

## Terms and Conditions

### 1. Invoices

- (a) Consortium Member shall not invoice Battelle more frequently than once per month. Invoices shall be submitted via email to [accountspayable@battelle.org](mailto: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 Officer. The final invoice should be marked "Final Invoice." Invoices that do not contain information or are not accompanied by documentation required by this clause will be returned unpaid to the Consortium Member for revision.
- (b) 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, Consortium Member 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 Consortium Member and Battelle.
- (c) Payment terms, NET 45, are from the latest of the following events: (i) Account Payable's receipt of the Consortium Member's properly completed and documented invoice, (ii) scheduled delivery date of the Work, or (iii) actual delivery of the Work.

### 2. Articles of Collaboration

All parties are bound to the Articles of Collaboration agreed to and accepted by the client, Battelle and all Team Members.

### 3. Termination

This Agreement may be terminated, in whole or in part, by written notice of Battelle in accordance with the terms of the Articles of Collaboration. The notice of termination shall specify the extent to which performance is terminated and the effective date of such termination.

4.. **Confidentiality**

Consortium Member and its staff shall maintain in strict confidence all information received from Battelle and/or generated by the Consortium Member 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. Consortium Member represents that it has required all staff working under this Agreement to have signed an agreement of confidentiality consistent with the foregoing requirements and that it will allow no staff members to work under this Agreement who has not signed such an agreement of confidentiality. The Consortium Member's staff's obligations of confidentiality are and shall remain in effect both during their employment and thereafter.

5. **Indemnity**

Consortium Member agrees to indemnify and hold Battelle, its officers, directors, employees and agents harmless from any and all liability, claims, demands, and damages, and all costs and expenses in connection therewith, for or arising out of the negligence or willful misconduct under this Agreement of Consortium Member, its officers, directors, school staff or agents.

6. **License**

Per the Articles of Collaboration, Consortium Member hereby grants to Battelle and other Collaborative Team members, the right to sublicense, a perpetual, paid-up, non-exclusive license to use, reproduce, modify and distribute materials generated by Consortium Member in the course of this work

7. **Independent Contractor**

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

8. **Export**

Consortium Member agrees that it shall comply with all U.S. laws and regulations applicable to exports. Consortium Member 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 Consortium Member 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.

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

## **9. Publicity**

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

10. This Agreement contains all understandings and agreements between the parties 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.
11. The Consortium Member shall provide reasonable cooperation with Battelle in the activities arising under this Agreement with respect to any and all program and administrative activities to support this Agreement award. Time is of the essence and Consortium Member shall diligently respond to all Agreement issues in an expeditious and timely manner.
12. The Consortium Member (and any approved Consortium Member) shall maintain documentation for all charges under this Agreement. The books, records, and documents of the Consortium Member (and any approved Consortium Member), insofar as they relate to work performed or money received under this Agreement, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the state agency, the Comptroller of the Treasury, Battelle, or their duly appointed representatives.

## **13. Insurance**

Consortium Member shall 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 Consortium Member is engaged. Consortium Member 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 Consortium Member's operations or agreement

activities, including without limitation any non-U.S. jurisdictions. Nevertheless, the following minimum insurance coverage shall be maintained:

<b>Coverage</b>	<b>Limits</b>
(i) Worker's Compensation/ Employer's Liability	Not less than the relevant statutory amount or one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate.
(ii) Commercial General Liability (including personal injury & property damage, premises/operations/products) with a bodily injury/property damage)	Not less than one million dollars (\$1,000,000) per occurrence and two million (\$2,000,000) aggregate.
(iii) Business Auto Liability (including owned, leased, hired, and non-owned vehicles)	Not less than one million dollars (\$1,000,000) per occurrence.
(iv) 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. Consortium Member's insurance shall be primary and non-contributing over any and all insurance that may be maintained by Battelle. Consortium Member 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, Consortium Member shall maintain such insurance for a period of three (3) years after termination or expiration of this Agreement.
- (c) Consortium Member shall furnish to Battelle Certificates of Insurance evidencing compliance with the insurance requirements herein. These certificates shall provide for at least thirty (30) days prior notice to Battelle of any cancellation, non-renewal or material reduction of coverage. Certificates shall be provided prior to the initiation of agreement activities and upon each renewal in subsequent periods for a period of three (3) years after termination or expiration of this Agreement. Failure of Battelle to notify Consortium Member of any non-compliance with the provisions of this Agreement shall not constitute a waiver of Consortium Member's obligations under this Agreement.
- (d) Such minimum insurance limits shall not limit Consortium Member's liability under this Agreement.
- (e) Consortium Member shall require any lower tier Consortium Members to satisfy the requirements of this provision.

14. The obligations of the parties to this Agreement are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, natural disasters, riots, wars, epidemics, or any other similar cause.
15. All instructions, notices, consents, demands, or other communications required or contemplated by this Agreement shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Except as otherwise specified in this Agreement, such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice:

**16. Technical Representative**

Only the Battelle Subcontracting Officer has authority to make changes and amendments to this Subcontract. All changes, modifications and amendments will be in writing

- (a) Battelle technical personnel may from time to time render assistance, give technical advice, or discuss or affect an exchange of information with Consortium Member'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.
- (b) The Technical Representative for Battelle is identified in Article IV of the Schedule.
- (c) Except as otherwise provided herein, all notices to be furnished by the Consortium Member shall be sent to the Battelle Subcontracting Officer.
- (d) The responsibilities of Consortium Member's Technical Representative shall be the same as the Battelle Technical Representative as defined in 3(a) above.

**18 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, Consortium Member 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 Consortium Member under this Subcontract.

**19. Survivability,**

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

Applicable Laws  
Export  
Independent Contractor

Confidentiality  
Insurance (as applicable)  
Intellectual Property  
Indemnification (General and Patent)  
Warranty (as applicable)  
Audit (as applicable)  
Consequential Damages  
Survivability

**20. Miscellaneous**

- (a) This agreement 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.
- (b) Time is of the essence related to any dates or schedules related to Consortium Member's performance.
- (c) If any part of this agreement shall be held invalid or unenforceable, such invalidity and unenforceability shall not affect any other part of this Subcontract. Captions used as headings in this Subcontract are for convenience only and shall not be deemed to limit or otherwise affect the construction of any provision hereof.
- (d) 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 Consortium Member in whole or in part without the prior written consent of the Battelle Subcontracting Officer. Prior written consent is not necessary if the proposed second tier Consortium Member had been identified by the Consortium Member in Consortium Member's proposal submitted to Battelle prior to award of this Subcontract. Consortium Member shall not assign any money due or to become due to Consortium Member under this Subcontract without the prior written consent of the Battelle Subcontracting Officer.

**21. Entire Agreement:**

This Subcontract represents the entire agreement of the Parties 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) Articles of Collaboration 3) the terms and conditions of this Subcontract; 4) Government Clauses; and 5) Statement of Work.

This Subcontract may be modified or amended only by mutual agreement in writing. 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.

**22. 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.