

Effective Date: December 4, 2014

MASTER COMMODITY AGREEMENT

Terms and Conditions

This Master Commodity Agreement is entered into by and between BATELLE MEMORIAL INSTITUTE – CORPORATE OPERATIONS (hereinafter known as "Battelle"), a non-profit corporation under the laws of the State of Ohio, and _____ [Vendor Name] having its principal place of business at _____ (hereinafter known as "Seller"), in order to provide an efficient and mutually acceptable contractual vehicle for Battelle to obtain commercial item [Insert Supplies] _____ supplies from Seller and Seller to provide said supplies to Battelle on an on-going basis.

NOW, THEREFORE the parties do mutually agree as follows:

1. **MASTER COMMODITY AGREEMENT ORDERING.** This is a Master Commodity Agreement. No purchase is authorized by this Agreement. Any supplies to be furnished under this Agreement shall be ordered by the following methods: individual Purchase Orders, procurement card (P-card), established eProcurement solution, or established on-line ordering system (hereinafter referred to as "Orders"). It is agreed that Battelle shall have no obligation to authorize any purchase or issue any Order as a result of this Agreement. Orders will be processed according to the following:
 - a. There is no minimum or maximum number of Orders required to be issued pursuant to this Agreement. Battelle may issue Orders requiring delivery to multiple destinations or performance at multiple locations.
 - b. Only authorized Battelle Procurement Officers, P-card users, Battelle employees are authorized to place Orders under this Contract.
 - c. Battelle shall not be liable for any amount over the funded amount established in each Order.
 - d. Each Order issued pursuant to this Master Commodity Agreement shall be considered a separate agreement incorporating by reference these terms and conditions and any additional terms set forth or referenced in the Order issued under this Agreement.
 - e. In the event of an inconsistency, the following order of precedence shall apply: 1) the terms and conditions of this Master Commodity Agreement, 2) Orders and any additional terms and conditions specified therein, 3) the Flow-down clauses and references identified in the Order and 4) the Statement of Work.
 - f. The following documents are incorporated by reference into this Master Commodity Agreement:
 - i. Attachment B, Statement of Work
 - ii. Attachment C, Pricing Matrix, Commodity List [Insert Proper Name of List]
 - iii. Attachment E, Annual Representations and Certifications
 - g. Two types of Orders may be issued under this Agreement.
 1. Battelle Purchases: Orders may be issued for commercial item supplies to be delivered to Battelle as a supplier to Battelle.
 2. Government-Funded Purchases: Orders may be issued for commercial item supplies under Battelle contractual agreements funded in whole or in part by the United States Government or from state and local governments.
2. **COMMENCEMENT OF PERFORMANCE.** No work shall commence until a written Order is issued and accepted. Deliveries shall be completed within the period of performance specified in the Order. Seller's

505 King Avenue
Columbus, Ohio 43201

Tel. No. 614-424-7499
Fax No. 614-458-7499
Email _____@battelle.org

Tel. No.
Fax No.
Email

- B. Contacts with Battelle which affect the Contract price, schedule, Statement of work, Individual Order or the Terms and Conditions of this Agreement shall be made only with the authorized Purchasing Agent or Purchasing Manager. No changes to this Contract shall be binding upon Battelle unless incorporated in a written modification to the Contract and signed by Battelle's Purchasing Agent or Purchasing Manager.
- C. Account Representative: The following is Seller's Account Representative:

NAME
ADDRESS
PHONE
E-MAIL

It is the Account Representative's responsibility to do the following: _____
_____.

8. **CHANGES.** The Battelle Commodity Contract Manager may at any time, by written notice, and without notice to sureties or assigns, make changes to any one or more of the following: 1) drawings, designs, specifications or Statement of Work; 2) quantity; 3) method of shipping or packing; 4) place of inspection, acceptance, or point of delivery; 5) time of performance; and 6) place of performance. If a change or suspension under this clause causes an increase or decrease in the cost of items or the time required for performance, Seller may request an equitable adjustment in the Order price and/or delivery schedule. Seller must request any equitable adjustment within seven (7) calendar days of receipt of the written change. Disagreement over any adjustment shall be resolved in accordance with the "Disputes" clause of this Agreement. However, nothing contained in this "Changes" clause shall excuse Seller from proceeding without delay in the performance of the Order as directed.

9. **INDEPENDENT CONTRACTOR.** It is agreed that in the performance of work under any Order, the Seller is acting in the capacity of an independent contractor and is not an agent or employee of Battelle.

10. **COMPLIANCE WITH LAWS.** Seller agrees to comply with all applicable laws, orders, rules, regulations, ordinances and ethical and professional standards of behavior and conduct. Without limiting the foregoing, Seller specifically acknowledges the importance of strict adherence to those laws and professional standards related to doing business with the Federal government, adhering to ethical business practices, and complying with anti-fraud requirements. Seller shall indemnify and hold harmless Battelle for any failure to comply with this clause.

11. **CONFLICT OF INTEREST.** In addition to any specific Conflict of Interest obligation made part of any Order issued hereunder, Seller 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 this Agreement.

12. **DELIVERY.** All deliveries shall be F.O.B. destination specified in the Order, unless otherwise agreed in writing. Time is of the essence for any dates and schedules applicable to Seller's performance specified in this

Master Commodity Agreement and any Order issued. Seller shall promptly advise Battelle of any delay or any anticipated delay in delivery for items purchased pursuant to an Order.

13. PACKING AND SHIPPING. Unless otherwise specifically set forth in an individual Order, any goods purchased hereunder must be suitably packed and prepared for shipment to secure the lowest transportation rates or appropriately packed to comply with any specific transportation specifications of Battelle, and in all cases, to comply with the carrier's regulations. Seller agrees to ship all product standard ground freight free of charge in the 48 states. Charges for preparation for shipment (including packing and crating) and freight charges are included in the price for the goods set forth herein. Battelle shall not be obligated to accept any shipments in excess of the ordered quantity and any excess or advance shipments may be returned to Seller at Seller's expense.

An itemized Packing List shall accompany each shipment. Battelle's count, weight or other measure shall be final and conclusive on all shipments not accompanied by an accurate Packing List. Each itemized packing list shall contain the following minimum details:

1. Purchase Order/ P-card Reference Number
2. Item Number
3. Description or Part Number
4. Quantity Ordered
5. Quantity Shipped
6. Name of Supplier
7. Name of Requestor
8. Manufacturer's Lot / Date Code and Certificate of Conformance, if applicable
9. MSDS if applicable

14. ASSIGNMENT. Neither this Agreement nor any Order issued hereunder may be assigned by Seller in whole or in part without the prior written consent of Battelle's Commodity Manager. Seller shall not assign any money due or to become due Seller under any issued Order without the prior written consent of the Battelle Commodity Manager. In any event, however, this Agreement and all Orders issued hereunder shall be binding upon, inure to the benefit of, and be enforceable by and against the successors, assigns and transferees of the parties.

15. INSPECTION. All goods furnished pursuant to this Agreement and/or an Order shall be subject to inspection and test by Battelle at all reasonable times and places, notwithstanding the terms of delivery or payment or fact that title has not yet passed to Battelle or its customer. No inspection made prior to Final Acceptance shall relieve Seller from responsibility for defects or other failure to meet the requirements of this Agreement.

16. WARRANTY. All Goods provided shall be covered by the original manufacturer's warranty. Seller shall arrange for assignment of the original manufacturer's warranty to Battelle or Battelle's client, as identified in an individual Order. As a minimum, SELLER'S SHALL WARRANT THAT ALL PRODUCTS SOLD ARE WARRANTED AGAINST DEFECTS IN WORKMANSHIP OR MATERIALS UNDER NORMAL USE FOR ONE (1) YEAR AFTER DATE OF PURCHASE FROM SELLER, UNLESS OTHERWISE STATED. DURING SUCH ONE (1) YEAR PERIOD, SELLER WILL USE COMMERCIALY REASONABLE EFFORTS TO REPAIR OR REPLACE ANY DEFECTIVE PRODUCT; PROVIDED, HOWEVER, THAT BATTELLE HAS RETURNED THE DEFECTIVE PRODUCT TO SELLER. THE COSTS OR SHIPPING SHALL BE THE RESPONSIBILITY OF SELLER. ANY REPAIR OR REPLACEMENT OR, REFUND OF AMOUNTS PAID BY BATTELLE FOR THE DEFECTIVE PRODUCT, SHALL BE AT BATTELLE'S OPTION.

Manufacturers' Warranties & Sales Literature. Many of the Products listed in a Seller's General Catalog are warranted by the manufacturer to the final user. As a service for the Term of this Agreement, Seller will obtain copies of manufacturers' consumer warranties and will furnish them free of charge to Battelle. Seller may also furnish sales brochures and other literature of the manufacturer. Seller assumes no responsibility for the content or coverage's contained in any manufacturer's warranty or sales literature by providing this service.

OSHA Hazardous Substance Product Information. Copies of the Manufacturer's Material Safety Data Sheets (MSDS) shall be provided with the items delivered by Seller. Seller is not responsible for the accuracy or reliability of any MSDS.

The foregoing warranties shall survive any delivery, inspection, acceptance or payment by Battelle.

17. INSURANCE REQUIREMENTS. Seller shall purchase and maintain during the term of this Master Commodity Agreement and any extensions thereof, insurance in amounts reasonable and customary for the industry in which Seller is engaged. Seller shall maintain all insurance which is required by any law, statute, ordinance, or regulation of any jurisdiction having authority in whole or in part over the Seller's operations or Order activities. Nevertheless, the following minimum insurance coverage shall be maintained:

Coverage	Limits
(i) Worker's Compensation	Statutory
(ii) Employer's Liability	\$1,000,000 per occurrence
(iii) Commercial General Liability	\$3,000,000 per occurrence
(iv) Business Auto Liability	\$1,000,000 per occurrence
(v) Any other insurance which may be required by Battelle or Battelle's Customer.	

- (a) 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. Seller's insurance shall be primary and non-contributing over any and all insurance that may be maintained by Battelle. Seller and its insurer(s) shall waive all rights of subrogation against Battelle.
- (b) Seller shall furnish to Battelle Certificates of Insurance evidencing compliance with the applicable insurance requirements herein.
- (c) Such minimum insurance limits shall not limit Seller's liability under this Agreement or any issued Order.
- (d) Seller shall require any lower tier Sellers to satisfy the requirements of this provision.

18. INDEMNIFICATION. Seller agrees to indemnify, defend, and hold harmless Battelle, its officers, trustees, agents, and employees, from any and all damages, liabilities, claims, suits, demands, and all expenses and costs including reasonable attorney's fees and costs, arising out of the Seller's performance hereunder that are caused in whole or in part, by the negligent or wrongful acts or omissions of Seller or anyone employed by Seller for whose acts Seller may be liable.

This indemnification shall not include such injuries to any person(s) or damage to or destruction of any property due to the sole negligence or omission of Battelle or its employees.

19. INFRINGEMENT INDEMNITY. Seller shall indemnify, defend and hold Battelle and Battelle's customer's (hereinafter collectively referred to in this Section as "Battelle") harmless from and against any claim, suit or proceeding ("claim") brought against Battelle asserting that the goods furnished under this Agreement, or Battelle's use (including resale) thereof, constitutes an infringement of any currently existing patent, trademark, trade secret, copyright or other intellectual property right, and Seller shall pay all damages and costs awarded against and reasonable expenses incurred by Battelle in connection with such claim, including reasonable attorneys' fees. In the event such goods or use thereof are enjoined in whole or in part, Seller shall at its expense and Battelle's option undertake one of the following: (i) obtain for Battelle the right to continue the use of such goods; (ii) in a manner acceptable to Battelle, substitute equivalent goods or make modifications thereto so as to avoid such infringement and extend this indemnity thereto; or (iii) refund to Battelle an amount equal to the

purchase price for such goods plus any excess costs or expenses incurred in obtaining substitute goods from another source.

20. **CONSEQUENTIAL DAMAGES.** In no event shall either Seller or Battelle be liable to the other for any special, incidental or consequential damages of any type or nature, except as otherwise expressly provided in this Agreement or specifically set forth in an individual Order.

21. **BATTELLE RIGHTS AND REMEDIES.** The rights and remedies of Battelle set forth in this Agreement or any Order issued are cumulative and in addition to any other rights or remedies that Battelle may have at law and/or equity.

22. **FORCE MAJURE.** Neither party shall be held responsible to the other party for nonperformance or delay in performance due to acts of God, acts of Government, wars, riots, strikes, accidents in transportation, fuel or material shortages, or other causes beyond the control of the parties and which could not have been reasonably foreseen or prevented. Should such acts or events occur, the parties shall use their best efforts to overcome all difficulties and to resume work as reasonably possible.

23. **NOTICE OF INDICTMENT/ DEBARMENT/SUSPENSION.** Seller shall provide immediate notice to Battelle's Commodity Manager in the event of notice of potential suspension, debarment, or being declared ineligible to contract by any agency or Department of the U.S. Government, or upon receipt of a notice of proposed debarment from any agency or department of the U.S. Government, during the effective period of this Agreement.

24. **ACCESS.** Seller shall comply with all the rules and regulations regarding conduct, security, and safety established by Battelle for access to and activities in and around Battelle and/or its client's buildings and properties. Seller also agrees that all Seller's employees will execute, upon request, an access agreement permitting access to a Battelle facility.

25. **PUBLICITY.** No public releases including those for news, advertising, information, technical or scientific purposes relating to this Agreement or any Order shall be issued by Seller. Battelle does not endorse products or services. Accordingly, Seller shall not use or imply Battelle's or its client's name for advertising, promotional purposes, raising of capital, recommending investments, sale of securities or in any way that implies endorsement by Battelle.

26. **NOTICES.** Any notice required to be made by either party to the other may be made by United States mail postage prepaid, overnight delivery postage prepaid, by facsimile with receipt documented, by electronic or other means with actual receipt confirmed. All notices to Battelle will be sent to the Commodity Manager.

If to Battelle:

Battelle Memorial Institute – Corporate Operations
505 King Avenue
Columbus, Ohio 43021
Attention: Strategic Sourcing Services

If to Seller, to:

COMPANY NAME
ORGANIZATION NAME
COMPANY MAILING ADDRESS
Attention: Contractual Representative's Name

27. **TERMINATION FOR CONVENIENCE.** Battelle may terminate part of all of any issued Order for its convenience by providing written notice to Seller. In the event Battelle terminates for its convenience, after performance has commenced, Battelle will compensate Seller for the actual, allowable, and reasonable expenses

incurred by Seller for work in progress up to and including the date of termination provided Seller has used reasonable efforts to mitigate Battelle's liability under this clause.

- (a) Upon termination, in accordance with Battelle's written direction, Seller will immediately: 1) cease work; 2) prepare and submit to Battelle and 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 progress.
- (b) 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 Order price. Seller's termination claim shall be submitted within ninety (90) calendar days from the effective date of the termination.
- (c) Seller shall continue all work not terminated.

28. TERMINATION FOR DEFAULT. Battelle, by written notice, may terminate this Agreement and/or any Order issued hereunder for default, in whole or in part, if Seller fails to comply with any of the terms of this Agreement or any Order, fails to make progress so as to endanger performance of this Agreement or any Order, or fails to provide adequate assurance of future performance. Seller shall have then 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. Default involving performance delays shall not be subject to the cure provision.

- (a) Seller shall be compensated only for items actually delivered and accepted. Battelle may require Seller to deliver to Battelle any supplies or materials that Seller has specifically produced or acquired for the terminated portion of the referable Order. Battelle and Seller shall agree on the amount of payment for these other deliverables.
- (b) Battelle's final decision shall be conclusive and binding regarding the dispute unless Seller commences an action to contest such a decision in a court of competent jurisdiction within the State of Ohio within ninety (90) days of the date of the decision or within one (1) year following the act giving rise to the dispute, whichever is later. Said dispute shall be adjudicated under the laws of the State of Ohio without regard to the principles of conflicts of law.
- (c) Seller shall cooperate fully with Battelle in seeking a resolution of any dispute with Battelle's Client.
- (d) Battelle and Seller shall each bear its own costs of processing any dispute.

29. AUDIT. For three (3) years following the expiration, completion or termination of this Agreement and all Order(s) issued hereunder, Battelle and/or, if applicable, any cognizant government audit agency shall have access to Seller's records and documentation for audit purposes during normal business hours and upon ten (10) days notice and the audit will be conducted so as not to unreasonably interfere with the conduct of Seller's business.. Seller shall promptly reimburse Battelle for any amounts for which Seller cannot provide adequate documentation or substantiation or are otherwise unallowable or not properly chargeable to the referable Order. Seller will be given reasonable advance notice of the audit. If any error in pricing is discovered resulting in the overpayment, Battelle will notify Seller of the amount of such overpayment and Seller will promptly pay to Battelle the overpayment within thirty (30) days of receipt of such notice. Any disagreement regarding overpayment shall be resolved in accordance with the disputes clause.

30. ANNUAL CERTIFICATIONS / REPRESENTATIONS. To remain in good standing throughout the period of performance of this Agreement, Seller will be required to submit to Battelle an updated Offeror Representations and Certifications which shall remain valid for twelve (12) months upon date of execution. Battelle will furnish the Offeror Representations and Certifications –to be completed by Seller before expiration of the current R&C on file. Failure to comply with these requirements may be deemed by Battelle as non-performance to the terms of this Contract, and may result in Battelle invoking the Termination for Default provision of this Agreement.

31. **SURVIVABILITY.** If this Master Commodity Agreement and all Orders issued hereunder expire, are completed, or are terminated, Seller shall not be relieved of those obligations contained in the following provisions: Applicable laws, Independent Contractor, Insurance, Indemnification, Warranty, Audit, Consequential Damages, Survivability, and Miscellaneous.

32. **MISCELLANEOUS.** This includes the following provisions:

- (a) **Non-waiver of Rights.** Any action or inaction by Battelle on any occasion, to enforce any right or provision of this Agreement or any Order shall not be construed to be a waiver by Battelle of its rights or prevent Battelle from enforcing such provision or right on any future occasion. Acceptance or payment of any part of an Order shall not bind Battelle to accept future shipments nor deprive Battelle of the right to return goods already accepted or for which Battelle has made payment. Acceptance and/or payment shall not be deemed to be a waiver of Battelle's right to cancel or return all or any part of the goods because of failure to conform to an Order or by reason of defects, whether latent or patent, or other breach of warranty, or to make any claim for damages.
- (b) **Validity.** If any provision of this Agreement or any Order shall be declared invalid by a court or administrative body, then the remaining provisions of this Agreement and any Order(s) shall be construed to preserve the validity and the substance of the transaction contemplated to the fullest extent possible.
- (c) **Section Headings.** The descriptive Article headings are for convenience only and shall not be deemed to limit or otherwise affect the construction of any provision.
- (d) **Applicable Law.** This Agreement and all Orders issued hereunder are to be construed in accordance with the laws and enforced within the jurisdiction of the State of Ohio, without regard to the principles of conflicts of law.
- (e) **Disputes.** All disputes under this Contract which are not resolved by mutual agreement may be decided by recourse to an action at law or in equity. Until final resolution of any dispute hereunder, Seller shall diligently proceed with the performance of this Contract as directed by Battelle. Any such dispute must be raised within one (1) year of its accrual.
- (e) **Interpretation.** The captions and headings used in this Contract are solely for the convenience of the parties, and shall not be used in the interpretation of the text of this Contract. Each party has read and agreed to the specific language of this Contract; therefore no conflict, ambiguity or doubtful interpretation shall be construed against the drafter.
- (f) **Entire Agreement.** It is understood and agreed that this Agreement and the Orders issued hereunder, including attachments and references contain the entire understanding between the parties and there are no understandings or representations not set forth or incorporated by reference herein. Any modifications to this Agreement or any Order issued hereunder shall be effected by a written supplemental Order signed by authorized representatives of both parties.

33. **TERM OF AGREEMENT / PERIOD OF PERFORMANCE.** The initial term for this Master Commodity Agreement is ____ (__) years from the date of signature below unless otherwise amended in writing by mutual agreement of the parties. The period of performance for individual Orders issued under this agreement will be as defined in the Orders.

This Master Commodity Agreement is renewable in one (1) year increments after the initial term identified in the preceding paragraph upon mutual agreement of the parties.