

Board Office Use: Legislative File Info.	
File ID Number	18-1919
Introduction Date	9/26/18
Enactment Number	18-1539
Enactment Date	9/26/18 os



Memo

To Board of Education
From Kyla Johnson-Trammell, Superintendent
 Andrea Bustamante, Executive Director, Community Schools and Student Services

Board Meeting Date September 26, 2018
Subject Purchase Agreement
 Contractor: BSN Sports, LLC
 Services For: Oakland Athletic League, Community Schools and Student Services Department

Action Requested and Recommendation Approval by the Board of Education of Purchase Agreement between the District and BSN Sports, LLC, Dallas, TX, for the latter to provide factory-direct equipment, in partnership with OUSD, for team sport athletic apparel, footwear, sports equipment, and products needed for all participating student athletes via the Oakland Athletic League of the Community Schools and Student Services Department, for the period of July 1, 2018 through June 30, 2019, in an amount not to exceed \$90,200.00.

for the period of 7/1/2018 through 6/30/2019 in an amount not to exceed \$ 90,200.00.

Background
(Why do we need these services? Why have you selected this vendor?)
 CBSN Sports, LLC, is a factory-direct equipment company, the largest distributor of team sports apparel and equipment in the United States. They are a teamwear outfitter of Nike, Under Armour and other national brands. BSN Sports supports the needs of the athlete and coach for all grades, specializing in understanding the community, the school and their unique needs.

Competitively Bid Was this contract competitively bid? No
 If no, exception: Professional Services Agreement of less than \$90,200

Fiscal Impact Funding resource(s): Oakland Athletic League Funding

Attachments ● Purchase Agreement

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Purchase Agreement for
Materials, Supplies and Equipment
between
Oakland Unified School District
and
BSN Sports, LLC

Oakland Unified School District-BSN Sports, LLC
Purchase Agreement for Materials, Supplies and Equipment

This Agreement, made this 1st day of July 2018 (the "Effective Date"), together with the Exhibits attached hereto and incorporated herein which may be added hereto from time to time by mutual written agreement of the Parties (collectively, the "Agreement"), by and between Oakland Unified School District, a California public entity, having an office and place of business at 1000 Broadway, Oakland, CA 94607 ("District"), and BSN Sports, LLC, having an office and place of business at 1901 Diplomat Drive, Farmers Branch, TX 75234 ("Contractor") (hereinafter collectively referred to as "the Parties", or individually as a "Party").

WHEREAS, Contractor is in the business of, and has expertise in, providing Products and Services as hereinafter described; and

WHEREAS, District wishes to obtain through Contractor and Contractor wishes to provide to District such Products and Services.

NOW THEREFORE, in consideration of the mutual covenants and promises set forth herein, the Parties agree as follows:

Article 1 - Definition of Terms

The following terms, wherever used in any documents which form part of this Agreement, shall have the meanings indicated below unless the context otherwise requires. Additional definitions may be contained elsewhere in this Agreement.

- A. "Affiliate" means any entity which controls, is controlled by or is under common control with one of the Parties to this Agreement. "Control" or "Controlled" means beneficial ownership (direct or indirect) of the subject entity.
- B. "Commercially Reasonable" means taking all such steps and performing in such a manner as a well-managed company would undertake where it was acting in a determined, prudent and reasonable manner to achieve a particular desired result for its own benefit.
- C. "Deliverables" means those products, reports, documentation, and schedules to be developed and provided by Contractor to District in regard to the Services provided by Contractor hereunder.
- D. "Products" means collectively physical education and/or sports equipment and materials, whether in hard copy.
- E. "Services" means the services provided by Contractor under this Agreement; i.e. sourcing and fulfilling the Product and/or providing Deliverables identified in an Order.
- F. "Site" means the facility or office or other location, as designated in this Agreement or the Order, for which the Product and/or Deliverable is to be delivered.
- G. "Order" means the form of purchase order or other document used for the purpose of ordering Product and/or Deliverables pursuant to this Agreement. Order shall also include District's written or electronic form of purchase requisition.

Article 2 - Rules of Interpretation

- A. The term "including" means "including, but not limited to" and shall be interpreted as broadly as possible.
- B. All references to "days" shall be calendar days, not business days, unless otherwise explicitly stated.
- C. The captions and titles to articles and paragraphs of this Agreement are only provided for convenience/reference and have no effect on the nature, extent, construction and meaning of this Agreement.
- D. In the event of any inconsistency between the provisions of the following documents, (a) unless such inconsistency relates to modification to the Indemnification, Rights in Deliverables, Representations and Warranties, or Limitations of Liability Articles herein, in which case such modification must specifically state that it is amending this Agreement as so stated, then (b) the inconsistency shall be resolved by giving precedence in the following order:
 - 1. The Order;
 - 2. Documents incorporated into the Order in the order in which they are listed;
 - 3. Amendments to this Agreement, if any;
 - 4. This Agreement; and
 - 5. Documents incorporated into this Agreement in the order in which they are listed.

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Notwithstanding the foregoing order of precedence, this Agreement shall govern and supersede any conflicting preprinted and/or general terms and/or conditions stated on or attached to any Order, which are null and void with respect to this Agreement.

- E. If copies of documents are referenced or incorporated in this Agreement, they shall be considered originals. Attachments, schedules, appendices and addenda shall be considered part of the documents in which they are referenced. Documents that are referenced shall have the same force and effect as if contained in their entirety.
- F. Notwithstanding the general rules of construction, both District and Contractor acknowledge that both Parties were given an equal opportunity to negotiate the terms and conditions contained in this Agreement, and agree that the identity of the drafter of this Agreement is not relevant to any interpretation of the terms and conditions of this Agreement.

Article 3 - Attachments

The following documents are attached and are hereby incorporated into this Agreement by reference:

- A. Contractor's Catalog for all Products applicable to the Term of this Agreement.

Article 4 - Term of Agreement and Not to Exceed Amount

This Agreement shall be effective on the Effective Date and **shall expire on June 30, 2019**, unless terminated in accordance with this Agreement. Further, all purchases made by the District from Contractor under this Agreement (and related Orders) **shall not exceed \$90,200** during the term of the Agreement, including all fees and taxes. Contractor agrees and understands that any Orders that would be subject to this Agreement that are accepted and fulfilled by Contractor that **cumulatively** exceed the not to exceed amount of this Agreement during its term are void as a matter of law and Contractor is not and will not be entitled to any payment, remuneration, and/or return of product whatsoever for accepting and fulfilling said Orders. Contractor further understands and agrees that any order placed, accepted and/or fulfilled that is alleged or purportedly not related to or made pursuant to this Agreement is void as a matter of law and Contractor is not and will not be entitled to any payment, remuneration, and/or return of product whatsoever for accepting and fulfilling said order.

Article 5 - Scope of Agreement, Order

- A. This Agreement is not a commitment on the part of the District to purchase any Product from Contractor. Product will be purchased on an "as ordered" basis through the execution of one or more Orders, directing Contractor to deliver the Product, if any, for the benefit of the District.
- B. The Product and any Deliverables to be provided shall be determined in such Order, including all attachments thereto. Each Order that refers to or is made pursuant to this Agreement shall be deemed a separate agreement that incorporates the terms and conditions of this Agreement by reference.
- C. Any Order issued hereunder shall, at a minimum, contain the following:
 - 1. The incorporation by reference of this Agreement;
 - 2. The location where Product will be delivered;
 - 3. A detailed description of the Product, including, but not limited to, SKU, Manufacturer's item number, and any applicable designation and/or specifications which will avoid confusion regarding the Product to be delivered;
 - 4. A detailed description of Deliverable(s) to be provided by Contractor;
 - 5. Price, including any applicable fees and sales tax, and payment terms;
 - 6. The scheduled delivery date;
 - 7. Contractor shall not be required to deliver any Product and/or Deliverable unless and until an Order has been provided to Contractor.
- D. If notice of rejection of an Order is not received by District within two (2) business days from the date of its receipt by Contractor, then such Order shall be deemed to have been accepted by Contractor.

Article 6 - Rights in Deliverables

- A. Unless otherwise specifically agreed to in an Order, any and all Deliverables created, developed, or prepared specifically for District (e.g., not a hard good ordered out of a catalog) by Contractor, its employees or Subcontractors shall be deemed a "work for hire" for the sole benefit of and belonging exclusively to District.

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All other intellectual property rights and other proprietary rights in and to the Services, and information, know-how and processes developed by Contractor, or anyone acting on Contractor's behalf, arising from the Services performed hereunder shall be the sole and exclusive property of Contractor and shall not be claimed to be owned by District or their employees.

- B. To the extent any Deliverable is not deemed a "work for hire" by operation of law, Contractor hereby irrevocably assigns, transfers and conveys to District all of its right, title and interest in all Deliverables under the Order, including, but not limited to, all rights of patent, copyright, trade secret or other proprietary rights in such Deliverable.
- C. Contractor shall provide to District all Commercially Reasonable assistance, execute such documents, and take all such other actions, which may be reasonably required to perfect the foregoing rights to the Deliverable.
- D. Notwithstanding the foregoing, Contractor shall retain ownership rights to (1) all of its previously existing intellectual property, including any systems, derivatives, modifications and enhancements thereto, (2) Confidential Information of Contractor, and (3) any tools or scripting applications used, developed or created by Contractor or its third party licensors during the performance of this Agreement.

Article 7 - Invoicing, Terms of Payment, Price and Tax

All invoices shall be submitted to the remit-to address specified in an Order, submitted as specified in this Agreement, and shall reference the Order number.

Subject to reconciliation with the terms of this Agreement and the Order, including verification that the Product was delivered, the invoice shall be paid ("paid" being defined as "issuance of payment from District's Accounts Payable Department") net thirty (30) days after receipt of a valid invoice at the above referenced remit-to address.

- A. Any invoice or portion thereof that is subject to a good faith dispute will not be paid; in such case, District will promptly notify Contractor of any rejected invoice or portion thereof, with reasons for such rejection. The rejected costs, adjusted to the extent as mutually agreed to, shall then be re-invoiced on a separate invoice and paid net fifteen (15) days thereafter.

Invoices shall call for payments in U.S. Dollars, and shall accurately reflect the amount(s) of the Price set forth in the Order.

Price

The price specified in the Order for the Product shall consist of cost, including all other fees and taxes that apply to said cost.

Tax

At District's request, Contractor will, to a Commercially Reasonable extent, file any certificate or other document which may cause any tax to be avoided or reduced, and cooperate with District in contesting any such tax or in claiming, on District's behalf, refunds of any such taxes paid by or on behalf of District.

All other taxes, including, but not limited to a Party's operations, such as payroll or income taxes, federal, state, and local income taxes, franchise taxes, gross receipts taxes, federal, state, and local sales and use taxes, and property taxes shall be the responsibility of the Party that incurs the tax liability.

Article 8 - Title, Risk of Loss, Returns

- A. Contractor shall transfer to District good and merchantable title to the Deliverables and Product, free from all liens, encumbrances and claims of others, upon delivery of the Deliverables and Product to and its receipt by District, at which time title and risk of loss shall vest fully in District, unless notice of rejection is provided to Contractor's authorized representative within fourteen (14) days after such delivery.

B. Returns

1. General

Subject to Sections 2, 3, and 4 below,

- a. For a Product to be eligible for return it must be in Resale Condition (one hundred percent complete, including all original boxes, packing materials, manuals, blank warranty cards, and other accessories provided by Contractor).
- b. Unless otherwise stated, shipping fees imposed by the Contractor shall be at District's cost.

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- c. If return is due to Contractor's error, and the return request is made by District within thirty (30) days of receipt of Product, then Contractor will accept the return at no cost whatsoever to District.
 - d. If District ordered the incorrect Product or has decided that it no longer wants the Product, then Contractor will accept the return from District if notice of such is provided to Contractor's authorized representative within fourteen (14) days after such delivery, and the Product is returned to Contractor within thirty (30) days of receipt of Product.
2. Non-Conforming Product
- a. If District determines, in its reasonable discretion, that any Product is not in conformance with the description in the Order (a "Non-Conforming Product"), then District may at its option, either:
 - 1) Request that Contractor promptly initiate an order to replace the Non-Conforming Product at no cost to District, in which case Contractor will order replacement(s) within one (1) business day of notice of nonconformance from District and District shall return the Product to Contractor, all at no cost to District; or
 - 2) Terminate the non-conforming portion of the applicable Order, in which case District shall return the Product to Contractor at no cost to District, and Contractor, upon receipt of the Product, shall promptly refund to District any payments made to Contractor therefor, provided that the request for such return was made within fourteen (14) days after such delivery.
3. Damage and/or Defects
- If the Product has concealed damage (i.e., there is no evident damage to external packaging) or is defective, Contractor will accept the return from District. Contractor will order a replacement unit within one business day of notice of damage or defect from District for prompt delivery to District, all at no cost to District.
4. Shipping Damage
- a. If a package containing Product purchased from Contractor arrives at District Order's ship-to address with external damage, District should refuse to accept delivery from the carrier. If District does accept delivery of such a package, District must:
 - 1) note the damage on the carrier's delivery record so that Contractor may file a claim;
 - 2) save, as is, the Product and the original box and packaging it arrived in; and
 - 3) notify Contractor in writing within five days of delivery acceptance to arrange for carrier's inspection and pickup of the damaged merchandise.
 - b. If District does not comply with the above requirements, District will be deemed to have accepted the Product as if it had arrived undamaged, and Contractor's regular return policy, as described herein, will apply.

Article 9 - Packaging, Labeling, and Shipping

- A. Products shipped to District's facilities shall be packaged in such a manner as to preclude all reasonably anticipated in-transit damage and in accordance with commercial standards. All shipments of Products will be clearly labeled with the shipping address stated on the order, the applicable Order number, recipient's name and if applicable, building and room number.
- B. Contractor will deliver all Products FOB Destination to the ship to address designated in the Order, freight pre-paid and added, ground transportation.

Article 10 - Contractual Relationships, Relations

- A. District/Contractor Relationship: It is the intent of the Parties that the relationship of District and Contractor be that of the "District" and "independent contractor", respectively. As an independent contractor, Contractor shall not act as or be an agent or employee of District in performing the Services, and shall determine the means and methods for satisfactorily providing the Services.
- B. Any provision herein referring to Contractor's subcontractors shall not create privity of contract between District and such parties.

Article 11 - Indemnification

- A. Contractor agrees to hold harmless, indemnify, and defend the District and its officers, agents, and employees from any and all claims or losses accruing or resulting from injury, damage, or death of any

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person, firm, or corporation in connection with the performance of this Agreement. Contractor also agrees to hold harmless, indemnify, and defend the District and its elective board, officers, agents, and employees from any and all claims or losses incurred by any supplier, contractor, or subcontractor furnishing work, services, or materials to Contractor in connection with the performance of this Agreement. This provision survives termination of this Agreement.

Article 12 - Limitation of Liability

Other than as provided in this Agreement, District's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement as between the Parties to this Agreement, in no event, shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of, or in connection with, this Agreement for the services performed in connection with this Agreement.

Article 13 - Representations and Warranties

A. Contractor hereby represents and warrants to District that for the term of this Agreement:

1. Contractor shall perform the Services in a timely manner and with a high degree of professional skill and care using customarily accepted good and sound professional practices and procedures in the industry, and Contractor further understands and agrees that time is of the essence regarding its performance under this Agreement.
2. Contractor will maintain all necessary local, state, and federal licenses and certifications that may be required in order to legally deliver the Product and Deliverables described in the Order(s). Contractor understands and acknowledges that Contractor is wholly responsible for ensuring compliance with all federal, state, and local laws associated with the delivery of all Services associated with this Agreement and associated Order(s).
3. Contractor has all rights, approvals, and/or authorizations necessary to perform the Services hereunder, and provide the Product and/or Deliverables.
4. Contractor is authorized to execute this Agreement, is qualified to perform the Services, and has good title to the materials, supplies and equipment constituting the Services, free from all liens, encumbrances and claims of others.

B. Remedy

If a defect occurs or appears in the Deliverables or Services provided hereunder, it shall be presumed that Contractor failed to meet such standards, and Contractor shall promptly and at its own expense, correct or re-perform any such Services which fail to meet such standards within a reasonable time frame acceptable to District at no additional cost.

C. Warranty of Delivery & Liquidated Damages

1. For all Orders for Products placed by the District, Contractor guarantees delivery of said Products within fifteen (15) days of the placement of said Order.
2. Should Contractor fail to fulfill an Order within 15 days of its acceptance, it shall be liable to the District for all losses and damages therefrom; and because from the nature of the Service to be provided under this Agreement, it is and will be impracticable and extremely difficult to ascertain and fix the District's actual damages from any such failure of performance, it is agreed that Contractor will pay as liquidated damages to the District 1% of the total stated price of the Order in question per day within ten (10) business days of the actual delivery or other resolution of the Order consistent with this Order.
3. If the liquidated damages are not paid within the time specified above, the District may, in addition to its other remedies, deduct the same from any moneys due or to become due Contractor under this Agreement. The District has the express right to seek and obtain "actual damages" in addition to liquidated damages.
4. Provisions C.2. and 3. do not apply when delays are caused by conditions beyond the control of Contractor, as described in the Force Majeure provision.

D. Warranty of Product

1. The Products shall be covered by Contractor's standard warranty terms and provisions, provided, however, that the warranty coverage shall be no less than the following: (i) The warranty period set forth

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therein shall run for one (1) year following shipment of the Product to the District and (ii) Contractor warrants the Products against defects in material and workmanship under normal use.

2. District has made and will make its own selection of the Products to be ordered hereunder based on its own evaluation of the character of such Product and its use needs.
3. Contractor shall forward to District all associated documentation provided or made available relating to the Products at no additional cost, such as operator/user manuals, training materials, guides, and functional/technical specifications, whether in writing, electronic means or otherwise, (collectively "Documentation").

Article 14 - Publicity, Marks

- A. During or after the term of this Agreement, the Contractor shall not release any information (other than to its subcontractors on a need to know basis for purposes of performance under this Agreement and subject to the terms of this Agreement), including news releases, publicity, promotional, marketing, or other materials, media, or activities, any name, trade name, trademark, service mark, logo, or any other designation relating to the District, its Affiliates, or this Agreement, without the District's prior written approval and compliance with any terms and conditions related to such use which the owner of the mark provides to the other Party.
- B. Except as specifically set out in this Agreement, nothing in this Agreement shall grant, suggest or imply any authority for one Party to use the name, trademarks, service marks or trade names of the other for any purpose whatsoever.

Article 15 - Insurance

Contractor represents that it now carries, and agrees it will continue during the term of the Order to carry, as a minimum, insurance as listed below:

Type of Coverage	Limits of Liability
1. Worker's Compensation	\$1,000,000 per Accident or Disease
2. Employers' Liability	\$1,000,000 Bodily Injury by Accident or Disease, per person
3. Commercial General Liability including:	\$1,000,000 Each Occurrence
• Damage to Rented Premises	\$1,000,000 Each Occurrence
• Personal & ADV Injury, including sexual abuse and molestation	\$1,000,000
• General Aggregate	\$2,000,000
• Products/Completed Operations Aggregate	\$2,000,000
4. Automobile Liability Insurance (owned, hired, and non owned)	\$1,000,000 Combined Single Limit (each accident)
5. Excess/Umbrella Liability	\$10,000,000 Each Occurrence \$10,000,000 Aggregate
6. Commercial Crime Policy	\$1,000,000 / \$100,000 deductible
7. Errors & Omissions	\$5,000,000 Each Occurrence \$5,000,000 Aggregate

- B. Prior to the start of Services, at each subsequent policy renewal date, and each time a change is made in any insurance policy or insurance carrier, Contractor shall furnish one (1) insurance certificate to District for the foregoing coverages as proof of such insurance. The certificate shall include:
 1. Name of insurance carrier, policy number and expiration date;
 2. This Agreement number, or statement of blanket applicability;
 3. The coverages required, whether on the basis of claims made or per occurrence, and the limits on each, including the amount of deductibles or self-insured retentions (which shall be for the account of Contractor);
 4. A statement that District and their respective officers, directors, employees and agents are additional insureds on Commercial General Liability, including an Additional Insured endorsement naming the District as an additional insured; and

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- 5. All policies required by this Agreement shall be written by insurance carriers licensed to do business in the state of California.
- C. The coverage may not be canceled, altered or permitted to lapse or expire during the term of this Agreement.

Article 16 - Laws, Regulations and Permits

- A. Contractor shall at all times comply with all applicable federal, state and local laws, ordinances, statutes, rules and regulations, including but not limited to, those relating to wages, taxes, hours, environmental, fair employment practices, equal opportunity, antidiscrimination, safety, fire prevention and working conditions.

Article 17 - Assignment and Subcontracting

- A. Neither Party may assign, subcontract, or transfer the Agreement or any part thereof without the other Party's prior written consent, and any such assignment or transfer without such consent shall be null and void.
- B. Notwithstanding District's written consent to a proposed subcontract, Contractor shall remain responsible for all subcontracted Services and the payment therefor, and Contractor shall be liable to District for the acts and omissions of any subcontracted entity, their agents, representatives and persons directly or indirectly employed by them.
- C. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective legal representatives, heirs, successors and assigns permitted by this Agreement.

Article 18 - Authorized Representatives and Notices

A. Contract Representatives, Notices

- 1. Any notice or demand required under the terms of this Agreement that must be made in writing shall be sent by certified or registered mail, delivered by hand via a nationally recognized overnight carrier, or sent by Email with receipt confirmation addressed to the "Contract Representatives" named below. The effective date of any such notice shall be (1) upon evidence of successful Email transmission, or (2) five days following the date mailed for certified or registered letters and two days following the date mailed for overnight letters, or (3) when delivered, if in person or by overnight carrier.
- 2. The Contract Representatives are designated as follows:

For District	For Contractor
Michael Moore & Alphonso Powell III Oakland Unified School District 900 High Street Oakland, CA 94601 Email: michael.moore@ousd.org AND alphonso.powell@ousd.org	Jeremy Sinz BSN Sports, LLC 124 Gerald Drive Danville, CA 94526 JSchubb@bsnsports.com

- 3. The Contractor's Contract Representative shall have the authority to make binding and enforceable decisions on behalf of their employer, and to accept service of commercial notices and other contractual correspondence which a Party desires to give or is required to be given under this Agreement. The District's Contract Representative shall have the authority to make binding and enforceable decisions on behalf of the District, and to accept service of commercial notices and other contractual correspondence which a Party desires to give or is required to be given under this Agreement, with the exception of amendments or modifications to this Agreement, which excepted amendments or modifications require the formal approval or ratification of the District's Board of Education. Either Party may change its Contract Representative designee by giving the other Party prior written notice thereof.

B. Account Representatives

- 1. Before commencing the Services, the Parties shall designate authorized Account Representatives to represent and act for them regarding the administration of the Services and all other aspects of the supply of Product and/or Deliverables. Such Account Representative shall have the authority to make binding and enforceable decisions regarding the Services to be performed.
- 2. The Account Representative is not authorized to terminate, suspend, change or waive any provision of, or amend this Agreement.
- 3. The Account Representatives are designated as follows:

For District	For Contractor

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For District	For Contractor
Michael Moore & Alphonso Powell III Oakland Unified School District 900 High Street Oakland, CA 94601 Email: michael.moore@ousd.org AND alphonso.powell@ousd.org	Jon Schubb BSN Sports, LLC 124 Gerald Drive Danville, CA 94526 JSchubb@bsnsports.com

Article 19 - Force Majeure

- A. Neither Party to this Agreement shall be liable to the other to the extent any failure or delay in performing its obligations hereunder, or for any loss or damage resulting therefrom, is due to: (1) acts of God or public enemy, acts of government, riots, terrorism, fires, floods, strikes, lock outs, epidemics, act or failure to act by the other Party, or unusually severe weather affecting District, Contractor or its subcontractors, or (2) causes beyond their reasonable control and which are not foreseeable (each a "Force Majeure Event"). In the event of any such Force Majeure Event, the date of delivery or performance shall be extended for a period equal to the time lost by reason of the delay.
- B. The Party experiencing the delay shall be prompt in restoring normal conditions, establishing new schedules and resuming operations as soon as the event causing the failure or delay has ceased. Contractor shall notify District promptly of any such delay and shall specify the effect on the Product delivery as soon as practical.
- C. Notwithstanding any of the foregoing to the contrary, neither Party shall be excused from those obligations not directly affected by a Force Majeure Event, and if the Force Majeure Event is caused by a Party's failure to comply with any of its obligations under this Agreement or by such Party's negligence or omission, there shall be no relief for such Party from any of its obligations under this Agreement. Notwithstanding anything to the contrary in this Agreement, if the delay or interruption of performance resulting from a Force Majeure Event exceeds thirty days, then the Party receiving the delayed performance may terminate this Agreement upon ten business days' notice to the other Party.

Article 20 - Termination

- A. Termination for Convenience
 1. Either Party may terminate this Agreement, without cause and for its own convenience, by giving the other Party a written "Notice of Termination for Convenience," specifying the extent to which this Agreement is terminated and the date upon which such termination becomes effective. Such notice shall provide a minimum of sixty (60) days' notification before the termination is effective.
 2. After receiving such a "Notice of Termination for Convenience" and except as otherwise directed by District's Contract Representative, Contractor shall:
 - a. stop the Services on the date and to the extent specified in the termination notice; and
 - b. not accept or fulfill any further Orders.
 3. District's payment obligations shall be limited to the amounts owed up to the termination date.
- B. Termination for Default
 1. Either Party may terminate this Agreement in whole or in part by giving the defaulting Party a written "Notice of Termination for Default", specifying one or more of the following causes or circumstances:
 - a. if a Party becomes insolvent or makes a general assignment for the benefit of creditors; or
 - b. if a petition under the Bankruptcy Code is filed by or against a Party; or
 - c. if material and adverse developments affecting a Party's business come to the attention of the non-defaulting Party, and it seeks but fails to receive from the Party in default reasonable assurances, in writing, as to its ability and intention to perform and complete its obligations under this Agreement; or
 - d. if a Party becomes involved in legal proceedings that in the non-defaulting Party's reasonable opinion materially interferes or will materially interfere with the defaulting Party's obligations under this Agreement; or
 - e. if the defaulting Party fails to perform any of the other material provisions of this Agreement and the Party in default does not cure such failure or substantially commence cure of such failure within ten

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(10) business days (or such longer period as the non-defaulting Party may authorize in writing) after delivery of notice from the non-defaulting Party specifying such failure.

- C. An Order may be cancelled as follows:
1. District shall have the right to cancel or postpone, in whole or in part, any Order, without penalty, provided that notice of such cancellation or postponement is received by Contractor prior to shipment of the ordered Products; and
 2. If District cancels an Order following shipment of the Products but prior to delivery, District shall pay all freight and handling charges for shipment and return shipment of such Products to Contractor.
- D. Termination of this Agreement shall not affect the obligations of District or Contractor under any existing Order issued under this Agreement, and such Order shall continue in effect as though this Agreement had not been terminated, and was still in effect with respect to such Order.

Article 21 - No Waiver

Any failure by either Party to insist upon observance or performance by the other of the provisions of this Agreement shall not be deemed a "course of dealing", waiver of any such provision, or a waiver of the right of the Parties to enforce any and all provisions in the future. No waiver shall be binding unless it is in writing and signed by the Parties' Contract Representative. Any written waiver shall apply only to the specific default or to the instance specified, and a waiver of any default shall not be deemed a waiver of any other default, whether or not similar to the default waived.

Article 22 - Severance

Should any term or condition of this Agreement be declared unenforceable in law for whatever reason, all other terms and conditions shall survive and nevertheless remain valid, legal and enforceable, and the unenforceable provision will be severed from this Agreement.

Article 23 - Claims/Disputes/Governing Laws

- A. This Agreement, any Order thereunder, and any claims or disputes arising out of or relating thereto shall be governed by the laws of California, without regard to: (1) conflict of law principles or (2) the United Nations Convention on Contracts for the International Sale of Goods. The Alameda County Superior Court shall have jurisdiction over any litigation initiated to enforce or interpret this Agreement.
- B. Any claim or dispute which either Party may have against the other, arising out of this Agreement shall be presented by the claimant in writing to the other Party not later than thirty (30) days after circumstances which gave rise to the claim or dispute have taken place or become known to the claimant, whichever is later. The claim or dispute shall contain a concise statement of the question or dispute, together with relevant facts and data to fully support the claim.
- C. In the event of any such claim or dispute, the Parties' Contract Representatives shall use their best efforts to negotiate a resolution, provided however, that nothing herein contained shall prohibit either Party from terminating its participation in the dispute during any stage of the process and initiating litigation to seek legal redress of any type or character.
- D. The Parties acknowledge that the remedies available to them under this Agreement, or that would otherwise be available at law, will be inadequate in case of any default or threatened default in the performance of the Parties' respective obligations under this Article and that such obligations shall be enforceable by a decree for the specific performance or by an injunction against any actual or threatened violation thereof.
- E. Except as expressly stated in this Agreement, the Parties' rights and remedies hereunder shall be cumulative and not exclusive of each other, shall be in addition to all other rights and remedies at law or in equity, and may be pursued separately or concurrently as the aggrieved Party determines.
- F. The prevailing Party in any litigation arising out of or relating to this Agreement shall be entitled to recover its expenses, costs of litigation (including, without limitation, clerk, paralegal, and expert witness costs), and reasonable attorneys' fees from the losing Party, whether or not otherwise specifically awardable under any law or court rule.

Article 24 - Notice of Changes to Documents

The Parties represent that neither Party has made any change to any documents constituting the Agreement that have not been brought to the attention of the other Party via a redlined document, e-mail correspondence nor

Oakland Unified School District-BSN Sports, LLC
Purchase Agreement for Materials, Supplies and Equipment

other means reasonably calculated to put the other Party on notice of the change. Any such change shall render this Agreement terminable for breach by the other Party, at that Party's discretion, even if that Party has executed the Agreement.

Article 25 - Survival of Obligations

The obligations of the Parties in the following Articles herein shall survive termination, cancellation or expiration of this Agreement:

Article 6 - Rights in Deliverables
Article 11 - Indemnification
Article 12 - Limitation of Liability

Article 13 - Representations and Warranties
Article 23 - Claims/Disputes/Governing Laws

Article 26 - Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion and Regarding Compliance with California Law

Contractor certifies to the best of its knowledge and belief, that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency according to Federal Acquisition Regulation Subpart 9.4, and by signing this contract, certifies that this vendor does not appear on the Excluded Parties List (<https://www.sam.gov/>).

Contractor also certifies that it has complied and its Products comply with California law, including but not limited to the laws governing school districts' consideration and approval of contracts.

Article 27 - Execution/Counterparts/Electronic Transmission

This Agreement (and any Order) may be executed in two or more identical counterparts, each of which shall be deemed to be an original and all of which taken together will be deemed to constitute one and the same document when a duly authorized representative of each Party has signed a counterpart. The Parties may sign and deliver this Agreement (and any Order) electronic transmission. Each Party acknowledges that the delivery hereof by electronic transmission will have the same force and effect as delivery of original signatures.

Article 28 - Signature Authority

Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been given the proper authority and empowered to enter into this Agreement.

Article 29 - Contract Contingent on Governing Board Approval

The District shall not be bound by the terms of this Agreement until it has been formally approved or ratified, as legally applicable, by the District's Governing Board, and no payment shall be owed or made to Contractor absent that formal approval. This Agreement shall be deemed approved when it has been signed by the Board of Education, and/or the Superintendent as its designee.

Article 30 - W-9 Form

If Contractor is doing business with the District for the first time, complete and return with the signed Agreement the W-9 form.

Article 31 - Contract Publicly Posted

This contract, its contents, and all incorporated documents (including Orders) are public documents and will be made available by the District to the public online via the Internet.

Article 32 - Entire Agreement

This Agreement, including all Orders issued by District and accepted by Contractor pursuant to this Agreement, shall constitute the entire agreement between the Parties with respect to the subject matter of this Agreement. This Agreement and any Order shall not be modified or rescinded, except by a writing signed by Contractor and District. The provisions of this Agreement supersede all contemporaneous and prior oral and written communications, understandings and agreements of the Parties with respect to the subject matter of this Agreement.

Oakland Unified School District-BSN Sports, LLC
Purchase Agreement for Materials, Supplies and Equipment

Authorization

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives, effective as of the date first above written

OAKLAND UNIFIED SCHOOL DISTRICT

Aimee Eng

9/27/18

AIMEE ENG, President, Board of Education

Date

BSN SPORTS, LLC

[Signature]
Contractor Signature

5-8-18

Date

[Signature]

9/27/18

KYLA JOHNSON-TRAMMELL

Secretary, Board of Education

Date

John Gillette / Regional Sales Mgr.
Print Name Title

APPROVED AS TO FORM AND SUBSTANCE

[Signature]

9/7/18

DISTRICT OFFICE OF THE GENERAL COUNSEL

(Ac'd 9/7/18)

OUSD or the District verifies that the Contractor does not appear on the Excluded Parties List at <https://www.sam.gov/>

MULTI-BRAND SELECTION

BSN SPORTS offers the most brand names in the industry – One stop and you are done! Our partnerships with the best brands give you access to the latest, hottest products at the best prices. We outfit your team head to toe and sell virtually every piece of equipment you need.

NATIONAL BRANDS



BSN SPORTS BRANDS



- NATION'S LARGEST SUPPLIER OF TEAM APPAREL AND EQUIPMENT
- LOCAL SALES PROFESSIONALS IN YOUR COMMUNITY



EQUIPMENT. TEAMWEAR.

One-Stop Shop for all of your needs.



FEATURING USER-FRIENDLY, MOBILE-RESPONSIVE DESIGN
Shop online for our full selection BSNSPORTS.COM



BSN SPORTS
ADVANTAGE



Who We Are:

Founded in 1972 as a factory-direct equipment company, BSN SPORTS is the largest distributor of team sports apparel and equipment in the United States. We are your ultimate teamwear outfitter of Nike, Under Armour and other national brands. BSN SPORTS is in the unique position to support the athlete and coach from grade school to college and beyond. We are the Best Supply Network in Sports™.

LOCAL PARTNERSHIP

It all starts in our neighborhoods. With over 850 sales professionals living and working across the United States, we specialize in understanding your community, your school and your unique needs. BSN SPORTS service approach is designed to make you the hero on and off the field.



GAME CHANGING SOLUTIONS

We promise to provide real solutions that make a difference to your budget, your athletes and your peace of mind. Our one-stop shop approach saves you time and reduces the number of vendors you need.



24 Hour Quick Ship

We inventory over 25,000 items so we can ship your products immediately. With our central warehouse locations and FedEx partnership, your orders will arrive quickly.



One Invoice

Once your entire order ships, we send you one invoice. It's that simple. No accounting hassles or multiple invoices for the same order.



Online BSN Billing

To better serve our customers, we offer a simple, convenient, and secure online billing system. Review your account status, pay your bill and submit billing inquiries online. Sign up at bsnbilling.com today!



Best Price Guarantee

We guarantee 100% satisfaction with your purchase. That includes pricing. If you find one of our items at a lower price, we will beat it.



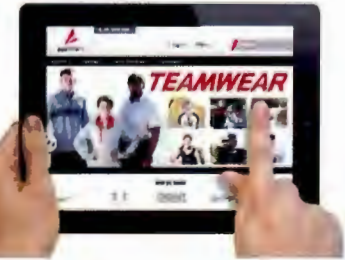
BSN SPORTS offers Complete Decoration Services

- SCREEN PRINTING • EMBROIDERY
- NUMBERING • LOGOS • LETTERING

TECHNOLOGY LEADER

iPad App = Instant Access

We are the most technologically advanced company in the industry. Why? Because we want to provide you with the best service, the quickest turn-around times, and the most personalized information possible. All sales professionals have iPads equipped with a custom app that can search products, check inventory, place orders, and track shipments.



My Team Shop

Create a custom online store with the decorated athletic apparel, footwear, and sports equipment you want your team to purchase. All orders are placed online, meaning you never have to collect order forms or payments again! Boost team spirit by opening your shop to the entire student body and the community. My Team Shop is also a hassle-free solution to fundraising for your program. Your local Sales Professional will manage the process from start to finish, allowing you to spend more time coaching and less doing administrative tasks.



Team Art Locker

Use this online tool to access custom artwork for every high school in America. Find your school and customize colors, school mascot and more for every sport. Your local sales professional can take your design from dream to reality with our extensive line of apparel.

