

**MASTER SERVICES AGREEMENT**

This Master Services Agreement ("Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 201\_ **[Fill in the Effective Date]** (the Agreement "Effective Date") by and between \_\_\_\_\_ **[Insert the Supplier's Legal Name]**, a \_\_\_\_\_ **[insert the type of entity – corporation, limited liability SUPPLIER, etc.]** with its principal place of business at \_\_\_\_\_ **[fill in Street address, City, State and Zip]** ("SUPPLIER"), and **BATTELLE MEMORIAL INSTITUTE**, a 501(c)(3) non-profit Ohio corporation with its principal place of business at 505 King Avenue, Columbus, Ohio 43201-2696 ("BATTELLE").

**1. SERVICES:** BATTELLE may from time to time request SUPPLIER to perform services ("Services") for BATTELLE by entering into this Agreement and an acSUPPLIERing Statement of Work, if applicable, in the format attached hereto that describes the Services to be provided, the payment terms, and the duration of the Services. SUPPLIER shall provide the Services in a professional and workmanlike manner, with care, skill and diligence in accordance with industry standards.

**2. INDEPENDENT CONTRACTOR:** It is expressly understood and agreed that neither SUPPLIER nor its personnel are agents or employees of BATTELLE. SUPPLIER's status is that of independent contractor and SUPPLIER has no authority to act for or on behalf of BATTELLE or to bind BATTELLE. SUPPLIER will make no claim against BATTELLE for any wages, Workers' Compensation, unemployment compensation or other benefit under an employer-employee relationship, and SUPPLIER assumes all responsibility for payment of wages, benefits or other benefit to and assumes full responsibility for acts or omissions of personnel or third parties employed by or under contract with SUPPLIER.

**3. FACILITIES ACCESS, AND BACKGROUND CHECKS:** SUPPLIER and its personnel shall comply with all BATTELLE rules and regulations regarding conduct, security, and safety while on BATTELLE premises. If SUPPLIER is coming inside a BATTELLE building and will not be supervised at all times, Background checks will be performed by SUPPLIER for all Personnel who provide Services at or from a Client location or have access to Client systems, prior to such Personnel providing any Services. Background checks on Personnel shall, at a minimum, include the following: a criminal background check for the past seven (7) years (subject to applicable law) in all counties of residence during that time to include pleas of guilty and nolo contendere, a Social Security number confirmation, a maiden or prior name check (if applicable), a verification of education and previous work experience, a verification that Personnel is not listed on the List of Excluded Individuals/Entities maintained by the HHS Office of Inspector General pursuant to 42 U.S.C. Sections 1320a-7, 13955ccc, 1320c-5 and regulations promulgated thereunder, which, as of the Effective Date, can be searched at the internet website of <http://exclusions.oig.hhs.gov/> (the "OIG List"), a verification that Personnel is not listed on the Excluded Parties List System maintained by the United States General Services Administration which, as of the Effective Date, can be searched at the internet website of <http://www.sam.gov> (the "GSA List"), and a verification that Personnel is not listed as a Specially Designated National or Blocked Person on the U.S Treasury's Office of Foreign Assets Control list of Specially Designated Nationals and Blocked Persons which, as of the Effective Date, is located at the internet site of <http://www.ustreas.gov/offices/enforcement/ofac/sdn> ( the "SDN List"). SUPPLIER will not allow any of its Personnel to provide Services if such individual Personnel (a) is included on the OIG List, (b) is included on the GSA List, (c) is included on the SDN List, or (d) otherwise fails the background check as determined by SUPPLIER, in compliance with all applicable law, including guidance from the Equal Employment Opportunity Commission. In addition, SUPPLIER will not allow any Personnel to provide Services to the extent the other confirmation and verification procedures of the background check reveal any information which conflicts with that supplied by such Personnel or which is reasonably suspect. SUPPLIER shall retain the results of each background check for the duration of the time that the individual is rendering any Services to Client under this Agreement and for six years thereafter, with this obligation surviving the expiration and termination of this Agreement. As may be required by Client, SUPPLIER shall certify in writing to Client that individual Personnel background checks have been completed as required under this Agreement, and that the results thereof satisfy the requirements of this Section. Upon Client's request, SUPPLIER will provide Client with copies of all records demonstrating SUPPLIER's compliance with this Section of this Agreement, including, without limitation (i) all invoices SUPPLIER received from vendors performing background checks on Personnel, with such invoices to include the name of the person(s) on whom the background check was performed, the dates the background checks were performed, and the type of background check performed, and (ii) cancelled checks and other proof of SUPPLIER's payment of invoices resulting from background checks performed on Personnel. Additional background checks may be required depending upon the individual's assigned

duties. SUPPLIER will comply with all applicable law when conducting background checks and drug screening under this Agreement.

3.1 **Drug Screening.** Drug screening shall be performed by SUPPLIER on all Personnel who provide Services at or from a Client location or have access to Client Systems, prior to such Personnel providing any Services. Drug screening to be performed on Personnel shall consist of National Institute on Drug Abuse ("NIDA") 10 Panel Urine Screening Test for the following substances: (a) amphetamines; (b) barbiturates; (c) benzodiazepines; (d) cocaine metabolite; (e) methadone; (f) opiates (including codeine, morphine, hydrocodone, hydromorphone); (g) 6MAM; (h) oxycodone; (i) phencyclidine (PCP); (j) propoxyphene; and (k) marijuana metabolite (THC). The testing laboratory selected by SUPPLIER must be certified by NIDA, or accredited by the College of American Pathologists. SUPPLIER will not allow Personnel who test positive for any of the controlled substances listed above (unless they have been lawfully prescribed) or any Personnel whom SUPPLIER has reason to believe have misused a lawfully prescribed controlled substance, to provide Services for Client. SUPPLIER shall retain the results of each individual's drug test for the duration of the time that individual renders Services to Client under this Agreement and for six (6) years thereafter and this obligation shall survive the termination and expiration of this Agreement. Any Personnel who test positive after having begun performing Services must be removed from involvement with Client and from the provisions of any Services. As may be required by Client, SUPPLIER shall certify in writing to Client that the individual Personnel drug tests have been completed as required under this Agreement and that the results thereof did not yield positive results for any of the above listed controlled substances.

3.2 **Costs.** SUPPLIER will be responsible for any costs incurred in conducting background checks and drug screening. Upon Client's request, SUPPLIER will disclose to Client the results of the background checks and drug testing performed on its Personnel who will be providing Services.

4. **INSURANCE:** SUPPLIER shall maintain appropriate insurance coverage during the term of this Agreement and any extensions thereof in an amount that is standard for its type of business. [MAY NEED TO ADD the language in red: "This includes as a minimum, the following:

<u>Type of Coverage</u>	<u>Amounts of Coverage</u>
<u>Workers' Compensation</u> (as required by law)	Statutory
<u>Employer's Liability</u> (if SUPPLIER Has Employees)	\$500,000 Per Occurrence
<u>Professional Liability</u>	\$3,000,000 Per Occurrence
<u>Commercial General Liability Insurance</u> appropriate to SUPPLIER'S business	\$1,000,000 Per Occurrence, \$2,000,000 Annual Aggregate
<u>Auto Liability</u> (if an automobile is being used as part of the Services)	\$300,000 Per Occurrence or an Aggregate of \$1,000,000

SUPPLIER shall provide BATTELLE with insurance certificates verifying these minimum levels of coverage. SUPPLIER shall provide a 30-day written notice to BATTELLE of any significant change in coverage."] (Depending on the risk and dollar amount, all of the language here in red can be deleted.)

5. **EQUAL EMPLOYMENT OPPORTUNITY/NON-DISCRIMINATION:** The parties hereby incorporate the requirements of 41 C.F.R. Sections 60-1.4(a), 60-250.5(a), 60-300.5(a), 60-741.5(a), and 29 C.F.R. Part 471, Appendix A to Subpart A, as applicable. Further, the parties agree to comply with all federal, state and local laws regarding non-discriminatory employment practices.

6. **GENERAL WARRANTY:** SUPPLIER represents and warrants that: (i) it has the right, authority and ability to enter into this Agreement and that its performance under this Agreement does not violate or conflict with any other agreement to which SUPPLIER is a party. SUPPLIER represents and warrants to BATTELLE that it has not knowingly employed, contracted with or provided any other support or resources to any

individual or entity that commits, attempts to commit, advocates, or participates in terrorist acts or that has committed, attempted to commit, facilitated or participated in terrorist acts.

**7. INVOICES:** SUPPLIER will invoice BATTELLE not more frequently than once per month for the Services performed in the previous month. Invoices for Services rendered shall be sent to BATTELLE at [accountspayable@battelle.org](mailto:accountspayable@battelle.org) and must reference the BATTELLE Purchase Order Number and the dates/time period during which the Services were performed. SUPPLIER must also provide an itemized invoice for expenses as set forth in subparagraph 7.b., below. Payment for invoices will be made within thirty (30) days of Battelle's receipt of a properly itemized invoice. Failure to include the required invoice information herein will result in invoice payment being put on hold by Battelle. All invoices for Services and expenses must be submitted within ninety (90) days from the date incurred; invoices submitted after 90 days from accrual will not be paid by BATTELLE.

SUPPLIER's invoice must include the following information as applicable:

- a. A description of the Services provided during the invoice period, including: the name of the individual providing the Services; a summary of the Services, date(s) of Services; number of hours expended on each date; and the total amount owed for the Services.
- b. All expenses that are submitted for reimbursement must be actual, reasonable, itemized and broken out by expense category (air fare, hotel, rental car, meals, mileage, etc.) and the dates incurred. Expenses totaling \$75.00 and above must be accompanied by receipts. Additionally, all lodging expenses must be accompanied by receipts and itemized by date(s) and destination of each trip. The invoice shall include only reimbursable expenses specified on the Purchase Order. SUPPLIER shall retain copies of such records and documentation for a period of five (5) years following the invoice date.
- c. Audit Rights. BATTELLE and/or any authorized government audit agency may, for audit requirement purposes, necessitate access to SUPPLIER's applicable records and documentation. Any such audit shall be during normal business hours, and after ten (10) days' written notice to SUPPLIER.

**8. TRAVEL EXPENSES:** If travel is authorized as a part of this Agreement and any associated Purchase Order (s), reimbursement of travel related costs shall be subject to U.S. General Service Administration (GSA) Federal Travel Regulation (FTR) chapter 301 for any authorized travel relating to the business purposes of this Agreement.

- a. Claims for travel expenses must be invoiced within thirty (30) days of completion of travel with receipts. An itemized list of travel charges with copies of receipts for each day is required. Failure to do so may result in non-reimbursement of the expenses.
- b. All claims for travel expenses must be accompanied by a detailed summary report indicating the purpose for which the expense was incurred, where it was incurred and when it was incurred.
- c. Meals and Incidental Expenses (M&IE) and Lodging Per Diem Expenses, if approved, shall be reimbursed in accordance with FAR 31.205-46 at the applicable United States Government rate found at [www.gsa.gov/portal/content/104877](http://www.gsa.gov/portal/content/104877) that was in effect at the time the expenses were incurred. On travel days, only 75% of the Meal Per Diem is allowable. Meal Per Diem charges do not require a receipt but do require itemization by day. Meals that are provided by Battelle must be deducted at the appropriate GSA amount for that meal. Amounts incurred for lodging and/or meals that exceed the applicable federal per diem will not be reimbursed.
- d. Only coach-class air travel will be allowable and reimbursable, unless another category of air travel has been approved in writing in accordance with this Article.
- e. Travel expenses related to personal use, entertainment, or that ultimately benefit the individual are NOT reimbursed. For example:
  - (1) Clothing;
  - (2) Grooming or personal care items;
  - (3) In-flight entertainment, hotel movies and phone calls;
  - (4) Child care expenses;
  - (5) Pet boarding fees;
  - (6) ATM fees;
  - (7) Non-business-related meal expenses;

- (8) Alcohol; and
  - (9) Traffic and parking fines and other auto costs incurred while traveling on SUPPLIER business.
  - (10) In-flight internet charges
  - (11) Rental Car Insurance
- f. SUPPLIER shall not be reimbursed for normal commuting time to and from work locations.
- g. If travel expenses are included in the Agreement and/or Purchase Order as an allowable expense to be incurred, SUPPLIER may be reimbursed for non-luxury, standard mid-size sedan or smaller sized models. Sport utility vehicles (SUV)/minivans are allowable when utilized for a group of greater than three persons.

**9. COMPLIANCE WITH LAWS & STANDARDS:** SUPPLIER shall comply with all Federal and state laws and regulations of SUPPLIER/contractor conduct such as procurement integrity regulations, and post-government service employment regulations including, but not limited to 41 U.S.C. 423 and 18 U.S.C. 207 which apply to SUPPLIER, SUPPLIER's employees, or the work performed by SUPPLIER under this Agreement. SUPPLIER agrees to comply with all applicable provisions of the OFPP/OMB Policy Letter on SUPPLIERS and Conflict of Interest, the Lobbying and Disclosure Act of 1995, and Public Law No. 101-121 (the Byrd Amendment), including but not limited to, those pertaining to disclosure, registration, and certification. SUPPLIER will avoid and promptly notify BATTELLE of any known actual or apparent conflict of interest with the known objectives of BATTELLE or its clients. SUPPLIER hereby acknowledges that at the time of entering into this Agreement neither it nor any person employed by SUPPLIER is (1) presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in any program sponsored by a Federal, State or local department or agency; or (2) under current investigation for debarment.

**10. CONFIDENTIALITY OF INFORMATION:** SUPPLIER agrees to keep confidential any information or material obtained by SUPPLIER or of which SUPPLIER may become aware ("Confidential Information") under this Agreement. Confidential Information shall include but not be limited to the terms of this Agreement. SUPPLIER shall not use such Confidential Information for any purpose other than as specifically authorized under this Agreement, nor publish to any third parties outside SUPPLIER's SUPPLIER any Confidential Information acquired by SUPPLIER in the course of the Services or work. SUPPLIER's personnel shall be bound by the terms of this Confidentiality clause. SUPPLIER 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.

The obligations with respect to handling Confidential Information in this Agreement do not apply to: (i) Information already known or in the public domain through no fault of SUPPLIER; (ii) Information already lawfully known to SUPPLIER outside of BATTELLE's disclosure; (iii) Information lawfully disclosed by BATTELLE; or (iv) Information lawfully received from other sources, without a breach of this Agreement. Upon the expiration or termination of this Agreement, SUPPLIER agrees to return to BATTELLE all records, notebooks, data, drawings, photographs, and any other information or data of every description furnished by BATTELLE or developed by SUPPLIER during or as a result of SUPPLIER's performance of this Agreement. SUPPLIER further agrees not to disclose, without BATTELLE's prior written approval, any such information or data. Such data and information provided by BATTELLE is and shall remain the sole property of BATTELLE.

The terms of this Section 9 will survive the expiration or termination of this Agreement.

**11. RIGHTS IN INTELLECTUAL PROPERTY AND DELIVERABLES:**

10.1 The parties agree that their existing inventions, discoveries and technologies are and shall remain their separate intellectual property and are not affected by this Agreement, and that no other party shall have any claims to or rights in such existing inventions, discoveries and technologies. BATTELLE shall own all deliverables that are provided by SUPPLIER.

10.2 BATTELLE Materials. BATTELLE owns, and will continue to own, all documentation and other materials that it may provide to SUPPLIER and all copies thereof regardless of when provided. SUPPLIER will return to BATTELLE any and all materials of BATTELLE and all copies thereof, on whatever media they are contained, promptly after whichever one of the following first occurs: (i) BATTELLE requests it; (ii) SUPPLIER completes its obligations described in a Statement of Work; or (iii) the Statement of Work involved or this Agreement expires or is terminated for any reason.

**12. TERM AND TERMINATION:**



**11.1 Term of Agreement.** This Agreement will, when fully executed by the parties, be effective as of the Effective Date and will continue in effect thereafter for a period of \_\_\_\_\_ (x) **[Fill in 1, 2 or 3 years]** years, unless earlier terminated according to the provisions below.

**11.2 Termination Provisions.** Either party may terminate this Agreement without cause and for its convenience, upon thirty (30) days' prior written notice to the non-terminating party. If either party breaches any material term or condition of this Agreement, including any Statement of Work that has not been cured or cannot be cured within thirty (30) days, the non-breaching party may terminate this Agreement upon written notice to the breaching party.

In the event SUPPLIER does one or more of the following, BATTELLE may, notwithstanding anything to the contrary contained in this Agreement, terminate this Agreement and any applicable Statement of Work immediately upon written notice to SUPPLIER:

- a. Breaches its security, compliance with laws, confidentiality obligations, or any other material term of this Agreement;
- b. Becomes insolvent and/or ceases conducting business in the ordinary course;
- c. Permits or fails to prevent the filing of a petition for bankruptcy or reorganization involving SUPPLIER, whether filed by SUPPLIER or others;
- d. Makes an arrangement or general assignment for the benefit of creditors or permits or fails to prevent the appointment of a receiver for SUPPLIER.

**11.3 Effect of Termination.** If either party terminates this Agreement for cause, any pending Statements of Work hereunder shall simultaneously and automatically terminate unless the parties otherwise agree in writing. This Section 11.3 and Sections 4, 9, 10, 12, 13, 14, and 21, together with any payment obligations which accrued prior to termination or expiration of this Agreement or any Statement of Work, shall survive the expiration or termination of this Agreement or any Statement of Work.

### **13. INDEMNITY:**

**12.1** SUPPLIER agrees to indemnify, defend and hold BATTELLE, its officers, executives, agents, and employees harmless from and against any and all losses, liabilities, damages, claims, causes of action, judgments, and all expenses and costs of any kind, including reasonable attorneys' fees, (collectively "Damages") arising out of the performance of SUPPLIER's Services and work hereunder that are directly caused, in whole or in part, by SUPPLIER'S negligent or wrongful act or omission or that of anyone employed by SUPPLIER for whose acts SUPPLIER may be liable.

**14. 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 THIS AGREEMENT OR THE SERVICES 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. NEITHER PARTY'S LIABILITY WILL EXCEED THE AMOUNTS PAID OR PROPERLY DUE AND OWING UNDER THIS AGREEMENT.

**15. EXPORT OF DATA:** SUPPLIER shall not, without the prior written consent of BATTELLE and appropriate U.S. Government agencies, transmit directly or indirectly any technical data received from BATTELLE or developed under this Agreement, any immediate product of such technical data, or any commodity produced by an immediate product of the technical data or any portion thereof to any person or country in contravention of the International Traffic in Arms Regulations, the Export Administration Regulations, the Assistance to Foreign Atomic Energy Activities Regulations or such other regulations governing the export of technical data.

**16. NON-WAIVER:** Failure of BATTELLE to insist on strict performance of any of the terms and conditions contained in this Agreement 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.

**17. NOTICES:** Any notice or payment required to be given or made by either party to the other must be in writing and will be deemed to have been given if delivered personally or by a courier service, or made by depositing the same in the United States mail, postage prepaid, mailed by U.S. registered or certified mail, return receipt requested,

addressed to BATTELLE or SUPPLIER at the addresses set forth below, or to an address as provided by written notice to the other party.

If to SUPPLIER:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Attn: \_\_\_\_\_

Email: \_\_\_\_\_

If to BATTELLE:

BATTELLE MEMORIAL INSTITUTE

505 King Avenue

Columbus, OH 43201-2696

Attn: Strategic Supply Services

[Fill in all SUPPLIER information above]

**18. 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 (iii) not be considered in breach 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 this Agreement by providing written notice to SUPPLIER.

**19. ASSIGNMENT AND SUCCESSORS IN INTEREST:** SUPPLIER may not assign, transfer or delegate its rights or obligations under this Agreement or any Statement of Work without the prior written consent of BATTELLE. Any assignment (or attempted assignment) of this Agreement or any Statement of Work in violation of this Section shall be void and of no force or effect. All terms and provisions of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by and against the parties, their successors, assigns and legal representatives.

**20. SEVERABILITY:** If any provision of this Agreement 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 of this Agreement, and no such prohibition or unenforceability in any jurisdiction will invalidate such provision in any other jurisdiction.

**21. GOVERNING LAW:** This Agreement shall be governed by the laws of the State of Ohio without regard to its conflict of laws principles.

**22. NO PUBLICITY/ENDORSEMENT:** SUPPLIER will not use BATTELLE's name or abbreviation thereof, nor any BATTELLE logo, abbreviation thereof, trademark or trade name in any news, advertising, publication, information release, or for any commercial, technical or scientific purposes without BATTELLE's prior written consent. SUPPLIER will not issue any press release or other public announcement regarding this Agreement which implies that BATTELLE has authorized or endorsed the Services of SUPPLIER. SUPPLIER shall not use BATTELLE's Confidential Information or reports for any advertising, promotional or marketing purposes, raising of capital, recommending investments, sale of securities or in any way that implies any type of authorization or endorsement by BATTELLE.

**23. ENTIRE AGREEMENT:** This Agreement, including all Statements of Work, attachments thereto, exhibits and all applicable referenced BATTELLE Purchase Order(s) (excluding any terms and conditions set forth on the reverse side), and any attachments referenced on the face of the Purchase Order, represents the rights, duties and obligations of the parties and supersedes all other representations, letters, proposals, discussions, agreements and understandings by or between the parties. In the event of a conflict between the terms of this Agreement and any Purchase Order provisions the terms of this Agreement shall be controlling. In the event of any conflict between the body of this Agreement and any Statement of Work or exhibit, the body of this Agreement will govern, except with regard to specific terms as mutually agreed upon by the parties, and as expressly identified in a Statement of Work as controlling. Any change, amendment or modification to this Agreement must be in writing, and signed by an authorized representative of each party.

**AGREED AND AUTHORIZED:**

\_\_\_\_\_ [SUPPLIER]

BATTELLE MEMORIAL INSTITUTE

Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Strategic Supply Services

Date: \_\_\_\_\_

EXHIBIT 1:

**RATE CARD [OR SCHEDULE]**

**To Master Services Agreement**

**Between BATTELLE MEMORIAL INSTITUTE (“BATTELLE”) and  
\_\_\_\_\_ [Full Legal Name] (“SUPPLIER”)**

The following are the Hourly/Monthly [specify which one] Fees/Rates for Services to be provided during the term of this Agreement:

**Type of Services**

**Rate**

[Add brief description here\_\_\_\_\_]

\$ \_\_\_\_\_.00/Hour [or /Month]\*

Plus reasonable and necessary Expenses  
as actually incurred

Estimated at \$\_\_\_\_\_.00

\*This Master Services Agreement contains the terms and conditions and pricing that the parties have agreed to during the Agreement term. Fees shall be invoiced as provided in the Invoicing Section herein and are determined by an applicable Statement of Work.