



NASPO ValuePoint Master Agreement Terms and Conditions

For Body Armor Products

**A Contract for the NASPO ValuePoint Cooperative Purchasing Program
Acting by and through the State of Colorado (Lead State)**

**Department of Personnel & Administration
State Purchasing & Contracts Office
1525 Sherman Street, 3rd Floor
Denver, Co 80203**

And

**KDH Defense Systems, Inc.
750A Fieldcrest Rd.
Eden, NC 27288**

Master Agreement Number: 2016-182

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I. NASPO VALUEPOINT MASTER AGREEMENT OVERVIEW

A. Parties

This Master Agreement is entered into by and between the State of Colorado, acting by and through the Department of Personnel & Administration, State Purchasing & Contracts Office (hereinafter called the "Lead State"), and KDH Defense Systems, Inc. (hereinafter called "Contractor"), for the procurement of Body Armor Products for the benefit of Participating Entity's and Purchasing Entities. The Contractor and the Lead State hereby agree to the following terms and conditions.

B. Effective Date

This Master Agreement shall not be effective or enforceable until the date on which it is approved and signed (hereinafter called the "Effective Date") by the Colorado State Controller or designee.

C. Master Agreement Order of Precedence

- 1) Any Order placed under this Master Agreement shall consist of the following documents:
 - a) A Participating Entity's Participating Addendum ("PA");
 - b) NASPO ValuePoint Master Agreement Terms & Conditions;
 - c) A Purchase Order issued against the Master Agreement;
 - d) The Solicitation, RFP-NK-15-001 Body Armor Products, and
 - e) Contractor's response to the Solicitation, as revised (if permitted) and accepted by the Lead State.
- 2) These documents shall be read to be consistent and complementary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. Contractor terms and conditions that apply to this Master Agreement are only those that are expressly accepted by the Lead State and shall be in writing and attached to this Master Agreement as an Exhibit.

D. Term of the Master Agreement

- 1) **Initial Term-Work Commencement.** The Parties' respective performances under this Master Agreement shall commence on the Effective Date. This Master Agreement shall terminate on March 15, 2018, unless terminated sooner, as specified in §VI(J) (Defaults and Remedies), or extended further as specified in §I(D)(2) below.
- 2) **Extension of Agreement.** This Master Agreement may be extended beyond the original Contract period for up to three (3) consecutive one (1) year additional terms, upon the mutual agreement of the Lead State and Contractor, by written Amendment. The total duration of the Master Agreement, including any extensions, shall not exceed five (5) years.
- 3) **Amendments.** The terms of this Master Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of the Lead State.

II. DEFINITIONS

- A. **Acceptance** means a written notice from a Purchasing Entity to Contractor advising Contractor that the Product has passed its Acceptance Testing. Acceptance of a Product for which Acceptance Testing is not required shall occur following the completion of delivery, installation, if required, and a reasonable time for inspection of the Product, unless the Purchasing Entity provides a written notice of rejection to Contractor.
- B. **CPL** means the Certified Product List.
- C. **Contract** means an agreement consisting of attachments and any Orders issued in connection therewith, and any future modifying agreements, exhibits, attachments or references incorporated herein, pursuant to State law and fiscal rules.
- D. **Contractor or Supplier** means the person or entity delivering Products or performing Services under the terms and conditions set forth in this Master Agreement.
- E. **Distributor** means an entity that purchases Products, takes title, stocks, maintains inventory, Resells the Product to end-users and has the ability to do on-site measurements.

- F. Free on Board (FOB) Destination** means the Contractor is responsible for transportation and handling charges and the sale does not occur until the Goods arrive at the Purchasing Entity's specified location.
- G. Goods** means any movable material acquired, produced, or delivered by Contractor, and shall include any movable material acquired, produced, or delivered by Contractor in connection with the Services.
- H. Inside Delivery** refers to a delivery to a location other than a loading dock, front lobby, or reception area.
- I. Intellectual Property** means any and all patents, copyrights, service marks, trademarks, trade secrets, trade names, patentable inventions, or other similar proprietary rights, in tangible or intangible form, and all rights, title, and interest therein.
- J. Lead State** means the State centrally administering any resulting Master Agreement(s).
- K. Lot Number** means an identification number, typically found on the outside of packaging, which is assigned to a particular quantity or lot of material from a single Manufacturer.
- L. Manufacturer** means a company that, as its primary business function, designs, assembles, and owns the trademark/patent and markets a Product. Also referred to as a Contractor.
- M. Master Agreement** means the underlying agreement executed by and between the Lead State, acting on behalf of the NASPO ValuePoint program, and the Contractor, as now or hereafter amended.
- N. NASPO ValuePoint** is the NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint, a 501(c)(3) limited liability company that is a subsidiary organization the National Association of State Procurement Officials (NASPO), the sole member of NASPO ValuePoint. NASPO ValuePoint facilitates administration of the NASPO cooperative group contracting consortium of state chief procurement officials for the benefit of state departments, institutions, agencies, and political subdivisions and other eligible entities (i.e., colleges, school districts, counties, cities, some nonprofit organizations, etc.) for all states and the District of Columbia. NASPO ValuePoint is identified in the Master Agreement as the recipient of reports and may perform Contract administration functions relating to collecting and receiving reports as well as other Contract administration functions as assigned by the Lead State.
- O. NIJ** means the National Institute of Justice.
- P. Order or Purchase Order** means any Purchase Order, sales order, Contract or other document used by a Purchasing Entity to order the Products.
- Q. Participating Addendum** means a bilateral agreement executed by a Contractor and a Participating Entity incorporating this Master Agreement and any other additional Participating Entity specific language or other requirements, e.g. ordering procedures specific to the Participating Entity, other terms and conditions.
- R. Participating Entity** means a state, or other legal entity, properly authorized to enter into a Participating Addendum.
- S. Participating State** means a state, the District of Columbia, or one of the territories of the United States that is listed in the Request for Proposal as intending to participate. A Participating State is not required to participate through execution of a Participating Addendum. Upon execution of the Participating Addendum, a Participating State becomes a Participating Entity.
- T. Product** means any equipment, software (including embedded software), documentation, service or other deliverable supplied or created by the Contractor pursuant to this Master Agreement. The term Products, supplies and Services, and Products and Services are used interchangeably in these terms and conditions.
- U. Product Category** means the type of Products that the Contractor is authorized to provide under this Master Agreement.

- V. **Purchasing Entity** means a state, city, county, district, other political subdivision of a State, and a nonprofit organization under the laws of some states if authorized by a Participating Addendum, who issues a Purchase Order against the Master Agreement and becomes financially committed to the purchase.
- W. **Resell** means any payment in exchange for transfer of tangible Goods, or assignment of the right to Services.
- X. **Services** mean the Services to be performed by Contractor, and shall include any Services to be rendered by Contractor in connection with the Goods.
- Y. **Solicitation** is a written offer by the Lead State to purchase Goods and/or Services through an official proposal, evaluation and award process.
- Z. **Subcontractor** means an individual or a business that signs a contract with the Contractor to perform part or all of Contractor's obligations under the Master Agreement.
- AA. **Threat Level** means the rated level of protection, according to Section 2 of the NJ Standard 0101.06.

III. NASPO VALUEPOINT PROGRAM PROVISIONS

A. Price and Rate Guarantee Period

- 1) The Product and Price List identifies a complete listing of all Products the Contractor can provide under this Master Agreement
- 2) All prices and rates on the Product and Price List must be guaranteed for the first twelve (12) months of the Master Agreement; however, Contractor may decrease its Product pricing and/or increase its discount rate, at any time.
- 3) Following the initial twelve (12) month period, any requests for price or rate increases must be for an equal guarantee period, and must be made at least thirty (30) days prior to the requested effective date. Requests for price or rate increases must include sufficient documentation supporting the request. Any adjustment or amendment to the Master Agreement shall not be effective unless approved by the Lead State. No retroactive adjustments to prices or rates will be allowed, unless the pricing is decreased.
- 4) Contractor may update their Products on the Product and Price List once per calendar quarter, by submitting a new Product and Price List to the Lead State for approval. Product modifications, additions and/or deletions shall not be effective unless approved by the Lead State.
- 5) Contractor is only authorized to provide Products that are awarded under this Master Agreement, as referenced in §IV(D)(Product Category).
- 6) Pricing must include all delivery, shipping and service costs associated with the Product.

B. Participants and Scope

- 1) Contractor may not deliver Products under this Master Agreement until a Participating Addendum acceptable to the Participating Entity and Contractor is executed. The NASPO ValuePoint Master Agreement Terms and Conditions are applicable to any Order by a Participating Entity (and other Purchasing Entities covered by their Participating Addendum), except to the extent altered, modified, supplemented or amended by a Participating Addendum. By way of illustration and not limitation, this authority may apply to unique delivery and invoicing requirements, confidentiality requirements, defaults on Orders, governing law and venue relating to Orders by a Participating Entity, indemnification, and insurance requirements. Statutory or constitutional requirements relating to availability of funds may require specific language in some Participating Addenda in order to comply with applicable law. The expectation is that these alterations, modifications, supplements, or amendments will be addressed in the Participating Addendum or, with the consent of the Purchasing Entity and Contractor, may be included in the ordering document (e.g. Purchase Order or Contract) used by the Purchasing Entity to place the Order.
- 2) Use of specific NASPO ValuePoint cooperative Master Agreements by state agencies, political subdivisions and other Participating Entities (including cooperatives) authorized by individual state's statutes to use state Contracts are subject to the approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the respective State Chief Procurement Official.

- 3) Obligations under this Master Agreement are limited to those Participating Entities who have signed a Participating Addendum and Purchasing Entities within the scope of those Participating Addenda. Financial obligations of Participating States are limited to the Orders placed by the departments or other state agencies and institutions having available funds. Participating States incur no financial obligations on behalf of political subdivisions. Contractor shall email a fully executed PDF copy of each Participating Addendum to PA@wsca-naspo.org to support documentation of participation and posting in appropriate data bases.
- 4) NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint, is not a party to the Master Agreement. It is a nonprofit cooperative purchasing organization assisting states in administering the NASPO cooperative purchasing program for state government departments, institutions, agencies and political subdivisions (e.g., colleges, school districts, counties, cities, etc.) for all 50 states, the District of Columbia and the territories of the United States.
- 5) Participating Addenda shall not be construed to amend the following provisions in this Master Agreement between the Lead State and Contractor, and any such language shall be void and of no effect:
 - a) Term of the Master Agreement;
 - b) Amendments;
 - c) Participants and Scope;
 - d) Administrative Fee;
 - e) NASPO ValuePoint Summary and Detailed Usage Reports;
 - f) NASPO ValuePoint Cooperative Program Marketing and Performance Review;
 - g) NASPO ValuePoint eMarket Center;
 - h) Right to Publish;
 - i) Price and Rate Guarantee Period; and
 - j) Individual Customers
- 6) Participating Entities who are not states may under some circumstances sign their own Participating Addendum, subject to the approval of participation by the Chief Procurement Official of the state where the Participating Entity is located. Any permission to participate through execution of a Participating Addendum is not a determination that procurement authority exists in the Participating Entity; they must ensure that they have the requisite procurement to execute a Participating Addendum.
- 7) Subject to any specific conditions included in the Solicitation or Contractor's proposal as accepted by the Lead State, or as explicitly permitted in a Participating Addendum, Purchasing Entities may not Resell Products. Absent any such condition or explicit permission, this limitation does not prohibit the following, however, any sale or transfer must be consistent with license rights granted for use of Intellectual Property:
 - a) Payments by employees of a Purchasing Entity for Products;
 - b) Sales of Products to the general public as surplus property; and
 - c) Fees associated with inventory transactions with other governmental or non-profit entities, and consistent with a Purchasing Entity's laws and regulations.

C. Administrative Fees

Some states may require a fee be paid directly to the state only on purchases made by Purchasing Entities within that state. For all such requests, the fee level, payment method and schedule for such reports and payments will be incorporated into the Participating Addendum that is made a part of the Master Agreement. The Contractor may adjust the Master Agreement pricing accordingly for purchases made by Purchasing Entities within the jurisdiction of the state.

D. NASPO ValuePoint Summary and Detailed Usage Reports

The Contractor shall provide the following NASPO ValuePoint reports.

- 1) **Summary Sales Data.** The Contractor shall submit quarterly sales reports directly to NASPO ValuePoint using the NASPO ValuePoint Quarterly Sales/Administrative Fee Reporting Tool found at <http://www.naspo.org/WNCPO/Calculator.aspx>. Any/all sales made under the Contract shall be reported as cumulative totals by state. Even if Contractor experiences zero sales during a calendar quarter, a report is still required. Reports shall be due no later than thirty (30) days following the end of the calendar quarter (as specified in the reporting tool).

- 2) **Detailed Sales Data.** Contractor shall also report detailed sales data by: (a) state; (b) entity/customer type, e.g. local government, higher education, K12, non-profit; (c) Purchasing Entity name; (d) Purchasing Entity bill-to and ship-to locations; (e) Purchasing Entity and Contractor Purchase Order identifier/number(s); (f) Purchase Order Type (e.g. sales Order, credit, return, upgrade, determined by industry practices); (g) Purchase Order date; (h) Ship Date; (i) and line item description, including Product number if used. Reports are due on a quarterly basis and must be received by the Lead State and NASPO ValuePoint Cooperative Development Team no later than thirty (30) days after the end of the reporting period. Reports shall be delivered to the Lead State and to the NASPO ValuePoint Cooperative Development Team electronically through a designated portal, email, CD-Rom or flash drive. Detailed sales data reports shall include sales information for all sales under Participating Addenda executed under this Master Agreement. The format for the detailed sales data report is shown in **Exhibit B (Sample NASPO ValuePoint Detailed Sales Data Report)**.
- 3) Reportable sales for the summary sales data report and detailed sales data report includes sales to employees for personal use where authorized by the Participating Addendum. Report data for employees should be limited to ONLY the state and entity they are participating under the authority of (state and agency, city, county, school district, etc.) and the amount of sales. No personal identification numbers, e.g. names, addresses, social security numbers or any other numerical identifier, may be submitted with any report.
- 4) Contractor shall provide the NASPO ValuePoint Cooperative Development Coordinator with an executive summary each quarter that includes, at a minimum, a list of states with an active Participating Addendum, states that Contractor is in negotiations with, and any PA roll out or implementation activities and issues. NASPO ValuePoint Cooperative Development Coordinator and Contractor will determine the format and content of the executive summary. The executive summary is due thirty (30) days after the conclusion of each calendar quarter.
- 5) Timely submission of these reports is a material requirement of the Master Agreement. The recipient of the reports shall have exclusive ownership of the media containing the reports. The Lead State and NASPO ValuePoint shall have a perpetual, irrevocable, non-exclusive, royalty free, transferable right to display, modify, copy, and otherwise use reports, data and information provided under this section.

E. NASPO ValuePoint Cooperative Program Marketing and Performance Review

- 1) Contractor agrees to work cooperatively with NASPO ValuePoint personnel to ensure that Contractor's personnel will be educated regarding the provisions of the Master Agreement, as well as the competitive nature of NASPO ValuePoint procurements, the Participating Addendum process, and the manner in which Participating Entities can utilize the Master Agreement.
- 2) Contractor agrees to participate in an annual Contract performance review, which may include a discussion of marketing action plans, target strategies, marketing materials, reporting, and timeliness of administration fee payments. The location of the performance review shall be determined by the Lead State and NASPO ValuePoint.

F. NASPO ValuePoint eMarket Center

- 1) In July 2011, NASPO ValuePoint entered into a multi-year agreement with SciQuest, Inc. whereby SciQuest will provide certain electronic catalog hosting and management services to enable eligible NASPO ValuePoint customers to access a central online website to view and/or shop the Goods and Services available from existing NASPO ValuePoint Cooperative Contracts. The central online website is referred to as the NASPO ValuePoint eMarket Center.
- 2) The Contractor shall have visibility in the eMarket Center through one of the following no-cost options:
 - a) **Ordering Instructions**
 - i. The Contractor shall provide a link to their website, their Product and price list, their dealer list, and any additional information they would like the customer to have in regards to placing Orders.
 - ii. Upon receipt of written request from the eMarket Center Site Administrator, the Contractor shall have thirty (30) days to provide NASPO ValuePoint with the Ordering Instructions.
 - b) **Hosted Catalog**
 - i. The Contractor shall provide a list of its awarded Products and pricing via an electronic data file, in a format acceptable to SciQuest.

- ii. In order to maintain the most up-to-date version of its Product offerings, the Contractor must submit electronic data to the eMarket Center no more than four (4) times per calendar year.
 - iii. Upon receipt of written request from the eMarket Center Site Administrator, the Contractor shall have fifteen (15) days to set up an enablement schedule with NASPO ValuePoint and SciQuest. The schedule shall include future calls and milestone timeframes related to testing and go-live dates.
 - iv. The Contractor shall have ninety (90) days from the receipt of written request, to provide the Hosted Catalog to NASPO ValuePoint.
 - v. The Hosted Catalog must be strictly limited to the awarded Product Categories, and must contain the most current approved pricing, including applicable quantity discounts.
 - vi. The catalog must include a Lead State Contract identification number and detailed Product line item descriptions.
 - vii. The catalog must include any additional NASPO ValuePoint and Participating Addendum requirements. Although Suppliers in the SQSN normally submit one (1) catalog, it is possible to have multiple catalogs applicable to different NASPO ValuePoint Participating Entities if for example, the Participating Entity has incorporated an Administrative Fee into the Contract pricing, or a Participating Entity has determined that they will not allow all awarded Product Categories under their Participating Addendum. SciQuest will deliver the appropriate Contract files to the user viewing the catalog.
- c) **Punch-Out Catalog**
- i. The Contractor shall provide its own online catalog, which must be capable of being integrated with the eMarket Center via Commerce eXtensible Markup Language (cXML).
 - ii. The Contractor shall validate that its online catalog is current by providing a written update to the Lead State every four (4) months, verifying that they have audited the offered Products and pricing.
 - iii. The Contractor shall have ninety (90) days from the receipt of the written request, to deliver the Punch-Out Catalog to NASPO ValuePoint.
 - iv. The Punch-Out Catalog must be strictly limited to the awarded Product Categories, and must contain the most current approved pricing, including applicable quantity discounts.
 - v. The catalog must include a Lead State Contract identification number and detailed Product line item descriptions.
 - vi. The catalog must include any additional NASPO ValuePoint and Participating Addendum requirements. Although suppliers in the SQSN normally submit one (1) catalog, it is possible to have multiple catalogs applicable to different NASPO ValuePoint Participating Entities if for example, the Participating Entity has incorporated an Administrative Fee into the Contract pricing, or a Participating Entity has determined that they will not allow all awarded Product Categories under their Participating Addendum. SciQuest will deliver the appropriate Contract files to the user viewing the catalog.
- 3) **Revising Pricing and Products**
- a) Any revisions to Product offerings (new Products, altered SKU's, new pricing, etc.) must be pre-approved by the Lead State.
 - b) Price increases shall only be allowed once per calendar year, beginning twelve (12) months after the Effective Date of the Master Agreement.
 - c) Updated Product and/or pricing files are required by the 1st of the month and shall go into effect by the 15th of each month, or when the Lead State approves the file, whichever comes first.
 - i. Files received after the 1st of the month may not be approved for up to thirty (30) days following submission.
 - ii. Errors in the Contractor's submitted files may delay the approval process.
- 4) **Supplier Network Requirements for Hosted and Punch-Out Catalogs**
- a) Contractor shall join the SciQuest Supplier Network (SQSN) and shall use the SciQuest's Supplier Portal to import the Contractor's catalog and pricing files into the SciQuest system.

- b) Contractor can receive Orders through electronic delivery (cXML) or through low-tech options such as fax.
 - c) More information about the SQSN can be found at www.sciquest.com, or by contacting the SciQuest Supplier Network Services team at 800-233-1121.
- 5) **Order Acceptance Requirements for Hosted and Punch-Out Catalogs**
- a) Contractor must be able to accept Purchase Orders via fax or cXML.
 - b) The Contractor shall provide confirmation via phone or email within 24 hours of Purchase Order receipt.
 - c) If the Purchase Order is received after 3pm (EST) on the day prior to a weekend or holiday, the Contractor must provide confirmation via phone or email on the next business day.
- 6) **UNSPSC Requirements**
- a) Contractor shall support use of the United National Standard Product and Services Code (UNSPSC). UNSPSC versions that Contractors must adhere to are provided by SciQuest and upgraded each year.
 - b) NASPO ValuePoint reserves the right to migrate to future versions of the UNSPSC, and Contractor shall be required to support the migration effort.
 - c) All line items for Products provided under the Master Agreement must be associated to a UNSPSC code.
 - d) All line items must be identified at the most detailed UNSPSC level, indicated by segment, family, class, and commodity.
 - e) More information about the UNSPSC is available at <http://www.unspsc.com> and <http://www.unspsc.com/FAQs.asp#howdoesunspscwork>.
- 7) **Applicability.** Contractor agrees that NASPO ValuePoint controls which Contracts appear in the eMarket Center, and that NASPO ValuePoint may elect at any time to remove any Contractor offerings from the eMarket Center.
- 8) Several NASPO ValuePoint Participating Entities currently maintain separate SciQuest eMarket Place accounts. In the event that one of these Participating Entities elects to use this NASPO ValuePoint Master Agreement (available through the eMarket Center), but publish the information to their own eMarket Place, the Contractor agrees to work in good faith with the entity and NASPO ValuePoint, and agrees to take commercially reasonable efforts to implement such separate SciQuest catalogs.

G. Right to Publish

Throughout the duration of this Master Agreement, Contractor must secure from the Lead State, prior approval for the release of any information that pertains to the potential work or activities covered by the Master Agreement. The Contractor shall not make any representations of NASPO ValuePoint's opinion or position as to the quality or effectiveness of the Services that are the subject of this Master Agreement without prior written consent. Failure to adhere to this requirement may result in termination of the Master Agreement for cause.

H. Individual Customers

Except to the extent modified by a Participating Addendum, each Purchasing Entity shall follow the terms and conditions of the Master Agreement and applicable Participating Addendum and will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement, including but not limited to, any indemnity or right to recover any costs as such right is defined in the Master Agreement and applicable Participating Addendum for their purchases. Each Purchasing Entity will be responsible for its own charges, fees, and liabilities. The Contractor will apply the charges and invoice each Purchasing Entity individually.

IV. STATEMENT OF WORK

A. Overview

- 1) Contractor guarantees a continuing supply and consistent quality of Goods and Services offered.
- 2) Contractor shall notify the Lead State, Participating Entities and all Purchasing Entities of any recall notices, warranty replacements, safety notices, or any applicable notice regarding the Products being sold. This notice must be received in writing (via postal mail or email) within thirty (30) calendar days of Contractor learning of such issues.

B. Distributors

- 1) Contractor may engage Distributors, who shall be Contractor's agent and Subcontractor for providing sales and support for the Goods and/or Services purchased by the Purchasing Entity under the Master Agreement.
- 2) In the event Contractor elects to use Distributors in the performance of the specifications, Contractor shall serve as the primary Contractor, and shall be fully accountable to the State for assuring that the Distributors comply with the terms and conditions of the Master Agreement, and shall be liable in the event Distributors fail to comply with such terms and conditions.
- 3) Contractor must disclose to the Lead State, a list of all Distributors that provide Goods and/or Services.
- 4) Contractor shall send notice to the Lead State, utilizing **Attachment 1 (Distributor Form)** and the Distributor List, within three (3) calendar days of engaging or removing a Distributor. The Lead State reserves the right to deny Contractor's addition of a new Distributor and will provide notification to the Contractor with justification as to why the decision was reached. In addition, it will be at the discretion of each Participating Entity as to whether they will utilize the Distributors as authorized by the Lead State.
- 5) Contractor or Distributors shall provide trained personnel to take on-site measurements at Purchasing Entity's designated location(s).
- 6) Distributors shall be expected to stay current with Contractor Products, pricing and Master Agreement requirements.

C. Product Standards

Contractor's Product shall meet the following standards, if applicable, and unless and until new NIJ standards are published and made effective:

- 1) Ballistic resistance of Body Armor NIJ Standard 0101.06.
- 2) Stab Resistance of Personal Body Armor NIJ Standard 0115.00.
- 3) NIJ Standard for Ballistic Helmets 0106.01
- 4) NIJ Standard for Ballistic Resistant Protective Materials 0108.01.

D. Product Category

Contractor shall provide Goods and related Services for the following Product Categories:

- 1) Ballistic Concealable Vests: Threat Level IIA, II, IIIA, III and/or IV.
- 2) Ballistic Tactical Vests: Threat Level IIA, II, IIIA, III and/or IV.
- 3) Stab Resistant Concealable Vests: Spike and/or Edged Blade: Threat Level 1, 2 and/or 3.
- 4) Carriers
- 5) Protectors
- 6) Ballistic Helmets: Threat Level IIA, II and/or IIIA.
- 7) Plates
- 8) Carry Bags: Concealed and/or Tactical vests, Shield, and/or Helmet.
- 9) Replacement Vest Straps
- 10) Pouches
- 11) ID Patches

E. Product Specifications

- 1) Body Armor Products must be ordered new and unused, and shall not contain re-used/remanufactured or re-purposed components.
- 2) Body Armor Products shall be constructed identically to the original model tested and certified to comply with the applicable NIJ standards.

- 3) All materials shall be the same as reported to the NJ in the "lists of materials of construction of each component of model."
- 4) Workmanship shall be first quality, with no defect that might affect performance, wear-ability, or durability of the vest.
- 5) Products shall not be "bulk ordered" inventory, nor substantially tailored or modified "off the shelf" items to fit personnel as needed, since altering Products could potentially change the performance aspects originally tested under Compliance Testing Program (CTP).
- 6) Each Body Armor Product shall be manufactured to professionally conducted measurements designed to fit a specific individual. Under no circumstances shall measurements result in a Product that does not properly fit and/or provide adequate protective coverage for that individual.
- 7) All measurements must be made according to Contractor stated standards and take into account all clearances of panels and duty belts as suggested in the NJ Selection and Application Guide to Buying Body Armor (as updated).
- 8) Armor sizes are to be per Compliance Testing Program standards listed on the NJ Compliant Products List.
- 9) All Body Armor Products that include the option of additional trauma or hard armor plate protection shall have the plate pocket permanently secured to the Body Armor carrier on three sides (both sides and the bottom).
- 10) All fasteners, including hook and pile (Velcro), non-directional snaps, webbing, side release buckles, fastex buckles, and zippers, shall be the same color as the carrier.
- 11) Label material shall withstand normal wear and cleaning, and remain legible throughout the entire warranted life of the Product.
- 12) All Body Armor shall be labeled with strict adherence to any applicable laws and regulations, and follow the labeling requirements according to NJ Standards and guidance for Ballistic resistance 0101.06, and Stab resistance 0115.00 as updated or amended. This shall include the following:
 - a) Name of Contractor and location that Product was manufactured;
 - b) Level of protection (must include the NJ-CPL model designation number and Threat Level);
 - c) The model designation number shall match submitted price list and letter of certification;
 - d) Identify NJ Standard 0101.06 or 0115.00 (Combination armor shall indicate both);
 - e) Completed manufacturing date and Lot Number;
 - f) Brand name and catalog number;
 - g) A "Property of" space so Purchasing Entity can enter an agency or officer name;
 - h) Basic care and maintenance instructions;
 - i) Size of panel; and
 - j) Unique serial number.
- 13) Contractor and/or Distributor must have the serial numbers stored in a readily accessible database.

F. Warranty

1) Overview

- a) Contractor warrants that the Product is suitable for any special purposes identified in the Solicitation or for which the Purchasing Entity has relied on the Contractor's skill or judgment.
- b) Contractor warrants that the Products are designed and manufactured in a commercially reasonable manner, and are free of defects.
- c) Upon breach of the warranty, the Contractor will repair or replace (at no charge to the Purchasing Entity) the Product whose nonconformance is discovered and made known to the Contractor. If the repaired and/or replaced Product proves to be inadequate, or fails of its essential purpose, the Contractor will refund the full amount of any payments that have been made.

- d) The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation, actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.

2) Requirements

- a) Ballistic panels shall have at least a 5-year Manufacturer's warranty.
- b) All Carriers shall have a 24-month Manufacturer's warranty.
- c) Warranty periods specified shall begin when Body Armor Products are delivered and accepted following inspection by Purchasing Entity.

3) Specifications

- a) Warranties are extended to the original user only.
- b) During the warranty period, any garment having a manufacturing or material defect, as determined through inspection by an authorized Contractor representative, will be repaired or replaced at no cost to the customer.
- c) Warranty shall be void if the maintenance care, as stated on the protective panel label, has not been followed, or if the Product has been altered in any manner after acceptance by the Purchasing Entity, or if the Product has been subjected to abnormal use or abuse.

G. Customer Service

- 1) Contractor shall provide full service and support to Participating Entities during normal business hours.
- 2) Contractor or Distributors shall offer instruction or provide presentations, as requested by Purchasing Entities, regarding the care, usage, and limitation of bullet-resistant and stab-resistant armor.
- 3) Contractor or Distributors shall provide Service to Purchasing Entities according to the time-frame outlined in Exhibit A (On-Site Response Time).

H. Ballistic Panel Recycling

- 1) Contractor shall offer a recycling program for vests that have expired or reached the end of their useful life.
- 2) Purchasing Entities are not required to utilize the Contractor's recycling program.
- 3) Shipping, and associated costs, shall be the responsibility of the Contractor.

V. ADMINISTRATION OF ORDERS

A. Ordering and Invoicing Specifications

- 1) All Products subject to NIJ compliance testing must be listed on the CPL on the date the Order is placed.
- 2) All sizing, measurements, and final fitting shall be done at no expense to, and shall be scheduled at the convenience of, the Purchasing Entity.
- 3) Master Agreement Order and Purchase Order numbers shall be clearly shown on all acknowledgments, shipping labels, packing slips, invoices, and on all correspondence.
- 4) Body Armor improperly fitted to an individual wearer shall be adjusted or replaced and delivered to the individual within thirty (30) calendar days by the Contractor at no expense to the Purchasing Entity.
- 5) The Master Agreement permits Purchasing Entities to define project-specific requirements and informally compete the requirement among companies having a Master Agreement, on an "as needed" basis. This procedure may also be used when requirements are aggregated or other firm commitments may be made to achieve reductions in pricing. This procedure may be modified in Participating Addenda and adapted to Purchasing Entity rules and policies. The Purchasing Entity may, in its sole discretion, determine which Master Agreement Contractors should be solicited for a quote. The Purchasing Entity may select the quote that it considers most advantageous, cost and other factors considered.
- 6) Each Purchasing Entity will identify and utilize its own appropriate purchasing procedure and documentation. Contractor is expected to become familiar with the Purchasing Entities' rules, policies, and procedures regarding the ordering of supplies and/or Services contemplated by this Master Agreement.
- 7) Contractor shall not begin work without a valid Purchase Order or other appropriate commitment document compliant with the law of the Purchasing Entity.

- 8) Orders may be placed consistent with the terms of this Master Agreement, and only during the term of the Master Agreement.
- 9) All Orders pursuant to this Master Agreement, at a minimum, shall include:
 - a) Name of Purchasing Entity;
 - b) The name, phone number, and address of the Purchasing Entity representative;
 - c) Order date;
 - d) Description of the Product ordered;
 - e) CPL model number and Threat Level;
 - f) Serial number;
 - g) Price;
 - h) The Master Agreement number; and
 - i) Any additional information required by the Participating Entity.
- 10) All communications concerning administration of Orders placed shall be furnished solely to the authorized purchasing agent within the Purchasing Entity's purchasing office, or to such other individual identified in writing in the Order.
- 11) Orders must be placed pursuant to this Master Agreement prior to the termination date thereof, but may have a delivery date or performance period up to 120 days past the then-current termination date of this Master Agreement. Contractor is reminded that financial obligations of Purchasing Entities payable after the current applicable fiscal year are contingent upon agency funds for that purpose being appropriated, budgeted, and otherwise made available.
- 12) Notwithstanding the expiration or termination of this Master Agreement, Contractor agrees to perform in accordance with the terms of any Orders then outstanding at the time of such expiration or termination. Contractor shall not honor any Orders placed after the expiration or termination of this Master Agreement, or otherwise inconsistent with its terms. Orders from any separate indefinite quantity, task orders, or other form of indefinite delivery Order arrangement priced against this Master Agreement, may not be placed after the expiration or termination of this Master Agreement, notwithstanding the term of any such indefinite delivery Order agreement.

B. Shipping and Delivery

- 1) All Orders, regardless of quantity, shall be delivered to the Purchasing Entity within sixty (60) calendar days after Manufacturer receipt of Order.
- 2) All deliveries shall be F.O.B. destination, freight pre-paid, with all transportation and handling charges paid by the Contractor. Responsibility and liability for loss or damage shall remain the Contractor's until final inspection and Acceptance when responsibility shall pass to the Buyer except as to latent defects, fraud and Contractor's warranty obligations. The minimum shipment amount, if any, will be found in the special terms and conditions. Any Order for less than the specified amount is to be shipped with the freight prepaid and added as a separate item on the invoice. Any portion of an Order to be shipped without transportation charges that is back ordered shall be shipped without charge.
- 3) All deliveries shall be made during normal working hours, which may vary for each Purchasing Entity of each Participating State.
- 4) It shall be the responsibility of the Contractor to be aware of the delivery days and receiving hours for each Purchasing Entity.
- 5) The Purchasing Entity shall not be responsible for any additional charges, should the Contractor fail to observe specific delivery days and receiving hours.
- 6) The delivery days and delivery hours shall be established by the Purchasing Entity at the time of Order placement.
- 7) All deliveries will be Inside Deliveries as designated by a representative of the Purchasing Entity placing the Order. Specific delivery instructions will be noted on the Order form or Purchase Order. Any damage to the building interior, scratched walls, damage to the freight elevator, etc., will be the responsibility of the

Contractor. If damage does occur, it is the responsibility of the Contractor to immediately notify the Purchasing Entity placing the Order.

- 8) All Products must be delivered in the Manufacturer's standard package. Costs shall include all packing and/or crating charges. Cases shall be of durable construction, good condition, properly labeled and suitable in every respect for storage and handling of contents. Each shipping carton shall be marked with the commodity, brand, quantity, item code number and the Ordering Entity's Purchase Order number.
- 9) Packages that cannot be clearly identified may be refused and/or returned at no cost to the Purchasing Entity.

C. Laws and Regulations

Any and all Products offered and furnished shall comply fully with all applicable Federal and State laws and regulations.

D. Inspection and Acceptance

- 1) All Products are subject to inspection at reasonable times and places before Acceptance. Contractor shall provide right of access to the Lead State or to any other authorized agent or official of the Lead State or other Participating or Purchasing Entity, at reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance requirements under this Master Agreement. Products that do not meet specifications may be rejected. Failure to reject upon receipt, however, does not relieve the Contractor of liability for material (nonconformity that substantially impairs value) latent or hidden defects subsequently revealed when Goods are put to use. Acceptance of such Goods may be revoked in accordance with the provisions of the applicable commercial code, and the Contractor is liable for any resulting expense incurred by the Purchasing Entity related to the preparation and shipping of Product rejected and returned, or for which Acceptance is revoked.
- 2) The warranty period shall begin upon Acceptance.

E. Title of Product

Upon Acceptance by the Purchasing Entity, Contractor shall convey to Purchasing Entity title to the Product free and clear of all liens, encumbrances, or other security interests.

F. License of Pre-Existing Intellectual Property

Contractor grants to the Purchasing Entity a non-exclusive, perpetual, royalty-free, irrevocable, unlimited license to use, modify, or dispose of the Intellectual Property and its derivatives, used or delivered under this Master Agreement, but not created under it ("Pre-existing Intellectual Property"). The license shall be subject to any third party rights in the Pre-existing Intellectual Property. Contractor shall obtain, at its own expense, on behalf of the Purchasing Entity, written consent of the owner for the licensed Pre-existing Intellectual Property.

G. Payment

Payment for completion of a Contract Order is normally made within thirty (30) days following the date the entire Order is delivered or the date a correct invoice is received, whichever is later. After forty-five (45) days the Contractor may assess overdue account charges up to a maximum rate of one (1) percent per month on the outstanding balance. Payments will be remitted by mail. Payments may be made via a State or political subdivision "Purchasing Card" with no additional charge.

VI. GENERAL PROVISIONS

A. Insurance

- 1) Unless otherwise agreed in a Participating Addendum, Contractor shall, during the term of this Master Agreement, maintain in full force and effect, the insurance described in this section. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in each Participating Entity's state and having a rating of A-, Class VII or better, in the most recently published edition of Best's Reports. Failure to buy and maintain the required insurance may result in this Master Agreement's termination or, at a Participating Entity's option; result in termination of its Participating Addendum.
- 2) Coverage shall be written on an occurrence basis. The minimum acceptable limits shall be as indicated below, with no deductible for each of the following categories:

- a) Commercial General Liability covering premises operations, independent Contractors, Products and completed operations, blanket contractual liability, personal injury (including death), advertising liability, and property damage, with a limit of not less than \$1 million per occurrence, \$10 million general aggregate, \$10 million Products and completed operations aggregate and \$50,000 and any one fire.
- b) If any aggregate limit is reduced below \$10,000,000 because of claims made or paid, the Contractor shall immediately obtain additional insurance to restore the full aggregate limit and furnish to the Participating Entity, a certificate or other document satisfactory to the Participating Entity, showing compliance with this provision.
- c) Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.
- d) Automobile Liability covering any auto (including owned, hired and non-owned), with a minimum limit of \$1,000,000 each accident combined single limit.
- e) Contractor shall pay premiums on all insurance policies. Such policies shall also reference this Master Agreement and shall have a condition that they not be revoked by the insurer until thirty (30) calendar days after notice of intended revocation thereof shall have been given to Purchasing Entity and Participating Entity by the Contractor.
- f) Prior to commencement of performance, Contractor shall provide to the Lead State a written endorsement to the Contractor's general liability insurance policy or other documentary evidence acceptable to the Lead State that (i) names the Participating States identified in the Request for Proposal as additional insured's, (ii) provides that no material alteration, cancellation, non-renewal, or expiration of the coverage contained in such policy shall have effect unless the named Participating State has been given at least thirty (30) days prior written notice, and (iii) provides that the Contractor's liability insurance policy shall be primary, with any liability insurance of any Participating State as secondary and noncontributory. Unless otherwise agreed in any Participating Addendum, the Participating Entity's rights and Contractor's obligations are the same as those specified in the first sentence of this subsection. Before performance of any Purchase Order issued after execution of a Participating Addendum authorizing it, the Contractor shall provide to a Purchasing Entity or Participating Entity who requests it the same information described in this subsection.
- g) Contractor shall furnish to the Lead State, Participating Entity, and, on request, the Purchasing Entity copies of certificates of all required insurance within seven (7) calendar days of the execution of this Master Agreement, the execution of a Participating Addendum, or the Purchase Order's effective date and prior to performing any work. The insurance certificate shall provide the following information: the name and address of the insured; name, address, telephone number and signature of the authorized agent; name of the insurance company (authorized to operate in all states); a description of coverage in detailed standard terminology (including policy period, policy number, limits of liability, exclusions and endorsements); and an acknowledgment of the requirement for notice of cancellation. Copies of renewal certificates of all required insurance shall be furnished within fifteen (15) days after any renewal date. These certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this section. Failure to provide evidence of coverage may, at sole option of the Lead State, or any Participating Entity, result in this Master Agreement's termination or the termination of any Participating Addendum.
- h) Coverage and limits shall not limit Contractor's liability and obligations under this Master Agreement, any Participating Addendum, or any Purchase Order.

B. Records Administration and Audit

- 1) The Contractor shall maintain books, records, documents, and other evidence pertaining to this Master Agreement and Orders placed by Purchasing Entities under it to the extent and in such detail as shall adequately reflect performance and administration of payments and fees. Contractor shall permit the Lead State, a Participating Entity, a Purchasing Entity, the federal government (including its grant awarding entities and the U.S. Comptroller General), and any other duly authorized agent of a governmental agency, to audit, inspect, examine, copy and/or transcribe Contractor's books, documents, papers and records directly pertinent to this Master Agreement or Orders placed by a Purchasing Entity under it for the purpose of making audits, examinations, excerpts, and transcriptions. This right shall survive for a period of five (5) years following termination of this Agreement or final payment for any Order placed by a Purchasing Entity against this Agreement, whichever is later, to assure compliance with the terms hereof or to evaluate performance hereunder.
- 2) Without limiting any other remedy available to any governmental entity, the Contractor shall reimburse the applicable Lead State, Participating Entity, or Purchasing Entity for any overpayments inconsistent with the terms of the Master Agreement or Orders, or underpayment of fees found as a result of the examination of the Contractor's records.
- 3) The rights and obligations herein right exist in addition to any quality assurance obligation in the Master Agreement requiring the Contractor to self-audit Contract obligations and that permits the Lead State to review compliance with those obligations.

C. Confidentiality, Non-Disclosure, and Injunctive Relief

- 1) **Confidentiality.** Contractor acknowledges that it and its employees or Distributors may, in the course of providing a Product under this Master Agreement, be exposed to or acquire information that is confidential to Purchasing Entity's or Purchasing Entity's clients. Any and all information of any form that is marked as confidential or would by its nature be deemed confidential obtained by Contractor or its employees or Distributors in the performance of this Master Agreement, including, but not necessarily limited to (a) any Purchasing Entity's records, (b) personnel records, and (c) information concerning individuals, is confidential information of Purchasing Entity ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated in the same manner as the Confidential Information. Confidential Information does not include information that (a) is or becomes (other than by disclosure by Contractor) publicly known; (b) is furnished by Purchasing Entity to others without restrictions similar to those imposed by this Master Agreement; (c) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Master Agreement; (d) is obtained from a source other than Purchasing Entity without the obligation of confidentiality, (e) is disclosed with the written consent of Purchasing Entity or; (f) is independently developed by employees, Distributors or Subcontractors of Contractor who can be shown to have had no access to the Confidential Information.
- 2) **Non-Disclosure.** Contractor shall hold Confidential Information in confidence, using at least the industry standard of confidentiality, and shall not copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than what is necessary to the performance of Orders placed under this Master Agreement. Contractor shall advise each of its employees and Distributors of their obligations to keep Confidential Information confidential. Contractor shall use commercially reasonable efforts to assist Purchasing Entity in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Contractor shall advise Purchasing Entity, applicable Participating Entity, and the Lead State immediately if Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Master Agreement, and Contractor shall at its expense cooperate with Purchasing Entity in seeking injunctive or other equitable relief in the name of Purchasing Entity or Contractor against any such person. Except as directed by Purchasing Entity, Contractor will not at any time during or after the term of this Master Agreement disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Master Agreement, and that upon termination of this Master Agreement or at Purchasing Entity's request, Contractor shall turn over to Purchasing Entity all documents, papers, and other matter in Contractor's possession that embody Confidential Information. Notwithstanding the foregoing, Contractor may keep one copy of such Confidential Information necessary for quality assurance, audits and evidence of the performance of this Master Agreement.

- 3) **Injunctive Relief.** Contractor acknowledges that breach of this section, including disclosure of any Confidential Information, will cause irreparable injury to Purchasing Entity that is inadequately compensable in damages. Accordingly, Purchasing Entity may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Purchasing Entity and are reasonable in scope and content.
- 4) **Purchasing Entity Law.** These provisions shall be applicable only to extent they are not in conflict with the applicable public disclosure laws of any Purchasing Entity.

D. Public Information

This Master Agreement and all related documents are subject to disclosure pursuant to the Purchasing Entity's public information laws.

E. Assignment/Subcontracts

- 1) Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Master Agreement, in whole or in part, without the prior written approval of the Lead State.
- 2) The Lead State reserves the right to assign any rights or duties, including written assignment of Contract administration duties to NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint.

F. Changes in Contractor Representation

The Contractor must notify the Lead State of changes in the Contractor's key administrative personnel, in writing within ten (10) calendar days of the change. The Lead State reserves the right to approve changes in key personnel, as identified in the Contractor's proposal. The Contractor agrees to propose replacement key personnel having substantially equal or better education, training, and experience as was possessed by the key person proposed and evaluated in the Contractor's proposal.

G. Independent Contractor

The Contractor shall be an independent Contractor. Contractor shall have no authorization, express or implied, to bind the Lead State, Participating States, other Participating Entities, or Purchasing Entities to any agreements, settlements, liability or understanding whatsoever, and agrees not to hold itself out as agent except as expressly set forth herein or as expressly agreed in any Participating Addendum.

H. Cancellation

Unless otherwise stated, this Master Agreement may be canceled by either party upon sixty (60) days written notice prior to the effective date of the cancellation. Further, any Participating Entity may cancel its participation upon thirty (30) days written notice, unless otherwise limited or stated in the Participating Addendum. Cancellation may be in whole or in part. Any cancellation under this provision shall not affect the rights and obligations attending Orders outstanding at the time of cancellation, including any right of and Purchasing Entity to indemnification by the Contractor, rights of payment for Products delivered and accepted, and rights attending any warranty or default in performance in association with any Order. Cancellation of the Master Agreement due to Contractor default may be immediate.

I. Force Majeure

Neither party to this Master Agreement shall be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. The Lead State may terminate this Master Agreement after determining such delay or default will reasonably prevent successful performance of the Master Agreement.

J. Defaults and Remedies

- 1) The occurrence of any of the following events shall be an event of default under this Master Agreement:
 - a) Nonperformance of contractual requirements; or
 - b) A material breach of any term or condition of this Master Agreement; or
 - c) Any certification, representation or warranty by Contractor in response to the Solicitation or in this Master Agreement that proves to be untrue or materially misleading; or

- d) Institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within thirty (30) calendar days after the institution or occurrence thereof; or
 - e) Any default specified in another section of this Master Agreement.
- 2) Upon the occurrence of an event of default. Lead State shall issue a written notice of default, identifying the nature of the default, and providing a period of thirty (30) calendar days in which Contractor shall have an opportunity to cure the default. The Lead State shall not be required to provide advance written notice or a cure period and may immediately terminate this Master Agreement in whole or in part if the Lead State, in its sole discretion, determines that it is reasonably necessary to preserve public safety or prevent immediate public crisis. Time allowed for cure shall not diminish or eliminate Contractor's liability for damages, including liquidated damages to the extent provided for under this Master Agreement.
 - 3) If Contractor is afforded an opportunity to cure and fails to cure the default within the period specified in the written notice of default, Contractor shall be in breach of its obligations under this Master Agreement and Lead State shall have the right to exercise any or all of the following remedies:
 - a) Exercise any remedy provided by law; and
 - b) Terminate this Master Agreement and any related Contracts or portions thereof; and
 - c) Impose liquidated damages as provided in this Master Agreement; and
 - d) Suspend Contractor from being able to respond to future bid Solicitations; and
 - e) Suspend Contractor's performance; and
 - f) Withhold payment until the default is remedied.
 - 4) Unless otherwise specified in the Participating Addendum, in the event of a default under a Participating Addendum, a Participating Entity shall provide a written notice of default as described in this section and have all of the rights and remedies under this paragraph regarding its participation in the Master Agreement, in addition to those set forth in its Participating Addendum. Unless otherwise specified in a Purchase Order, a Purchasing Entity shall provide written notice of default as described in this section and have all of the rights and remedies under this paragraph and any applicable Participating Addendum with respect to an Order placed by the Purchasing Entity. Nothing in these Master Agreement Terms and Conditions shall be construed to limit the rights and remedies available to a Purchasing Entity under the applicable commercial code.

K. Waiver of Breach

Failure of the Lead State, Participating Entity, or Purchasing Entity to declare a default or enforce any rights and remedies shall not operate as a waiver under this Master Agreement or Participating Addendum. Any waiver by the Lead State, Participating Entity, or Purchasing Entity must be in writing. Waiver by the Lead State or Participating Entity of any default, right or remedy under this Master Agreement or Participating Addendum, or by Purchasing Entity with respect to any Purchase Order, or breach of any terms or requirements of this Master Agreement, a Participating Addendum, or Purchase Order shall not be construed or operate as a waiver of any subsequent default or breach of such term or requirement, or of any other term or requirement under this Master Agreement, Participating Addendum, or Purchase Order.

L. Debarment

The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (Contract) by any governmental department or agency. This certification represents a recurring certification made at the time any Order is placed under this Master Agreement. If the Contractor cannot certify this statement, attach a written explanation for review by the Lead State.

M. Indemnification

- 1) The Contractor shall defend, indemnify and hold harmless NASPO, NASPO Cooperative Purchasing Organization LLC (doing business as NASPO ValuePoint), the Lead State, Participating Entities, and Purchasing Entities, along with their officers, agents, and employees as well as any person or entity for which they may be liable, from and against claims, damages or causes of action including reasonable attorneys' fees and related costs for any death, injury, or damage to property arising from act(s), error(s), or

omission(s) of the Contractor, its employees or Subcontractors or volunteers, at any tier, relating to the performance under the Master Agreement.

- 2) **Indemnification – Intellectual Property.** The Contractor shall defend, indemnify and hold harmless NASPO, NASPO Cooperative Purchasing Organization LLC (doing business as NASPO ValuePoint), the Lead State, Participating Entities, Purchasing Entities, along with their officers, agents, and employees as well as any person or entity for which they may be liable ("Indemnified Party"), from and against claims, damages or causes of action including reasonable attorneys' fees and related costs arising out of the claim that the Product or its use, infringes Intellectual Property rights ("Intellectual Property Claim").
- a) The Contractor's obligations under this section shall not extend to any combination of the Product with any other Product, system or method, unless the Product, system or method is:
- i. Provided by the Contractor or the Contractor's subsidiaries or affiliates;
 - ii. Specified by the Contractor to work with the Product; or
 - iii. Reasonably required, in order to use the Product in its intended manner, and the infringement could not have been avoided by substituting another reasonably available Product, system or method capable of performing the same function; or
 - iv. It would be reasonably expected to use the Product in combination with such Product, system or method.
- b) The Indemnified Party shall notify the Contractor within a reasonable time after receiving notice of an Intellectual Property Claim. Even if the Indemnified Party fails to provide reasonable notice, the Contractor shall not be relieved from its obligations unless the Contractor can demonstrate that it was prejudiced in defending the Intellectual Property Claim resulting in increased expenses or loss to the Contractor. If the Contractor promptly and reasonably investigates and defends any Intellectual Property Claim, it shall have control over the defense and settlement of it. However, the Indemnified Party must consent in writing for any money damages or obligations for which it may be responsible. The Indemnified Party shall furnish, at the Contractor's reasonable request and expense, information and assistance necessary for such defense. If the Contractor fails to vigorously pursue the defense or settlement of the Intellectual Property Claim, the Indemnified Party may assume the defense or settlement of it and the Contractor shall be liable for all costs and expenses, including reasonable attorneys' fees and related costs, incurred by the Indemnified Party in the pursuit of the Intellectual Property Claim. Unless otherwise agreed in writing, this section is not subject to any limitations of liability in this Master Agreement or in any other document executed in conjunction with this Master Agreement.

N. No Waiver of Sovereign Immunity

- 1) In no event shall this Master Agreement, any Participating Addendum or any Contract or any Purchase Order issued thereunder, or any act of a Lead State, a Participating Entity, or a Purchasing Entity be a waiver of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.
- 2) This section applies to a claim brought against the Participating State only to the extent Congress has appropriately abrogated the Participating State's sovereign immunity and is not consent by the Participating State to be sued in federal court. This section is also not a waiver by the Participating State of any form of immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

O. Governing Law and Venue

- 1) The construction and effect of the Master Agreement shall be governed by the laws of the Lead State. Venue for any administrative or judicial action relating to the Solicitation and Master Agreement shall be in the City and County of Denver, Colorado.
- 2) The construction and effect of any Participating Addendum or Order against the Master Agreement shall be governed by and construed in accordance with the laws of the Participating Entity's or Purchasing Entity's State.
- 3) If a claim is brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for (in decreasing order of priority): The Lead State for claims

relating to the procurement, evaluation, award, or Contract performance or administration if the Lead State is a party; the Participating State if a named party; the Participating Entity state if a named party; or the Purchasing Entity state if a named party.

P. Assignment of Antitrust Rights

Contractor irrevocably assigns to a Participating Entity any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future by reason of any violation of state or federal antitrust laws (15 U.S.C. § 1-15 or a Participating Entity's state antitrust provisions), as now in effect and as may be amended from time to time, in connection with any Goods or Services provided to the Contractor for the purpose of carrying out the Contractor's obligations under this Master Agreement or Participating Addendum, including, at a Participating Entity's option, the right to control any such litigation on such claim for relief or cause of action.

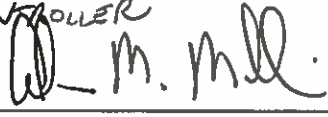

Q. Contract Provisions for Orders Utilizing Federal Funds

Pursuant to Appendix II to 2 Code of Federal Regulations (CFR) Part 200, Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, Orders funded with federal funds may have additional contractual requirements or certifications that must be satisfied at the time the Order is placed or upon delivery. These federal requirements may be proposed by Participating Entities in Participating Addenda and Purchasing Entities for incorporation in Orders placed under this Master Agreement.

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THE PARTIES HERETO HAVE EXECUTED THIS MASTER AGREEMENT

* Persons signing for Contractor hereby swear and affirm that they are authorized to act on Contractor's behalf and acknowledge that the Lead State is relying on their representations to that effect.

<p>CONTRACTOR KDH Defense Systems, Inc.</p> <p>By: <u>Alan Mullis</u> Title: <u>CONTROLLER</u></p> <p>By: <u></u> *Signature</p> <p>Date: <u>3/21/16</u></p>	<p>STATE OF COLORADO John W. Hickenlooper, Governor Department of Personnel & Administration State Purchasing & Contracts Office June Taylor, Executive Director</p> <p>By: <u></u> Cindy Lombardi, State Purchasing and Contracts Director</p> <p>Date: <u>3/25/16</u></p>
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ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Contracts. This Master Agreement is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If Contractor begins performing prior thereto, the State of Colorado is not obligated to pay Contractor for such performance or for any Goods and/or Services provided hereunder.

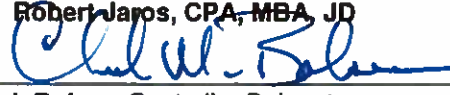
<p>STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p> <p>By: <u></u></p> <p>Clark Bolser, Controller Delegate Greg Garner, Controller Delegate Floy Jeffares, Controller Delegate Joe Weber, Controller Delegate Challon Winer, Controller Delegate</p> <p>Date: <u>3/25/16</u></p>

EXHIBIT A – ON-SITE RESPONSE TIME

The table below provides information on how long (e.g. response time) it will take **KDH Defense Systems, Inc.** or one of their authorized Distributors, to arrive at a Purchasing Entity’s specified location once the Purchasing Entity has requested a fitting.

The response time is based on **1.** The distance that **KDH Defense Systems, Inc.** or their authorized Distributor is located from the Purchasing Entity, and **2.** The number of vests that the Purchasing Entity wants fitted.

Distance from Purchasing Entity	Number of vests	Response Time	Other Time Proposed
< 50 miles	50-501+	2 business days	
	1-49	3 business days	
		4 business days	
		Other	
50 – 100 miles	50-501+	2 business days	
	1-49	3 business days	
		4 business days	
		Other	
> 100 and ≤ 150 miles	50-501+	2 business days	
	1-49	3 business days	
		4 business days	
		Other	
> 150 miles	50-501+	2 business days	
	1-49	3 business days	
		4 business days	
		Other	

ATTACHMENT 1 – DISTRIBUTOR FORM

Manufacturer Name: **KDH Defense Systems, Inc.**

(check one)

- The Distributor listed below is authorized to provide Goods and Services in accordance with the NASPO ValuePoint Body Armor Products Master Agreement.

- The Distributor listed below will no longer provide Goods and Services under the NASPO ValuePoint Body Armor Products Master Agreement.

State(s) Serviced by Distributor:	
Distributor Name:	
Address:	
Phone (include Toll-Free, if available):	
Contact Person(s):	
Email Address:	
FEIN:	
Distributor Website:	

Signed: _____ **Date:** _____
(KDH Defense Systems, Inc. Representative)

Signed: _____ **Date:** _____
(Distributor Representative)

(Print First and Last Name of Distributor Representative)