

General Provisions

Battelle Memorial Institute, Pacific Northwest Division, has entered into Use Permit Agreement DE-GM05-00RL01831 with the United States Department of Energy to perform the work specified herein at the Pacific Northwest National Laboratory, in Richland, Washington, which may require the use of facilities and equipment which belong to the U.S. Government. This contract is entered into under the authorization and restrictions of that agreement.

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Acceptance of Contract Terms and Conditions (cl. 302 - Oct 2008)

The Contractor, by signing this Contract or performing the services and/or delivering the supplies identified herein, agrees to comply with all the terms and conditions and all specifications and other documents that this Contract incorporates by reference or attachment. Battelle hereby objects to any terms and conditions contained in any acknowledgment of this Contract that are different from or in addition to those mentioned in this document. Failure of Battelle to enforce any of the provisions of this Contract shall not be construed as evidence to interpret the requirements of this Contract, nor a waiver of any requirements, nor of the right of Battelle to enforce each and every provision. All rights and obligations shall survive final performance of this Agreement.

Order of Precedence (cl. 309B - Aug 2009)

This Contract 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:

- A. The Schedule (excluding the specifications or statement of work)
- B. General Provisions of this Contract
- C. Terms and Conditions of individual Task Order(s), if applicable
- D. Government Clauses
- E. Other documents, exhibits, and attachments
- F. The specifications or statement of work

Contract Changes (cl. 346B – Aug 2009)

- A. The Battelle Contracts Representative may, by written notice, make changes within the general scope of this Contract 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
 - 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 Contract, Contractor may request an equitable adjustment in this Contract price and/or delivery schedule.
- C. Contractor must request any equitable adjustment within 14 calendar days of receipt of the written change. If the Contractor's change/equitable adjustment 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.

Disagreement over any adjustment shall be resolved in accordance with the "Disputes" clause of this Contract. However, nothing contained in this "Changes" clause shall excuse Contractor from proceeding without delay in the performance of this Contract as directed.

Contract Administration (cl. 384 - Jan 1986)

- A. The Contractor's progress and compliance with the technical requirements of this contract may be monitored for Battelle by a Technical Administrator. The name of the Technical Administrator, if one is designated, will be furnished the Contractor by the Battelle Contracts Representative.
- B. The Battelle Technical Administrator is authorized to receive information, conduct inspections of work in process and witness Contractor tests. He/she has no authority to (1) change or waive any provision of this contract, including but not limited to statements of work, drawings, specifications and standards, whether attached or incorporated by reference; (2) provide interpretations of any provision or requirement of this contract; (3) direct, advise, or recommend any particular course of conduct on the part of the Contractor; or (4) create any legally binding commitment on behalf of Battelle.
- C. The Contractor is solely responsible for strict compliance with all requirements of this contract. No notice, communication or representation in any form or from any person other than a Battelle Contracts Representative shall be effective to relieve the Contractor of such obligation or to stop Battelle from enforcing the contract exactly according to its written terms.

Confidentiality (cl. 313B – Aug 2009)

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

Communication with Client (cl. 314B – Aug 2009)

Battelle shall be solely responsible for all liaison and coordination with Client. Under no circumstances will Contractor act upon directions given to it by representatives of Client. If Contractor receives such directions for a representative of Client, Contractor will notify the Battelle Contracts 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 Contractor without written authorization by the Battelle Contracts Representative.

Assignment (cl. 357B – Aug 2009)

Battelle may assign this contract to the Client or a designee of the Client. Upon receipt by the Contractor of written notice that the Client or its designee has been assigned this contract, Battelle shall be relieved of all responsibility hereunder, and the Contractor shall thereafter look solely to the assignee for performance of Battelle's obligations.

Unless assignment is made to a wholly owned subsidiary, the Contractor shall not assign this contract or any interest therein, nor money due or to become due, nor claims thereunder without the prior written consent of Battelle or Battelle's assignee. Any assignment, by operation of law or otherwise, without prior written consent of Battelle or Battelle's assignee shall be void.

Insurance Requirements (cl. 378, Jan 2009)

Unless otherwise specified in the Contract Schedule, this clause applies when work will be performed on the Pacific Northwest National Laboratory or other DOE-owned or -leased sites (see below), or when Contractors will be driving or operating Battelle-owned or government-owned vehicles or boats.

- A. Contractor shall purchase and maintain during the term of this Contract, at its own expense, and any extensions thereof, insurance in amounts reasonable and customary for the industry in which Contractor is engaged. Contractor 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 Contractor's operations or Contract activities, including without limitation any non-U.S. jurisdictions. Nevertheless, the following minimum insurance coverage shall be maintained:

1. Workers Compensations: Statutory
 2. Employers' Liability: \$100,000 per occurrence
 3. Commercial General Liability (including contractual and products and completed operations liability): \$500,000 per occurrence
 4. Business Auto Liability (to include bodily injury and property damage liability covering the operation of all autos owned and unowned used in connection with performance of contract): \$200,000 per person; \$500,000 per occurrence for bodily injury; and \$20,000 per occurrence for property damage
 5. Any additional insurance which may be required by Battelle or the Department of Energy
- 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 coverages. Contractor's insurance shall be primary and non-contributing over any and all insurance that may be maintained by Battelle. Contractor and its insurer(s) shall waive all rights of subrogation against Battelle, its officers, directors, agents, trustees and employees.
- C. Contractor shall furnish to Battelle Certificates of Insurance evidencing compliance with the insurance requirements herein. These certificates shall provide for at least 30 days prior written notice to Battelle of any cancellation, non-renewal, or material reduction in coverage. These certificates shall be provided prior to the initiation of contract activities and upon each policy renewal for a total of three years after termination or expiration of this Contract. Failure of Battelle to notify Contractor of any non-compliance with the provisions of this Contract shall not constitute a waiver of Contractor's obligations under this Contract. Battelle does not warrant or represent that the minimum amounts of coverage required are sufficient to protect the Contractor in fulfilling its obligations under this subcontract. Such minimum insurance limits shall not limit Contractor's liability under this Contract. Contractor shall require any lower-tier subcontractors to satisfy the requirements of this provision.

Invoices and Payment (cl. 350 – Oct 2008)

Contractor shall submit its invoice at the time of final shipment or final completion of the services, unless otherwise provided in the Contract Schedule or Purchase Order. Invoices shall reference the Battelle Purchase Order number and include a complete description of the ordered items, prices, ship dates, and other documentation as required by the Contract Schedule or Purchase Order. Whenever possible, invoices should be sent electronically to ap.invoices@pnl.gov. Failure to comply with any of these requirements may result in a delay in payment of the invoices.

Payment shall be made for items delivered to the specified delivery destination, and for services completed and accepted by Battelle. Unless otherwise provided in the Contract Schedule or Purchase Order, the terms of payment shall be 30 days after receipt of the Contractor's properly submitted invoice. Any offered discount shall be taken if payment is made within the discount period indicated by the Contractor. Payments may be made by check or by electronic funds transfer, at the option of Battelle. Payment shall be deemed to have been made as of the date of mailing or the date on which an electronic funds transfer was made.

Indemnity/Disclaimer (cl. 351B – Aug 2009)

Contractor shall indemnify and save harmless Battelle from and against any and all liabilities and losses for injury (including death) to persons (including but not limited to Contractor's employees) or damage to property to the extent caused by a negligent act or omission or willful misconduct of the Contractor, its agents, or employees that occur during the performance of this Contract, including any and all expense, legal or otherwise, incurred in the investigation or defense of any claim.

This indemnification shall not include such injuries to any person or persons or damage to or destruction of any property to the extent caused by the negligence or omission of Battelle or its employees.

In no event shall either Contractor or Battelle be liable for any special, incidental, or consequential damages of any type or nature.

The following paragraph is incorporated if the Truth in Negotiations Act applies to the Contract:

In addition, Contractor agrees to hold Battelle harmless from liability, claims, suits, or demands and all costs to the extent directly caused by Contractor's failure to provide current, complete and/or accurate cost and pricing data in accordance with FAR 52.215-10 and 52.215-11.

Compliance with Laws (cl. 3121B – Aug 2009)

Contractor shall comply with all applicable Federal, State and local laws and regulations, including, but not limited to, all applicable laws and regulations relating to business ethics, protection of the environment, occupational safety and health, equal opportunity and non-discrimination, the Immigration Reform and Control Act and the Fair Labor Standards Act. Contractor will indemnify and hold Battelle and its trustees, officers, employees and representatives harmless from and against any claims, demands, suits, losses, damages, costs and expenses arising out of any non-compliance, violation or alleged non-compliance or violation by Contractor of any such laws, regulations and/or ordinances.

Warranty (cl. 383D – Aug 2009)

- A. **Goods:** Contractor warrants that all goods furnished under this Contract 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 Contractor, whichever is longer, will conform with all requirements of this Contract, 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. Contractor

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:** Contractor warrants that all services performed under this Contract will be performed with the standard of a fully qualified professional, be free from defects, conform to the requirements of the Contract, and be performed in strict compliance with any regulatory or international standards specified in the Statement of Work for this Contract. Any services corrected or re-performed will be covered by this warranty.
- C. The warranties provided in Paragraphs A and B above shall apply unless a more extensive warranty(s) is/are specified as in the Government Clauses, or regularly offered by Contractor, in which case the greater warranty shall apply.
- D. If Contractor breaches any warranty, Battelle may elect, at its sole discretion and with no increase in the Contract price, to:
 - 1. Require Contractor either to repair or replace, at the Battelle election, defective or nonconforming goods promptly; or
 - 2. Require Contractor promptly to furnish materials or parts and installation instructions required to successfully accomplish the correction of defective or nonconforming goods, and equitably reduce the Contract price to account for the cost of correction including, without limitation, removal and installation; or
 - 3. Require Contractor to promptly redesign defective or nonconforming goods and require Contractor promptly to repair or replace goods manufactured in accordance with such defective design; or
 - 4. Require Contractor either to correct or re-perform, at the Battelle election, defective or nonconforming services promptly; or
 - 5. Equitably reduce the Contract price; or
 - 6. Correct or have corrected the nonconformity at Contractor's expense.

Inspection (cl. 379F – Aug 2009)

Battelle shall have the right, at all reasonable times with reasonable advance notice, to inspect or otherwise evaluate the technical work performed or being performed hereunder.

Battelle Name (cl. 374B Aug 2009)

The Contractor agrees not to use Battelle's name or identifying characteristics for advertising, sales promotion, raising of capital, recommending investments or other publicity purposes that implies endorsement by Battelle without the prior written consent of Battelle. This clause shall survive the termination or expiration of this contract.

Independent Contractor (cl. 358B – Aug 2009)

Contractor is an independent contractor and not an employee, agent, or representative of Battelle. Contractor 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. Contractor shall be solely responsible for its own financial obligations to third parties and to its employees and contractors. Further, Contractor agrees that it shall not be covered by any Battelle insurance or benefits. Contractor 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 Contractor's responsibilities under this clause.

Export (cl. 337B – Aug 2009)

Contractor agrees that it shall comply with all U.S. export laws and regulations. Contractor agrees not to export or re-export any products, materials, items and/or technical data, or the product(s) thereof, received from Battelle unless Contractor has obtained in advance all required licenses, agreements or other authorizations from the U.S. 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 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.

Termination for Convenience (cl. 365H – Aug 2009)

- A. Battelle may terminate all or part of this Contract for its convenience by giving written notice to Contractor. In the event Battelle terminates for its convenience, after performance has commenced, Battelle will compensate Contractor for the actual, allowable, and reasonable expenses incurred by Contractor for work in process up to and including the date of termination provided Contractor has used reasonable efforts to mitigate the Battelle liability under this clause.
- B. Upon termination, in accordance with the Battelle written direction, Contractor 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; and 4) deliver upon request any work in process.
- 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 Contract price. Contractor's termination claim shall be submitted within ninety (90) calendar days from the effective date of the termination.
- D. Contractor shall continue all work not terminated.

Termination for Default (cl. 365G – Aug 2009)

- A. Battelle, by written notice, may terminate this Contract for default, in whole or in part, if Contractor fails to comply with any of the material terms of this Contract. Contractor 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.
- B. Contractor shall be compensated only for the work actually delivered and accepted. Battelle may require Contractor to deliver to Battelle any supplies and materials, or other items that Contractor has specifically produced or acquired for the terminated portion of this Contract. Battelle and Contractor shall agree on the amount of payment for these other deliverables.
- C. Contractor shall continue all work not terminated.
- D. In the event of a termination for default, Contractor 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 Contractor was not in default, such termination shall be converted to a Termination for Convenience.

Excusable Delays (cl. ci-69 - Feb 2007)

The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Battelle Contracts Representative in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Battelle Contracts Representative of the cessation of such occurrence. Such an excusable delay may result in an extension of the contract completion date but will not result in additional funding.

Stop Work (cl.380 - July 2009)

Battelle shall have the right to issue a stop-work notice in accordance with the procedures set forth in FAR 52.242-15.

Disputes (cl. 331B - Oct 1979)

Except as otherwise provided or agreed any dispute relating to this contract which is not disposed of by agreement shall be decided by litigation in a court of competent jurisdiction upon filing of a legal action by the aggrieved party. It is further agreed by the Contractor that litigation shall be limited and confined exclusively to the appropriate state or Federal court located within the State of Washington. Determination of any substantive issue of law shall be based upon application of Federal law. During the pendency of any dispute, the Contractor shall proceed diligently with the performance of the contract and in accordance with the direction of Battelle. The Contractor shall have one year from the time of its accrual to bring a dispute to the attention of the Battelle Contracts Representative.

Quick Close-Out Procedures (cl. 362B – Aug 2009)

When Battelle and Contractor agree, the quick close-out procedures of FAR 42.708 may be used.

Intellectual Property (cl. 360B – Aug 2009)

This effort is not for research and development services and there is no expectation that any "invention(s)" (as defined under Title 35 of the U.S. Code) will arise in the performance of this contract. However, in the event that an invention does arise and subject to the terms of any applicable Government Contracts provision including but not limited to those found in FAR subparts 27.3 and 52.227, Battelle shall be the exclusive owner of all inventions, innovations, business plans/systems, concepts, computer codes, and other information, writings, and discoveries arising out of Contractor's performance under this contract.

Unless contrary to any applicable Government Contracts provision, Contractor agrees to immediately disclose and does hereby assign to Battelle all right title and interest in any such inventions, concepts, computer codes, and other information, writings, and/or discoveries. Contractor further agrees to provide assistance in obtaining, and to execute when requested, any and all legal instruments deemed necessary by Battelle or its transferees or designees to seek and/or obtain formalized legal recognition of the rights herein assigned. This includes but is not limited to applications for copyright and trademark registrations, patent grants, and assignments of same.

Patent Indemnity (cl. 367B – Aug 2009)

Contractor warrants that the work performed or delivered under this contract will not infringe or otherwise violate the intellectual property rights of any third party in the United States or any foreign country. Contractor agrees to defend, indemnify and hold harmless Battelle and Client from and against any claims, damages, losses, costs and expenses, including reasonable attorneys fees, arising out of any action by a third party that is based upon a claim that the work performed or delivered under this contract 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 contract except with regard to allowable insurance costs.

Final Invoice (cl. 350B – Aug 2009)

Contractor shall submit a final invoice, designated as such, promptly upon completion of the work, but no later than six (6) months, (or longer, as Battelle may approve in writing) from the completion date. Upon approval of that final invoice and upon Contractor's compliance with all terms of this Contract and this provision, Battelle shall promptly pay the balance of allowable costs and that part of the fee (if any) not previously paid.

Contractor shall pay to Battelle any refunds, rebates, credits or other amounts (including interest, if any) accruing to or received by Contractor or any assignee under this Contract to the extent that those amounts are properly allocable to costs for which Contractor has been reimbursed by Battelle. Reasonable expenses incurred by Contractor for securing refunds, rebates, credits or other amounts shall be allowable costs if approved by Battelle.

Audit (cl. 340B – Aug 2009)

For three (3) years following the completion or termination of this Contract, Battelle and/or, if applicable, any cognizant government audit agency, shall have access to Contractor's records and documentation for audit purposes during normal business hours and upon ten (10) day's notice. Contractor shall promptly reimburse Battelle for any amounts for which Contractor cannot provide adequate documentation or substantiation or are otherwise unallowable or not properly chargeable in accordance with FAR Part 31.

Survivability (cl. 394B – Aug 2009)

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

- Compliance with Laws
- Export Control
- Independent Contractor
- Confidentiality
- Insurance (as applicable)
- Intellectual Property
- Battelle Name
- Audit (as applicable)
- Indemnities
- Warranty (as applicable)

Notice of Debarment or Suspension (cl. 361B – Aug 2009)

Contractor shall provide immediate notice to the Battelle Contracts Representative in the event of being suspended, debarred, or declared ineligible by any agency or Department of the U.S. Government, or upon receipt of notice of proposed debarment from any agency or department of the U.S. Government, during the performance of this Contract.

Miscellaneous (cl. 315B – Aug 2009)

- A. If any part of this Contract shall be held invalid or unenforceable, such invalidity and unenforceability shall not affect any other part of this Contract. Captions used as headings in this Contract are for convenience only and shall not be deemed to limit or otherwise affect the construction of any provision hereof.
- B. The rights and remedies of Battelle set forth in this Contract are cumulative and are in addition to any other rights or remedies that Battelle may have at law and/or in equity.