoices submitted to Battelle. Battelle will not pay GST/HST and/or PST/QST unless such taxes have been so identified on the invoices submitted to Battelle by Seller.

If services are performed in Puerto Rico, such services may be subject to Puerto Rico withholding (income tax withholding) if the Seller cannot provide proof of exemption or a waiver certificate.

3. Time is of the essence related to any dates or schedules related to Seller’s performance.

4. Battelle may terminate this Agreement in whole or in part, by giving written notice to Seller for any reason. The notice of termination shall specify the extent to which performance is terminated and the effective date of such termination. Seller shall be entitled to reasonable termination charges consisting of a percentage of the Agreement price reflecting the percentage of the work performed prior to termination, plus any reasonably incurred settlement expense. In the event that this Agreement is terminated due to Seller's actual or anticipated non-performance, Seller shall be liable to pay to Battelle all amounts incurred for re-procurement of items or services provided for in this Agreement, in addition to any other remedies provided by law or this Agreement.

5. Battelle may at any time, by written order, require the Seller to stop all, or any part, of the work. Upon receipt of such an order the Seller 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. Within ninety (90) days of the stop work order, Battelle shall either: (i) cancel the stop work order, or (ii) terminate the work covered by such order.

6. 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 or equitable proceedings. Pending any decision, appeal or judgment the Seller shall proceed diligently with the performance of this Agreement unless otherwise directed by Battelle. The parties further agree, to the extent permitted by law, to waive all rights to a trial by jury of any action relating to any dispute or interpretation of this Agreement. The parties specifically acknowledge that this waiver is made knowingly and voluntarily after an adequate opportunity to negotiate its terms.

7. Seller and its employees shall maintain in strict confidence all information received from Battelle and/or generated by the Seller during performance of this Agreement 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. Seller and its employees shall only use such information to accomplish the work covered by this Agreement and for no other purpose. Upon completion, all information is to either be returned to Battelle upon Battelle's written request or destroyed by Seller. Seller agrees that all employees, contractors, consultants, or agents working under this Agreement shall comply with these obligations of confidentiality.

8. Seller 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 Seller's employees) or damage to property caused wholly or in part by any act or omission of Seller, 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 Agreement. 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.

Further, Seller 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 Seller's employees. Seller 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 Seller's performance of this Agreement, 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.

9. Battelle's liability to Seller hereunder shall not, under any circumstances, be greater than the total dollar amount paid or properly due and owing under this Agreement. In no event shall either Battelle or Seller be liable to the other for any special, incidental, or consequential damages of any type or nature, except as otherwise expressly provided in this Agreement. This limitation of liability shall not apply to Seller's confidentiality obligations in Section 7, and Seller's indemnification obligations under this Agreement including the obligations in Sections 8 and 11.

10. Unless otherwise expressly agreed in a contemporaneous or subsequent writing to the contrary signed by both parties or otherwise expressly set forth in this Agreement, 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 Seller in the performance of this Agreement or which is derived from or based on the use of information supplied by Battelle shall be the property of Battelle. Seller shall execute such documents necessary to perfect Battelle's title to the Intellectual Property. Unless otherwise expressly agreed in a contemporaneous or subsequent writing to the contrary or otherwise expressly set forth in this Agreement, any work performed pursuant to this Agreement which includes any copyright interest shall be considered a "work made for hire". To the extent any of such works do not qualify as a "work made for hire", Seller 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.

11. Seller warrants that the work performed or delivered under this Agreement will not infringe or otherwise violate the intellectual property rights of any third party in the United States or any foreign country. Seller agrees to defend, indemnify and hold harmless Battelle 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 Agreement infringes or otherwise violates the intellectual property rights of any person or entity.

12. Seller shall purchase and maintain at its own expense, during the term of this Agreement, and any extensions thereof, insurance in amounts reasonable and customary for the industry in which Seller is engaged. Seller 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 Seller's operations or activities related to this Agreement, 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
iii. Commercial General Liability (Including Contractual, and Products and Completed Operations and Contractual 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 Battelle's client which is under the control of Seller
- vii. Any other insurance which may be required by Battelle.

Such minimum insurance limits shall not limit Seller's liability under this Agreement.

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

### 13. Warranty

a. Goods: Seller warrants that all goods furnished under this Agreement 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 Seller, whichever is longer, will conform with all requirements of this Agreement, 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. Seller 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: Seller warrants that all services performed under this Agreement will be performed with the standard of a fully qualified professional, conform to the requirements of the Agreement, and be performed in strict compliance with any regulatory or international standards specified in the Statement of Work for this Agreement. Any services corrected or re-performed will be covered by this warranty.

c. The warranties provided in a. and b. above shall apply unless more extensive warranty(s) is/are regularly offered by Seller, in which case the greater warranty shall apply.

d. If Seller breaches any warranty, Battelle may elect, at its sole discretion and with no increase in the Agreement price, to:

i. Require Seller either to repair or replace, at Battelle's election, defective or nonconforming goods promptly; or

ii. Require Seller promptly to furnish materials or parts and installation instructions required to successfully accomplish the correction of defective or nonconforming goods, and equitably reduce the Agreement price to account for the cost of correction including, without limitation, removal and installation; or

- iii. Require Seller to promptly redesign defective or nonconforming goods and require Seller promptly to repair or replace goods manufactured in accordance with such defective design;
- iv. Require Seller either to correct or re-perform, at the Battelle election, defective or nonconforming services promptly; or
- v. Equitably reduce the Agreement price; or
- vi. Correct or have corrected the nonconformity at Seller's expense.

14. Seller is an independent contractor and not an employee, agent, or representative of Battelle. Seller 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. Seller 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, Seller 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. Seller 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 Seller's responsibilities as an independent contractor.

15. Seller agrees to comply with all applicable laws, orders, rules, regulations, ordinances, and ethical and professional standards of behavior and conduct. Seller 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.

Seller agrees that it shall comply with all U.S. laws and regulations applicable to exports. Seller 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 or developed under this Agreement unless Seller 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 defense articles, 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.

Seller understands and agrees to comply with the United States Foreign Corrupt Practices Act, which prohibits Battelle and Seller from providing anything of value to a foreign public official in order to obtain or retain business. Seller agrees not to give anything of value, including but not limited to business gratuities and reimbursement of travel, to any foreign government officials. Seller agrees to ensure 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.

16. Title to all property, equipment, materials or other tangible property (hereinafter referred to as "Property") furnished to Seller or paid for by Battelle shall remain the Property of Battelle. Seller shall not alter or use such Property for any purpose other than that specified by Battelle without the prior written consent of Battelle. Seller 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 Seller's expense. Property created or made in accordance with Battelle-provided specifications and/or drawings shall not be furnished or quoted by Seller to any other person or concern without Battelle's prior written consent.

17. Neither Seller nor Battelle shall be liable in any way for failure to perform any provision of this Agreement (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.

18. No public releases including those for news, advertising, information, technical, or scientific purposes relating to this Agreement shall be issued by Seller. Battelle does not endorse products or services. Accordingly, Seller 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.

19. This Agreement may not be assigned by Seller in whole or in part without the prior written consent of Battelle. In any event, however, this Agreement shall be binding upon, inure to the benefit of, and be enforceable by and against the successors, assigns and transferees of the parties.

20. If this Agreement expires, is completed, or is terminated, the below sections, together with any payment obligations which accrued prior to completion, termination, or expiration of this Agreement, shall survive the completion, expiration, or termination of this Agreement.

- 6. Disputes
- 7. Confidentiality
- Indemnification (8. General and 11. Patent)
- 9. Limitation of Liability and Consequential Damages
- 10. Intellectual Property
- 12. Insurance (as applicable)
- 13. Warranty (as applicable)
- 14. Independent Contractor
- 15. Export Control
- 20. Survivability
- 21. Entire Agreement

21. This Agreement contains all of Battelle and Seller's understandings and agreements relating to the services and/or goods 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.