

**WESTERN STATES CONTRACTING ALLIANCE
PARTICIPATING ADDENDUM
FOR BODY ARMOR**

This Participating Addendum will add the State of Colorado as a participating State to purchase from WSCA Price Agreement number **68008YYY14P** with Point Blank Solutions, Inc. (Manufacturer).

1. Scope

This Participating Addendum covers Body Armor products and is available for use by all delegated state agencies and institutions of higher education, and also made available for use by non-delegated institutions of higher education and political subdivisions of the state.

2. Changes

See Exhibit A (attached), Terms and Conditions for the State of Colorado.

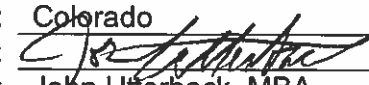
3. Primary Contact


The primary contact individual for this Participating Addendum is as follows:

Name: Jeff Wylde, CPPB
Address: Department of Personnel and Administration
State Purchasing Office
633 17th Street, Suite 1520
Denver, CO 80202
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E-mail: jeff.wylde@state.co.us

This Participating Addendum and the Master Price Agreement together with its exhibits and attachments set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Participating Addendum and the Master Price Agreement, together with its exhibits, shall not be added to or incorporated into this Addendum or the Master Price Agreement and its exhibits, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Participating Addendum and the Master Price Agreement and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms.

IN WITNESS WHEREOF, the parties have executed this Participating Addendum as of the date of execution by both parties below.

Participating State: Colorado
By: 
Name: John Utterback, MBA
Title: State Purchasing Director
Date: _____

Vendor: Point Blank Solutions, Inc.
By: 
Name: Patrick Stallings
Title: EVP
Date: 8/31/2011

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STATE OF COLORADO
Exhibit A
with
Point Blank Solutions, Inc.

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1. EFFECTIVE DATE AND NOTICE OF NONLIABILITY

This **Participating Participating Addendum** shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or designee (the "Effective Date"). The Participating State shall not be liable to pay or reimburse Contractor for any performance hereunder including, but not limited to, costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date.

2. DEFINITIONS

A. Defined Terms

The following terms as used herein shall be construed and interpreted as follows:

i. "Body Armor" means bullet resistant and/or stab resistant concealable or tactical body armor and related armor products having been certified under the most recent standards through the "Voluntary Testing Program" operated by the National Institute of Justice (NIJ), National Law Enforcement and Correctional Testing Center (NLECTC). "Body armor" and "Body armor products" are synonymous with "goods", and shall refer to any category of products included on Exhibit G, Current Vendor Price Sheet, of the Master Price Agreement, as revised by the State on the Colorado State Purchasing Office Price Agreement webpage.

ii. "Contractor" means Point Blank Solutions, Inc.

iii. "Goods" shall have the meaning ascribed to it in the Uniform Commerical Code.

iv. "IFB" means the Invitation for Bid for Body Armor, Solicitation Number IFB-JW-11-0002 conducted by the State of Colorado.

v. "Master Price Agreement" means the State of Colorado Price agreement No. **68008YYY14P/WSCA, CMS # 34406.**

vi. "Order" means any purchase order, contract, or other authorized agreement used to order the Body Armor products priced in the Master Price Agreement. An Order amended consistent with the requirements of any State Agency or Political Subdivision shall also be governed by the Master Price Agreement.

vii. "Ordering Entity" means a State Agency, institution of higher education, or a Political Subdivision, within the Participating State that places an Order.

viii. "Participating State" means the State of Colorado.

ix. "Parties" means the Participating State and Contractor.

- x. "Political Subdivision" means a political subdivision of the Participating State.
- xi. "State Agency" means any department, agency, or institution of higher education of the State of Colorado, not including Political Subdivisions
- xii. "State Purchasing Office" means the State Purchasing Office, Colorado Department of Personnel and Administration.
- xiii. "Uniform Commercial Code" means the Uniform Commercial Code as enacted in the State of Colorado, CRS §4-1-101 et seq.
- xiv. Other Definitions: include capitalized terms used and not otherwise defined in this Exhibit A shall have the meanings ascribed to them in the Participating Addendum or the Master Price Agreement, as applicable.

3. TERM AND ORDERS

A. Term

The Parties' respective performances under this Participating Addendum shall commence on the later of the Effective Date or September 1, 2011. This Participating Addendum shall terminate on July 31, 2013 unless sooner terminated or further extended as specified elsewhere herein. The initial term of the Master Price Agreement also terminates on July 31, 2013. The Master Price Agreement may be extended at the sole option of the WSCA lead state, Colorado. The Master Price Agreement may be renewed beyond the initial two (2) year term for three (3) additional terms of one (1) year each, up to a total of five (5) years. The final renewal term of this Participating Addendum shall terminate no later than August 1, 2016. In the event the Master Price Agreement is extended by option letter for any of the subsequent one (1) year renewal terms, The State of Colorado at its sole option as a Participating State, may renew the term of this Participating Addendum for a similar term, in aggregate not to exceed August 1, 2016 unless terminated sooner for Convenience per §26, or for Default/Cause per §27 of the Master Price Agreement.

The Participating State's decision to renew the term of the Participating Addendum by Option Letter is contingent upon renewal of the Master Price Agreement, and shall be executed in accordance with §41 of the Master Price Agreement.

B. Orders

Orders may be placed consistent with the terms of this Participating Addendum during the term specified in §3(A). All Orders for Body Armor products issued pursuant to this Participating Addendum, at a minimum, shall include (collectively, the "Minimum Required Information"):

- i. Order date, when the Order was placed by the Ordering Entity;
- ii. A brief description of the Goods being purchased, including item number and quantity;
- iii. The place and time of delivery;
- iv. The billing address;
- v. The complete name of the Ordering Entity, the name, phone number, and address of the Ordering Entity's representative (example for State Agency designation: "Colo. Dept. of Transportation", "CDOT" is not acceptable);
- vi. The price by item and the total amount of the Order for Goods being purchased;
- vii. The WSCA Master Price Agreement Number: **68008YYY14P/WSCA, CMS # 34406.**

**viii. The Participating Addendum for the State's statewide Price Agreement
Number: 68008YYY14P/WSCA, CMS # 35700.**

This Participating Addendum is subject to a fiscal rule waiver to allow State Agencies to place Orders on an alternative commitment voucher including the Minimum Required Information in place of a separate contract or State purchase order.

Unless otherwise agreed in writing, any Body Armor products ordered pursuant to this Participating Addendum shall be delivered F.O.B. destination to the location specified in the Order. The Ordering Entity shall not be deemed to have accepted any Body Armor products until such products have been inspected in accordance with the specifications and are accepted by the Ordering Entity. Title to the ordered Body Armor products shall pass to the Ordering Entity upon acceptance of delivered items.

Orders under this Participating Addendum may be placed at any time prior to the termination hereof. All Orders must be placed prior to the expiration date of this Participating Addendum, but may have a delivery date or performance period up to 120 days past the then-current expiration date of this Participating Addendum. Financial obligations of State Agencies and Political Subdivisions payable after the current applicable fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

Notwithstanding the expiration or termination of this Participating Addendum or the Master Price Agreement, Contractor agrees to perform in accordance with the terms of any Orders then outstanding at such expiration or termination. Contractor shall not honor any Orders placed after the expiration or termination of this Participating Addendum, or otherwise inconsistent with its terms. Orders for any indefinite quantity, task order, or other form of indefinite delivery order arrangement priced under the Master Price Agreement shall not be placed after the expiration or termination of this Participating Addendum, notwithstanding the term of any such indefinite delivery order agreement.

Use of the Master Price Agreement under this Participating Addendum is "permissive", whereby State Agencies and delegated institutions of higher education subject to the State's Procurement Code shall be expected to satisfy requirements through the Statewide Price Agreement. Exceptions may be granted by the Director of the State Purchasing Office on application by the State Agency involved. This Participating Addendum does not provide an exclusive price agreement for a single specific vendor. The State of Colorado reserves the right to create multiple statewide price agreements. Political Subdivisions and other non-delegated institutions of higher education may order from this Participating Addendum at their discretion.

4. MODIFICATIONS TO MASTER PRICE AGREEMENT

The Master Price Agreement shall be modified as follows:

A. Limited Liability

The following shall be added at the end of **§14** of the **Master Price Agreement**;
"Contractor's liability for intellectual property infringement shall not be limited."

B. Public Records

Section 16.3 of the Master Price Agreement is amended to include the additional language as follows:

"The disclosure of Contractor information by the Participating State, a State Agency or a Political Subdivision shall be governed by the Colorado Open Records Act, CRS §24-72-200.1, et seq.

C. Taxes

Section 22, Tax Exempt Status, of the Master Price Agreement is deleted in its entirety and the following is inserted in lieu thereof:

“State Agencies are tax-exempt and are not liable for any sales, use, excise, property, or other taxes imposed by any federal, state or local government tax authority. The Participating State's tax exemption number is 98-02565. The Participating State is not liable for any taxes assessed against Contractor for franchise or related to Contractor's income. No taxes of any kind shall be charged to the Participating State. Contractor is hereby notified that when materials are purchased for the benefit of the Participating State, some Political Subdivisions require the Contractor to pay sales or use taxes even though the ultimate product or service is provided to the Participating State. These sales or use taxes will not be reimbursed by the Ordering Entity, nor will any prices or rates in this Participating Addendum be adjusted on account of such taxes.

Contractor shall accord the same tax free treatment to Political Subdivisions placing Order under this Participating Addendum, to the extent that they establish like exemption from taxes.”

D. Venue.

All suits or actions related to this Participating Addendum or any Order placed hereunder shall be filed and proceedings held in the State of Colorado, and exclusive venue shall be in the City and County of Denver.

E. Governmental Immunity

No term or condition of this Participating Addendum shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.

F. Binding Arbitration Prohibited

The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this Participating Addendum or the Master Price Agreement or incorporated herein or therein by reference shall be null and void.

5. REPORTING

A. Volume Reports

The Participating State intends to use a centralized method of volume reporting directly to the Lead State and Western States Contracting Alliance (WSCA) as noted in the Master Price Agreement. Contractor shall furnish sales reports each fiscal year quarter. The reports must include:

- i. The total dollars spent by State Agencies in conjunction with the Master Price Agreement,
- ii. The total estimated dollars saved by State Agencies on the Master Price Agreement for that period,
- iii. The total dollars spent by State institutions of higher education (State universities and State colleges) in conjunction with the Master Price Agreement,

- iv. The total estimated dollars saved by State institutions of higher education (State universities and colleges) on the Master Price Agreement for that period,
- v. The total dollars spent by Political Subdivisions in conjunction with the Master Price Agreement,
- vi. The total estimated dollars saved by Political Subdivisions on the Master Price Agreement.
- vii. The total dollars paid for with a procurement card as opposed to traditional methods of payment.

The foregoing requirements shall be in addition to using the required WSCA reporting template; Contractor shall be required to provide Colorado specific reporting in the form set forth on the website of the State Purchasing Office: <https://www.gssa.state.co.us/PriceAwd.nsf/Forms+Info+Pages?OpenView> .

Failure to provide required reports shall constitute cause for termination of this Participating Addendum and may disqualify Contractor from the award of future price agreements by the Participating State.

6. CONFLICTS OF INTEREST

Contractor shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the full performance of Contractor's obligations hereunder. Contractor acknowledges that with respect to this Participating Addendum, even the appearance of a conflict of interest is harmful to the Participating State's interests. Absent the Participating State's prior written approval, Contractor shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Contractor's obligations to the Participating State hereunder.

If a conflict or appearance of a conflict exists, or if Contractor is uncertain whether a conflict or the appearance of a conflict of interest exists, Contractor shall submit to the Participating State a disclosure statement setting forth the relevant details for the Participating State's consideration. Failure to promptly submit a disclosure statement or to follow the Participating State's direction in regard to the apparent conflict constitutes a breach of this Participating Addendum.

7. INSURANCE

Contractor and its subcontractors, if any, shall obtain and maintain insurance as specified in this section at all times during the term of this Participating Addendum. All policies evidencing the insurance coverage required hereunder shall be issued by insurance companies satisfactory to Contractor and the Participating State.

A. Contractor

i. Public Entities

If Contractor is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq., as amended (the "GIA"), then Contractor shall maintain at all times during the term of this Participating Addendum such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. Contractor shall show proof of such insurance satisfactory to the Participating State, if requested by the Participating State. Contractor shall require each contract with a subcontractor

that is a public entity, to include the insurance requirements necessary to meet such subcontractor's liabilities under the GIA.

ii. Non-Public Entities

If Contractor is not a "public entity" within the meaning of the Governmental Immunity Act, Contractor shall obtain and maintain during the term of this Participating Addendum insurance coverage and policies meeting the same requirements set forth in this §7(A) with respect to subcontractors that are not "public entities".

B. Contractors - Subcontractors

Contractor shall require each contract with subcontractors other than those that are public entities, providing goods or services in connection with this Participating Addendum, to include insurance requirements substantially similar to the following:

i. Worker's Compensation

Worker's Compensation Insurance as required by Participating State statute, and Employer's Liability Insurance covering all of Contractor or subcontractor employees acting within the course and scope of their employment.

ii. General Liability

Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows: (a) \$1,000,000 each occurrence; (b) \$10,000,000 general aggregate; (c) \$10,000,000 products and completed operations aggregate; and (d) \$50,000 any one fire.

If any aggregate limit is reduced below \$1,000,000 because of claims made or paid, subcontractor shall immediately obtain additional insurance to restore the full aggregate limit and furnish to Contractor a certificate or other document satisfactory to Contractor showing compliance with this provision.

iii. Automobile Liability

Automobile Liability Insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit.

iv. Additional Insured

The State of Colorado and all of its agencies and institutions of higher education shall be named as additional insured on all Commercial General Liability policies (leases and construction contracts require additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent) required of Contractor and any subcontractors hereunder.

v. Primacy of Coverage

Coverage required of Contractor and subcontractor shall be primary over any insurance or self-insurance program carried by Contractor or the Participating State.

vi. Cancellation

The above insurance policies shall include provisions preventing cancellation or non-renewal without at least 30 days prior notice to Contractor and Contractor shall forward such notice to the Participating State in accordance with §9(A) (Notices) within seven days of Contractor's receipt of such notice.

vii. Subrogation Waiver

All insurance policies in any way related to this Participating Addendum and secured and maintained by Contractor or its subcontractors as required herein shall include clauses stating that each carrier shall waive all rights of recovery, under subrogation or otherwise, against Contractor or the Participating State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

C. Certificates

Contractor shall provide certificates showing insurance coverage required hereunder to the Participating State within seven (7) business days of the Effective Date of this Participating Addendum. No later than 15 days prior to the expiration date of any such coverage, Contractor shall deliver to the Participating State certificates of insurance evidencing renewals thereof. In addition, upon request by the Participating State at any other time during the term of this Participating Addendum or any sub-contract, Contractor shall, within ten (10) days of such request, supply to the Participating State evidence satisfactory to the Participating State of compliance with the provisions of this §7.

8. INTELLECTUAL PROPERTY

If Contractor infringes on a patent, copyright, trademark, trade secret or other intellectual property right while performing its obligations under this Participating Addendum, Contractor shall, at Contractor's option (a) obtain for the Participating State or Contractor the right to use such products and services; (b) replace any Goods or other product involved with non-infringing products of substantially similar functionality or modify them so that they retain substantially similar functionality but become non-infringing; or, (c) if neither of the foregoing alternatives are reasonably available, remove any infringing Goods or products and refund the price paid therefore to the Participating State, such price to be based upon a five year straight amortization schedule.

9. GENERAL PROVISIONS

A. Notices

All notices required to be given hereunder shall be delivered in accordance with §33 of the Master Price Agreement. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

B. Modification

i. By the Parties

Except as specifically provided in this Participating Addendum, modifications of this Participating Addendum shall not be effective unless agreed to in writing by both parties in an amendment to this Participating Addendum, properly executed and approved in accordance with applicable Colorado State law and Fiscal Rules. Modifications permitted under this Participating Addendum, other than contract amendments, shall conform to the Policies of the Office of the State Controller, including, but not limited to, the policy entitled MODIFICATIONS OF CONTRACTS TOOLS AND FORMS.

ii. By Operation of Law

This Participating Addendum shall be subject to such modifications as may be required by changes in Federal or Colorado State law, or their implementing regulations. Any such required modification automatically shall be incorporated into and be part of this Participating Addendum on the effective date of such change, as if fully set forth herein.

C. Order of Precedence

The provisions of this Participating Addendum shall govern the relationship of the Participating State of Colorado and Contractor. In the event of conflicts or inconsistencies between this Participating Addendum and its exhibits and attachments, including, but not limited to, those provided by Contractor, or this Participating Addendum and the Master Price Agreement or any Order, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- i. This Participating Addendum, other than §11 Purchase Order Terms and Conditions;
- ii. Purchase Order Terms and Conditions §11 for Orders placed under this Participating Addendum;
- iii. The Master Price Agreement, including all Exhibits and Attachments; and
- iv. An Order.

10. Additional Terms and Conditions

A. Doing Business in Colorado

Contractor shall register with the Colorado Secretary of State in accordance with Colorado Revised Statute (CRS) 7-90-801, and must be in "good standing" and maintain such status throughout the term of this Participating Addendum. A copy of Contractor's organizational documents (Ex. Articles of Incorporation and/or Bylaws) may be requested by the Participating State.

Contractor, if a foreign corporation or other foreign entity transacting business in the State of Colorado, further warrants that it currently has obtained and shall maintain any applicable certificate of authority to transact business in the State of Colorado and has designated a registered agent in Colorado to accept service of process. Any revocation, withdrawal or non-renewal of such certification shall be a material breach by Contractor and constitutes grounds for termination of this Participating Addendum.

B. Colorado BIDS Registration

Contractor shall register with the Colorado Bid Information and Distribution System (BIDS) under the business entity identified in this Participating Addendum. Contractor shall obtain and maintain a current status throughout the term of this Participating Addendum.

C. Federal Employer Identification Number (FEIN)

Contractor shall submit to Participating State its F.E.I.N. prior to purchase order issuance and as directed by the Office of the State Controller. Contractor shall also provide a completed W-9, Taxpayer Identification form, to the Participating State.

D. Sex Offender Registry Check

If in the course of doing business, a Contractor's employee visits a Participating State facility that has as clients children under the age of 21 on the premises, Contractor shall perform a sex offender registry check on each such employee prior to such employee going to any such Participating State facility. In the event a Contractor's employee is on the registry, such employee shall not be sent to a Participating State facility and will not be admitted to such facility. Link to access the Colorado Department. of Public Safety's website: <http://cdpsweb.state.co.us/> (Reference CRS §16-22-110, Sex Offender Registry.)

11. PURCHASE ORDER TERMS AND CONDITIONS

The terms and conditions of this §11 shall apply to all Orders placed by any State Agency not utilizing a separate contract or purchase order (each a "State Order"). If a Political Subdivision opts to use the terms and conditions of this §11, it must specifically include the following statement "This Order is subject to the terms and conditions of §11 of the Participating Addendum" (each a "Political Subdivision Order").

For the purposes of this §11 and for each State Order, references to "vendor" shall be deemed to be references to Contractor, references to "buyer" shall be deemed to be references to the Ordering Entity and references to "PO" shall be deemed to be references to the applicable State Order or Political Subdivision Order.

- A. Offer/Acceptance.** If this purchase order ("PO") refers to vendor's bid or proposal, this PO is an ACCEPTANCE of vendor's OFFER TO SELL in accordance with the terms and conditions of the "solicitation" identified in vendor's bid or proposal. The solicitation includes an RFP, IFB, or any other form of order by buyer. If a bid or proposal is not referenced, this PO is an OFFER TO BUY, subject to vendor's acceptance, demonstrated by vendor's performance or written acceptance of this PO. Any COUNTER-OFFER TO SELL automatically CANCELS this PO, unless a change order is issued by buyer accepting a counter-offer. This PO shall supersede and control over any vendor form(s) or part(s) thereof included in or attached to any bid, proposal, offer, acknowledgment, or otherwise, in the event of inconsistencies or contradictions, regardless of any statement to the contrary in such form(s) or parts thereof.
- B. Safety Information.** All chemicals, Supplies and/or Goods and materials proposed and/or used in the performance of this PO shall conform to the requirements of the Occupational Safety and Health Act of 1970. Vendor shall furnish all Material Safety Data Sheets (MSDS) for any regulated chemicals, Supplies and/or Equipment or hazardous materials at the time of delivery.
- C. Changes.** Vendor shall furnish products and/or services strictly in accordance with the specifications and price set forth for each item. This PO shall not be modified, superseded or otherwise altered, except in writing approved by an authorized agent of the Ordering Entity and accepted by vendor. Each shipment received or service performed shall comply with the terms of this PO, notwithstanding invoice terms or acts of vendor to the contrary, unless this PO has been modified, superseded or otherwise altered in accordance with this section.
- D. Delivery.** Unless otherwise specified in the solicitation or this PO, delivery shall be FOB destination. Buyer is relying on the promised delivery date, installation, and/or service performance set forth in vendor's bid or proposal as material and basic to buyer's acceptance. If vendor fails to deliver or perform as and when promised, buyer, in its sole discretion, may cancel its order, or any part thereof, without prejudice to its other rights, return all or part of any shipment so made, and charge vendor with any loss or expense sustained as a result of such failure to deliver or perform as promised. Time is of the essence.
- E. Intellectual Property.** Any software, research, reports, studies, data, photographs, negatives or other documents, drawings or materials (collectively "materials") delivered by vendor in performance of its obligations under this PO shall be the exclusive property of buyer. Ownership rights shall include, but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use the materials. Vendor shall comply with all applicable Cyber Security Policies of the State of Colorado (the "State"), or buyer, as applicable, and all confidentiality and non-disclosure agreements, security controls, and reporting requirements.

- F. Quality.** Buyer shall be the sole judge in determining "equals" with regard to quality, price and performance. All products delivered shall be newly manufactured and the current model, unless otherwise specified.
- G. Warranties.** All provisions and remedies of the Colorado Uniform Commercial Code, CRS, Title 4 ("CUCC"), relating to implied and/or express warranties are incorporated herein, in addition to any warranties contained in this PO or the specifications.
- H. Inspection and Acceptance.** Final acceptance is contingent upon completion of all applicable inspection procedures. If products or services fail to meet any inspection requirements, buyer may exercise all of its rights, including those provided in the CUCC. Buyer shall have the right to inspect services provided under this PO at all reasonable times and places. "Services" as used in this section includes services performed or tangible material produced or delivered in the performance of services. If any of the services do not conform to PO requirements, buyer may require vendor to perform the services again in conformity with PO requirements, without additional payment. When defects in the quality or quantity of service cannot be corrected by re-performance, buyer may (a) require vendor to take necessary action to ensure that future performance conforms to PO requirements and (b) equitably reduce the payment due vendor to reflect the reduced value of the services performed. These remedies do not limit the remedies otherwise available in this PO, at law, or in equity.
- I. Cash Discount.** The cash discount period will start from the later of the date of receipt of acceptable invoice, or from date of receipt of acceptable products/services at the specified destination by an authorized buyer representative.
- J. Taxes.** Buyer and the State are exempt from all federal excise taxes under Chapter 32 of the Internal Revenue Code [No. 84-730123K] and from all State and local government sales and use taxes [CRS, Title 39, Article 26, Parts I and II]. Such exemptions apply when materials are purchased for the benefit of State, except that in certain Political Subdivisions (e.g., City of Denver) vendor may be required to pay sales or use taxes even though the ultimate product or service is provided to buyer. Buyer shall not reimburse such sales or use taxes.
- K. Payment.** Buyer shall pay vendor for all amounts due within 45 days after receipt of products or services and a correct notice of amount due. Interest on the unpaid balance shall begin to accrue on the 46th day at the rate set forth in CRS §24-30-202(24) until paid in full. Interest shall not accrue if a good faith dispute exists as to buyer's obligation to pay all or a portion of the amount due. Vendor shall invoice buyer separately for interest on delinquent amounts due, referencing the delinquent payment, number of day's interest to be paid, and applicable interest rate.
- L. Vendor Offset.** *[Not Applicable to Inter-governmental POs]* Under CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (a) unpaid child support debts or arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.
- M. Assignment and Successors.** Vendor shall not assign rights or delegate duties under this PO, or subcontract any part of the performance required under this PO, without the express, written consent of buyer. This PO shall inure to the benefit of and be binding upon vendor and buyer and their respective successors and assigns. Assignment of accounts receivable may be made only upon written notice furnished to buyer.
- N. Indemnification.** If any article sold or delivered under this PO is covered by a patent, copyright, trademark, or application therefore, vendor shall indemnify and hold harmless buyer from any and all loss, liability, cost, expenses and legal fees

incurred on account of any claims, legal actions or judgments arising out of manufacture, sale or use of such article in violation or infringement of rights under such patent, copyright, trademark or application. If this PO is for services, vendor shall indemnify, save, and hold harmless buyer, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related expenses, incurred as a result of any act or omission by vendor, or its employees, agents, subcontractors or assignees, arising out of or in connection with performance of services under this PO.

- O. Independent Contractor.** Vendor shall perform its duties hereunder as an independent contractor and not as an employee. Neither vendor nor any agent or employee of vendor shall be deemed to be an agent or employee of buyer. Vendor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through buyer and buyer shall not pay for or otherwise provide such coverage for vendor or any of its agents or employees. Unemployment insurance benefits will be available to vendor and its employees and agents only if coverage is made available by vendor or a third party. Vendor shall pay when due all applicable employment, income, and local head taxes incurred pursuant to this PO. Vendor shall not have authorization, express or implied, to bind buyer to any agreement, liability or understanding, except as expressly set forth herein. Vendor shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by buyer, and (c) be solely responsible for its acts and those of its employees and agents.
- P. Communication.** All communication concerning administration of this PO, prepared by vendor for buyer's use, shall be furnished solely to Ordering Entity.
- Q. Compliance.** Vendor shall strictly comply with all applicable federal and state laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.
- R. Insurance.** Vendor shall obtain, and maintain, at all times during the term of this PO, insurance as specified in the solicitation, and provide proof of such coverage as requested by the Ordering Entity.
- S. Termination Prior to Shipment.** If vendor has not accepted this PO in writing, buyer may cancel this PO by written or oral notice to vendor prior to shipment of goods or commencement of services.
- T. Termination for Cause.** (a) If vendor refuses or fails to timely and properly perform any of its obligations under this PO with such diligence as will ensure its completion within the time specified herein, buyer may notify vendor in writing of non-performance and, if not corrected by vendor within the time specified in the notice, terminate vendor's right to proceed with the PO or such part thereof as to which there has been delay or a failure. Vendor shall continue performance of this PO to the extent not terminated and be liable for excess costs incurred by buyer in procuring similar goods or services elsewhere. Payment for completed services performed and accepted shall be at the price set forth in this PO. (b) Buyer may withhold amounts due to vendor as buyer deems necessary to reimburse buyer for excess costs incurred in curing, completing or procuring similar goods and services. (c) If after rejection, revocation, or other termination of vendor's right to proceed under the CUCC or this clause, buyer determines for any reason that vendor was not in default or the delay was excusable, the rights and obligations of buyer and vendor shall be the same as if the notice of termination had been issued pursuant to termination under §21.
- U. Termination in Public Interest.** Buyer is entering into this PO for the purpose of carrying out the public policy of the State, as determined by its Governor, General Assembly, and Courts. If this PO ceases to further the public policy of the State, buyer, in its sole discretion, may terminate this PO in whole or in part and such termination shall not be deemed to be a breach of buyer's obligations hereunder.

This section shall not apply to a termination for vendor's breach, which shall be governed by §20. Buyer shall give written notice of termination to vendor specifying the part of the PO terminated and when termination becomes effective. Upon receipt of notice of termination, vendor shall not incur further obligations except as necessary to mitigate costs of performance. For services or specially manufactured goods, buyer shall pay (a) reasonable settlement expenses, (b) the PO price or rate for supplies and services delivered and accepted, (c) reasonable costs of performance on unaccepted supplies and services, and (d) a reasonable profit for the unaccepted work. For existing goods, buyer shall pay (e) reasonable settlement expenses, (f) the PO price for goods delivered and accepted, (g) reasonable costs incurred in preparation for delivery of the undelivered goods, and (h) a reasonable profit for the preparatory work. Buyer's termination liability under this section shall not exceed the total PO price plus a reasonable cost for settlement expenses. Vendor shall submit a termination proposal and reasonable supporting documentation, and cost and pricing data as required by CRS §24-106-101, upon request of buyer.

- V. PO Approval.** This PO shall not be valid until the Order has been validly placed by an authorized agent of the Ordering Entity. Buyer shall not be responsible or liable for products or services delivered or performed prior thereto.
- W. Fund Availability.** Financial obligations of buyer payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available. If this PO is funded in whole or in part with federal funds, this PO is subject to and contingent upon the continuing availability of federal funds for the purposes hereof. Buyer represents that it has set aside sufficient funds to make payment for goods delivered in a single installment, in accordance with the terms of this PO.
- X. Choice of Law.** State laws, rules and regulations shall be applied in the interpretation, execution, and enforcement of this PO. The CUCC shall govern this PO in the case of goods unless otherwise agreed in this PO. Any provision included or incorporated herein by reference which conflicts with such laws, rules, and regulations is null and void. Any provision incorporated herein by reference which purports to negate this or any other provision in this PO in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Unless otherwise specified in the solicitation or this PO, venue for any judicial or administrative action arising out of or in connection with this PO shall be in Denver, Colorado. Vendor shall exhaust administrative remedies in CRS §24-109-106, prior to commencing any judicial action against buyer.
- Y. Public Contracts for Services.** *[Not Applicable to offer, issuance, or sale of securities, investment advisory services, fund management services, sponsored projects, intergovernmental POs, or information technology services or products and services]* Vendor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this PO and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this PO, through participation in the E-Verify Program or the Department program established pursuant to CRS §8-17.5-102(5)(c), Vendor shall not knowingly employ or contract with an illegal alien to perform work under this PO or enter into a contract or PO with a subcontractor that fails to certify to vendor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this PO. Vendor shall (a) not use E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants during performance of this PO, (b) notify subcontractor and buyer within three days if vendor has actual knowledge that subcontractor is employing or contracting with an illegal alien for work under this PO, (c) terminate the subcontract if subcontractor does not stop employing or contracting with the illegal alien within three days of receiving notice, and (d) comply with reasonable



requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If vendor participates in the Department program, vendor shall deliver to the buyer a written, notarized affirmation that vendor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If vendor fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., buyer may terminate this PO for breach and, if so terminated, vendor shall be liable for damages.

Z. Public Contracts with Natural Persons. Vendor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS §24-76.5-101 et seq., and (c) has produced a form of identification required by CRS §24-76.5-103 prior to the date vendor delivers goods or begins performing services under terms of the PO.

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**THE PARTIES HERETO HAVE EXECUTED THIS PARTICIPATING
ADDENDUM**

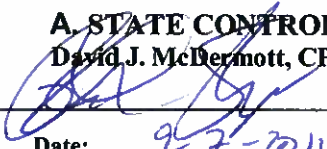
*** Persons signing for Manufacturer hereby swear and affirm that they are authorized to act on Manufacturer's behalf and acknowledge that the State is relying on their representations to that effect.**

<p>MANUFACTURER Point Blank Solutions, Inc.</p> <p>By: _____ Title: _____</p> <p></p> <p>_____ *Signature</p> <p>Date: <u>8/31/2011</u></p>	<p>STATE OF COLORADO John W. Hickenlooper, Governor Department of Personnel and Administration Kathy Nesbitt, Executive Director</p> <p>By: _____ </p> <p>Date: <u>9.7.11</u></p>
<p>2nd Contractor Signature if Needed</p> <p>By: _____ Title: _____</p> <p>_____ *Signature</p> <p>Date: _____</p>	<p>LEGAL REVIEW John W. Suthers, Attorney General</p> <p>By: _____ Signature - Assistant Attorney General</p> <p>Date: _____</p>

ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

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

A. STATE CONTROLLER
David J. McDerriott, CPA

B. By: _____


Date: 9-7-2011

SAMPLE OPTION LETTER

Date:	Original CMS #: 34406	Option Letter #	CMS Routing # 35700
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OPTION to renew only *(for an additional term)*

In accordance with Section 41 of the Original Master Price Agreement between the State of Colorado, Department of Personnel and Administration, and Contractor's Name ("Manufacturer"), the State hereby exercises its option for an additional term beginning start date and ending on ending date according to the terms specified in Section, Schedule, Attachment, Exhibit etc.

The sentence in Section is hereby modified accordingly. The total contract term including all previous amendments, option letters, etc. is Insert New .

Effective Date. The effective date of this Option Letter is upon approval of the State Controller or , whichever is later.

STATE OF COLORADO John Hickenlooper, GOVERNOR Department of Personnel and Administration
By: Name & Title of Person Signing for Agency
Date: _____

ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State contracts. This Option Letter is not valid until signed and dated below by the State Controller or delegate. Manufacturer is not authorized to begin performance until such time. If Manufacturer begins performing prior thereto, the State of Colorado is not obligated to pay Manufacturer for such performance or for any goods and/or services provided hereunder.

STATE CONTROLLER
David J. McDermott, CPA

By: _____
Department of Personnel and Administration, Office of the State Controller

Date: _____

