

Contract Terms and Conditions

Battelle Memorial Institute, Pacific Northwest Division, an Ohio non-profit corporation (hereinafter called "**Battelle**"), and the "**Contractor**," identified in the Contract Schedule, agree to enter into this Contract subject to the following terms and conditions:

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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 Contract.

Order of Precedence (cl. 309D – Dec 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. Other documents, exhibits, and attachments
- E. The specifications or statement of work

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 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
- to provide interpretations of any provision or requirement of this contract; direct, advise, or recommend any particular course of conduct on the part of the Contractor
- to 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. 313 – 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.

Assignment (cl. 357D – Dec 2009)

The Contractor shall not assign this contract or any interest therein, nor claims thereunder without the prior written consent of Battelle, which shall not be unreasonably withheld.

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.

Delivery and FOB Point (cl. 349 – Dec 2009)

All deliveries shall be F.O.B. destination unless otherwise specified on the Contract Schedule.

Changes – Fixed Price (cl. 346b – Sep 2007)

- A. The Battelle Contracts Representative may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:
1. Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for Battelle in accordance with the drawings, designs, or specifications.
 2. Method of shipment or packing.
 3. Place of delivery.
- B. If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the Battelle Contracts Representative shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.
- C. The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Battelle Contracts Representative decides that the facts justify it, the Battelle Contracts Representative may receive and act upon a proposal submitted before final payment of the contract.
- D. If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the Battelle Contracts Representative shall have the right to prescribe the manner of the disposition of the property.
- E. Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

Inspection/Acceptance (cl. 379G – Dec 2009)

The Contractor shall only tender for acceptance those items that conform to the requirements of this Contract. Battelle reserves the right to inspect or test any supplies or services that have been tendered for acceptance. Battelle may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in the Contract price. If repair/replacement or reperformance will not correct the defects or is not feasible, Battelle may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. Battelle must exercise its post-acceptance rights—(1) within a reasonable time

after the defect was discovered or should have been discovered; and (2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

Title (cl. 378B – Dec 2009)

Unless specified elsewhere in this Contract, title to items furnished under this Contract shall pass to Battelle upon acceptance by Battelle, regardless of when or where Battelle takes physical possession.

Insurance Requirements

This clause not only applies when work will be performed on the Pacific Northwest National Laboratory or other Department of Energy (DOE)-owned or –leased sites (see below), but it also applies 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: \$1,000,000 per occurrence
 - 3. Commercial General Liability (including contractual and products and completed operations liability): \$3,000,000 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): \$1,000,000 per occurrence
 - 5. Professional Liability Insurance: \$3,000,000 per occurrence
 - 6. Property Insurance: full replacement value covering any and all supplies and equipment owned by Battelle or Client which is under the control of Contractor
 - 7. Any additional 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 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.

Indemnity (cl. 351C – 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.

Intellectual Property (cl. 360C – Aug 2009)

Battelle shall be the exclusive owner of all inventions, concepts, computer codes, and other writings and discoveries made or conceived by the Contractor in the course of work under this Contract and all those inventions, concepts, computer codes, and other writings and discoveries made during the period of this Contract, provided they result from information gained by the Contractor from Battelle under this Contract.

The Contractor agrees to immediately disclose to Battelle any such inventions, concepts, computer codes, and other writings and discoveries. All copyrightable works shall be deemed works for hire under the Copyright Law, but to the extent that by operation of law or otherwise that they are not works for hire, then the Contractor shall assign to Battelle, and does hereby assign to Battelle, all right, title and interest in the copyrightable work and the copyright therein, including the right to apply for and receive copyright registrations and other similar protection which may then be available in the name of Battelle.

The Contractor agrees to assign to Battelle, and does hereby assign to Battelle, all right, title, and interest in such inventions, concepts, computer codes, and other writings and discoveries. Battelle shall have the right to file applications in its own name as assignee or applicant for patent, copyright, trademark, and/or other intellectual property protections which may then be available in

the United States and foreign countries. In countries where necessary, the Contractor shall, at the request and expense of Battelle, make such application and/or execute any papers and do all such things as may be reasonably required to assign and protect the rights of Battelle or its transferees or designees in all such properties.

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.

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. 383E – Dec 2009)

- A. **Goods.** In addition to the warranties provided for under the Uniform Commercial Code, Contractor warrants that all goods furnished under this Contract will be free from defects, 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.
- B. **Services.** Contractor warrants that all services will be performed with the highest standard of professional service, be free from defects, conform to the requirements of this Contract, and be performed in strict compliance with any specified regulatory or international standards. Any services corrected or re-performed will be covered by this warranty.

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.

Termination (cl. 337J– Dec 2009)

- A. Battelle may terminate all or part of this Contract by giving written notice to Contractor. In the event Battelle terminates this Contract, 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.
 - 1. 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.
 - 2. 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 fifteen (15) calendar days from the effective date of the termination.
 - 3. If terminated in part, Contractor shall continue all work not terminated.
- B. Battelle, by written notice, may terminate this Contract, 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.
 - 1. 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.
 - 2. Contractor shall continue all work not terminated.
 - 3. In the event of a termination for default, Contractor shall be liable to Battelle for excess procurement costs, in addition to the Battelle other rights and remedies at law or in equity.

Stop Work *(cl. 380C - Aug 2009)*

Battelle may at any time, by written order, require the Contractor to stop all, or any part, of the work. Upon receipt of such an order the Contractor 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. Battelle shall either (i) cancel the stop-work order, or (ii) terminate the work covered by such order.

Disputes *(cl. 331C - 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.

Force Majeure *(cl. 310 - Dec 2009)*

Neither Battelle nor Contractor shall be liable in any way for failure to perform any provision of this Contract (except for 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, Contractor and/or Battelle shall use commercially reasonable efforts to overcome all difficulties and to resume work as soon as reasonably possible.

Survivability *(cl. 394C - Aug 2009)*

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

- Confidentiality
- Insurance (as applicable)
- Intellectual Property
- Battelle Name
- Indemnities
- Warranty (as applicable)

Miscellaneous *(cl. 391 - Dec 2009)*

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.

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.