

State of Utah Cooperative Contract  
PARTICIPATING ADDENDUM  
TIRES, TUBES, AND SERVICES  
State of Utah Contract #: PA4557

Master Agreement #: 24156

Contractor: Michelin North America, Inc

Participating Entity: **STATE OF UTAH**

Participating Entity Contract #PA4557

**Participating Addendum Terms and Conditions:**

1. Scope: This addendum covers Tires, tubes, and services led by the state of Iowa for NASPO for use by state agencies and other entities located in the State of Utah authorized by that State's statutes to utilize State contracts with the prior approval of the State's Chief Procurement Official. An amendment to this PA is not required when offerings are adjusted in the Master Agreement, so long as all additions remain within the master agreement's original scope.
2. Pricing: The pricing and rates from the Master Agreement shall flow down to this PA. An amendment to this PA is not required when pricing in the Master Agreement is adjusted / updated.
3. Administrative Fee: One (1) percent (1%) and will apply per Section 35 of Attachment A.
4. Contract Effective Dates: This PA is effective upon final signature of both parties, and expires upon the expiration or termination of the NASPO contract. A contract amendment is not necessary in the event of the renewal or extension of the Master Agreement, so long as such renewal/extension was originally provided within the solicitation supporting the master agreement.
5. Order of Precedence:  
Attachment A: Terms and Conditions for Goods and Services  
Attachment B: Master Agreement  
**Any conflicts between Attachment A and the other Attachments will be resolved in favor of Attachment A.**  
All other governmental laws, regulations, or actions applicable to the goods and/or services authorized by this contract.  
Utah State Procurement Code, Procurement Rules, and Contractor's response to solicitation #RFP0223005113.
6. Participation: This NASPO Master Agreement may be used by all state agencies, institutions of higher institution, political subdivisions and other entities authorized to use statewide contracts in the State of Utah. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.
7. Subcontractors: All contactors, dealers, and resellers authorized in the State of Utah, as shown on the dedicated Contractor (cooperative contract) website, are approved to provide sales and service support to participants in the NASPO Master Agreement. The Contractor's dealer participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement. Contractor's Authorized Dealers are not subcontractors.
8. Orders: Any order placed by an Eligible User for a product and/or service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the order agree in writing that another contract or agreement applies to such order.

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9. Primary Contacts: The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

|                  |                                         |
|------------------|-----------------------------------------|
| Name:            | Kelly Adams                             |
| Address:         | One Parkway South, Greenville, SC 29615 |
| Telephone:       | 864-630-3979                            |
| Email:           | Kelly.adams@michelin.com                |
| Vendor Number:   | VC221538                                |
| Commodity Codes: | 86305                                   |

State of Utah Division of Purchasing

|            |                                                        |
|------------|--------------------------------------------------------|
| Name:      | State of Utah, Division of Purchasing, Keli Lessing    |
| Address:   | 4315 South 2700 West Fl 3, Taylorsville, UT 84129-2128 |
| Telephone: | 801-957-7167                                           |
| Email:     | klessing@utah.gov                                      |

10. ADDITIONAL TERMS AND CONDITIONS

The following terms and conditions will apply to this participating addendum.

**ATTACHMENT A: STATE OF UTAH STANDARD TERMS AND CONDITIONS FOR GOODS AND SERVICES**

Negotiated: 1m, 10, 18, 24, 26, 27, 48

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1. **DEFINITIONS:** The following terms shall have the meanings set forth below:
  - a) **"Confidential Information"** means information that is deemed as confidential under applicable state and federal laws, including personal information. The Eligible User reserves the right to identify, during and after this Contract, additional reasonable types of categories of information that must be kept confidential under federal and state laws.
  - b) **"Contract"** means the Contract Signature Page(s), including all referenced attachments and documents incorporated by reference. The term "Contract" shall include any purchase orders that result from this Contract.
  - c) **"Contract Signature Page(s)"** means the State of Utah cover page(s) that the Division and Contractor signed.
  - d) **"Contractor"** means the individual or entity delivering the Procurement Item identified in this Contract. The term "Contractor" shall include Contractor's agents, officers, employees, and partners.
  - e) **"Custom Deliverable"** means the Work Product that Contractor is required to deliver to the Eligible User under this Contract.
  - f) **"Division"** means the Division of Purchasing and General Services.
  - g) **"Eligible User(s)"** means those authorized to use State Cooperative Contracts and includes the State of Utah's government departments, institutions, agencies, political subdivisions (e.g., colleges, school districts, counties, cities, etc.), and, as applicable, nonprofit organizations, agencies of the federal government, or any other entity authorized by the laws of the State of Utah to participate in State Cooperative Contracts.
  - h) **"End User Agreement"** means any agreement that Eligible Users are required to sign in order to participate in this Contract, including an end user agreement, customer agreement, memorandum of understanding, statement of work, lease agreement, service level agreement, or any other named separate agreement.
  - i) **"Procurement Item"** means a supply, a service, Custom Deliverable, construction, or technology that Contractor is required to deliver to the Eligible User under this Contract.
  - j) **"Response"** means the Contractor's bid, proposals, quote, or any other document used by the Contractor to respond to the Solicitation.
  - k) **"Solicitation"** means an invitation for bids, request for proposals, notice of a sole source procurement, request for statement of qualifications, request for information, or any document used to obtain bids, proposals, pricing, qualifications, or information for the purpose of entering into this Contract.
  - l) **"State of Utah"** means the State of Utah, in its entirety, including its institutions, agencies, departments, divisions, authorities, instrumentalities, boards, commissions, elected or appointed officers, employees, agents, and authorized volunteers.
  - m) **"Subcontractors"** means a person under contract with a contractor or another subcontractor to provide services or labor for design or construction, including a trade contractor or specialty contractor. Authorized dealers are not subcontractors.
  - n) **"Work Product"** means every invention, modification, discovery, design, development, customization, configuration, improvement, process, software program, work of authorship, documentation, formula, datum, technique, know how, secret, or intellectual property right whatsoever or any interest therein (whether patentable or not patentable or registerable under copyright or similar statutes or subject to analogous protection) that is specifically made, conceived, discovered, or reduced to practice by Contractor or Contractor's Subcontractors (either alone or with others) pursuant to this Contract. Work Product shall be considered a work made for hire under federal, state, and local laws; and all interest and title shall be transferred to and owned by the Eligible User. Notwithstanding anything in the immediately preceding sentence to the contrary, Work Product does not include any Eligible User intellectual property, Contractor's intellectual property (that it owned or licensed prior to this Contract) or Third Party intellectual property.
2. **GOVERNING LAW AND VENUE:** This Contract shall be governed by the laws, rules, and regulations of the State of Utah. Any action or proceeding arising from this Contract shall be brought in a court of competent jurisdiction in the State of Utah. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
3. **LAWS AND REGULATIONS:** At all times during this Contract, Contractor and all Procurement Items delivered and/or performed under this Contract will comply with all applicable federal and state constitutions, laws, rules, codes, orders, and regulations, including applicable licensure and certification requirements. If this Contract is funded by federal funds, either in whole or in part, then any federal regulation related to the federal funding, including CFR Appendix II to Part 200, will supersede this Attachment A.
4. **RECORDS ADMINISTRATION:** Contractor shall maintain or supervise the maintenance of all records necessary to properly account for Contractor's performance and the payments made by Eligible Users to Contractor under

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this Contract. These records shall be retained by Contractor for at least six (6) years after final payment, or until all audits initiated within the six (6) years have been completed, whichever is later. Contractor agrees to allow, at no additional cost, State of Utah auditors, federal auditors, Eligible Users or any firm identified by the Division, access to all such records. Contractor must refund to the Division any overcharges brought to Contractor's attention by the Division or the Division's auditor and Contractor is not permitted to offset identified overcharges by alleged undercharges to Eligible Users.

5. **PERMITS:** If necessary Contractor shall procure and pay for all permits, licenses, and approvals necessary for the execution of this Contract.
6. **CERTIFY REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION SYSTEM":** The Status Verification System, also referred to as "E-verify", only applies to contracts issued through a Request for Proposal process, to sole sources that are included within a Request for Proposal, and when Contractor employs any personnel in Utah.
  - a. Contractor certifies as to its own entity, under penalty of perjury, that Contractor has registered and is participating in the Status Verification System to verify the work eligibility status of Contractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws.
  - b. Contractor shall require that each of its Subcontractors certify by affidavit, as to their own entity, under penalty of perjury, that each Subcontractor has registered and is participating in the Status Verification System to verify the work eligibility status of Subcontractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws.
  - c. Contractor's failure to comply with this section will be considered a material breach of this Contract.
7. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the Division or the State of Utah, unless disclosure has been made to the Division.
8. **INDEPENDENT CONTRACTOR:** Contractor and Subcontractors, in the performance of this Contract, shall act in an independent capacity and not as officers or employees or agents of the Division or the State of Utah.
9. **CONTRACTOR RESPONSIBILITY:** Contractor is solely responsible for fulfilling the contract, with responsibility for all Procurement Items delivered and/or performed as stated in this Contract. Contractor shall be the sole point of contact regarding all contractual matters. Contractor must incorporate Contractor's responsibilities under this Contract into every subcontract with its Subcontractors that will provide the Procurement Item(s) to the Eligible Users under this Contract. Moreover, Contractor is responsible for its Subcontractors compliance under this Contract.
10. **INDEMNITY:** Contractor shall be fully liable for the actions of its agents, employees, officers, partners, and Subcontractors, and shall fully indemnify, defend, and save harmless the Division, the Eligible Users and the State of Utah from all claims, losses, suits, actions, damages, and costs of every name and description arising out of Contractor's performance of this Contract to the extent caused by defects in workmanship or materials in any Procurement Items manufactured by Contractor and sold to Eligible Users under this Contract. Contractor shall not indemnify for that portion of any claim, loss, or damage arising hereunder due to the fault of an Eligible User.
11. **EMPLOYMENT PRACTICES:** Contractor agrees to abide by the following federal and state employment laws, including: (i) Title VI and VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e), which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services on the basis of race, religion, color, or national origin; (ii) Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; (iii) 45 CFR 90, which prohibits discrimination on the basis of age; (iv) Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disabilities; and (v) Utah's Executive Order 2019-1, dated February 5, 2019, which prohibits unlawful harassment in the workplace. Contractor further agrees to abide by any other laws, regulations, or orders that prohibit the discrimination of any kind by any of Contractor's employees. Contractor agrees to abide by any other laws, regulations, or orders that prohibit the discrimination of any kind by any of Contractor's employees.
12. **AMENDMENTS:** This Contract may only be amended by the mutual written agreement of the parties, provided that the amendment is within the Scope of Work of this Contract and is within the scope/purpose of the original solicitation for which this Contract was derived. The amendment will be attached and made part of this Contract. Automatic renewals will not apply to this Contract, even if listed elsewhere in this Contract.

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13. **DEBARMENT:** Contractor certifies that it is not presently nor has ever been debarred, suspended, proposed for debarment, or declared ineligible by any governmental department or agency, whether international, national, state, or local. Contractor must notify the Division within thirty (30) days if debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any contract by any governmental entity during this Contract.
14. **TERMINATION:** This Contract may be terminated, with cause by either party, in advance of the specified expiration date, upon written notice given by the other party. The party in violation will be given ten (10) days after written notification to correct and cease the violations, after which this Contract may be terminated for cause immediately and subject to the remedies below. This Contract may also be terminated without cause (for convenience), in advance of the specified expiration date, by the Division, upon thirty (30) days written termination notice being given to the Contractor. The Division and the Contractor may terminate this Contract, in whole or in part, at any time, by mutual agreement in writing.
- On termination of this Contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved and conforming Procurement Items ordered prior to date of termination. In no event shall the Eligible Users be liable to the Contractor for compensation for any Procurement Item neither requested nor accepted by an Eligible User. In no event shall the Division's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the Eligible Users for any damages or claims arising under this Contract.
15. **NONAPPROPRIATION OF FUNDS, REDUCTION OF FUNDS, OR CHANGES IN LAW:** Upon thirty (30) days written notice delivered to the Contractor, a purchase order that results from this Contract may be terminated in whole or in part at the sole discretion of an Eligible User, if an Eligible User reasonably determines that: (i) a change in Federal or State legislation or applicable laws materially affects the ability of either party to perform under the terms of this Contract; or (ii) that a change in available funds affects an Eligible User's ability to pay under this Contract. A change of available funds as used in this paragraph includes, but is not limited to a change in Federal or State funding, whether as a result of a legislative act or by order of the President or the Governor.
- If a written notice is delivered under this section, an Eligible User will reimburse Contractor for the Procurement Item(s) properly ordered and/or properly performed until the effective date of said notice. An Eligible User will not be liable for any performance, commitments, penalties, or liquidated damages that accrue after the effective date of said written notice.
16. **SALES TAX EXEMPTION:** The Procurement Item(s) under this Contract will be paid for from an Eligible User's funds and used in the exercise of an Eligible Users essential functions. Upon request, an Eligible User will provide Contractor with its sales tax exemption number. It is Contractor's responsibility to request an Eligible User's sales tax exemption number. It also is Contractor's sole responsibility to ascertain whether any tax deduction or benefits apply to any aspect of this Contract.
17. **WARRANTY OF PROCUREMENT ITEM(S):** Contractor warrants, represents and conveys full ownership and clear title, free of all liens and encumbrances, to the Procurement Item(s) delivered to an Eligible User under this Contract. Contractor warrants for a period of one (1) year that: (i) the Procurement Item(s) perform according to all specific claims that Contractor made in its Response; (ii) the Procurement Item(s) are suitable for the ordinary purposes for which such Procurement Item(s) are used; (iii) the Procurement Item(s) are suitable for any special purposes identified in the Contractor's Response; (iv) the Procurement Item(s) are designed and manufactured in a commercially reasonable manner; (v) the Procurement Item(s) are manufactured and in all other respects create no harm to persons or property; and (vi) the Procurement Item(s) are free of defects. Unless otherwise specified, all Procurement Item(s) provided shall be new and unused of the latest model or design.
- Remedies available to an Eligible User under this section include, but are not limited to, the following: Contractor will repair or replace Procurement Item(s) at no charge to the Eligible User within ten (10) days of any written notification informing Contractor of the Procurement Items not performing as required under this Contract. If the repaired and/or replaced Procurement Item(s) prove to be inadequate, or fail its essential purpose, Contractor will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies an Eligible User may otherwise have under this Contract.
18. **CONTRACTOR'S INSURANCE RESPONSIBILITY.** The Contractor shall maintain the following insurance coverage:

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- a. Workers' compensation insurance during the term of this Contract for all its employees and any Subcontractor employees related to this Contract. Workers' compensation insurance shall cover full liability under the workers' compensation laws of the jurisdiction in which the work is performed at the statutory limits required by said jurisdiction.
- b. Commercial general liability [CGL] insurance from an insurance company authorized to do business in the State of Utah. The limits of the CGL insurance policy will be no less than one million dollars (\$1,000,000.00) per person per occurrence and three million dollars (\$3,000,000.00) aggregate.
- c. Commercial automobile liability [CAL] insurance from an insurance company authorized to do business in the State of Utah. The CAL insurance policy must cover bodily injury and property damage liability and be applicable to all vehicles used in your performance of Services under this Agreement whether owned, non-owned, leased, or hired. The minimum liability limit must be \$1 million per occurrence, combined single limit. The CAL insurance policy is required if Contractor will use a vehicle in the performance of this Contract.
- d. Other insurance policies required in the Solicitation.

Certificate of Insurance, showing up-to-date coverage, shall be on file with the State before the Contract may commence.

The State reserves the right to reasonably require higher or lower insurance limits where warranted. Failure to provide proof of insurance as required will be deemed a material breach of this Contract. Contractor's failure to maintain this insurance requirement for the term of this Contract will be grounds for immediate termination of this Contract.

19. **RESERVED.**

20. **PUBLIC INFORMATION:** Contractor agrees that this Contract, related purchase orders, related pricing documents, and invoices will be public documents and may be available for public and private distribution in accordance with the State of Utah's Government Records Access and Management Act (GRAMA). Contractor gives the Division, the Eligible Users, and the State of Utah express permission to make copies of this Contract, related sales orders, related pricing documents, and invoices in accordance with GRAMA. Except for sections identified in writing by Contractor and expressly approved by the Division, Contractor also agrees that the Contractor's Response will be a public document, and copies may be given to the public as permitted under GRAMA. The Division, the Eligible Users, and the State of Utah are not obligated to inform Contractor of any GRAMA requests for disclosure of this Contract, related purchase orders, related pricing documents, or invoices.
21. **DELIVERY:** All deliveries under this Contract will be F.O.B. destination with all transportation and handling charges paid for by Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to an Eligible User, except as to latent defects or fraud. Contractor shall strictly adhere to the delivery and completion schedules specified in this Contract.
22. **ACCEPTANCE AND REJECTION:** An Eligible User shall have thirty (30) days after delivery of the Procurement Item(s) to perform an inspection of the Procurement Item(s) to determine whether the Procurement Item(s) conform to the standards specified in the Solicitation and this Contract prior to acceptance of the Procurement Item(s) by the Eligible User.

If Contractor delivers nonconforming Procurement Item(s), an Eligible User may, at its option and at Contractor's expense: (i) return the Procurement Item(s) for a full refund; (ii) require Contractor to promptly correct or replace the nonconforming Procurement Item(s); or (iii) obtain replacement Procurement Item(s) from another source, subject to Contractor being responsible for any cover costs. Contractor shall not redeliver corrected or rejected Procurement Item(s) without: first, disclosing the former rejection or requirement for correction; and second, obtaining written consent of the Eligible User to redeliver the corrected Procurement Item(s). Repair, replacement, and other correction and redelivery shall be subject to the terms of this Contract.

23. **INVOICING:** Contractor will submit invoices within thirty (30) days after the delivery date of the Procurement Item(s) to the Eligible User. The contract number shall be listed on all invoices, freight tickets, and correspondence relating to this Contract. The prices paid by the Eligible User will be those prices listed in this Contract, unless Contractor

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offers a discount at the time of the invoice. It is Contractor's obligation to provide correct and accurate invoicing. The Eligible User has the right to adjust or return any invoice reflecting incorrect pricing.

24. **PAYMENT:** Payments are to be made within thirty (30) days after a correct invoice is received. All payments to Contractor will be remitted by mail, electronic funds transfer, or the State of Utah's Purchasing Card (major credit card). If payment has not been made after sixty (60) days from the date a correct invoice is received by an Eligible User, then interest may be added by Contractor as prescribed in the Utah Prompt Payment Act. The acceptance by Contractor of final payment, without a written protest filed with the Eligible User within ten (10) business days of receipt of final payment, shall release the Eligible User from all claims and all liability to the Contractor. An Eligible User's payment for the Procurement Item(s) and/or Services shall not be deemed an acceptance of the Procurement Item(s) and is without prejudice to any and all claims that the Eligible User may have against Contractor. Contractor shall not charge Eligible Users electronic payment fees of any kind. In the event Eligible User is delinquent in payment, Contractor shall have the right, without limitation on any other remedy otherwise available to it, to prevent shipment of any further Procurement Items to Eligible User.
25. **INDEMNIFICATION RELATING TO INTELLECTUAL PROPERTY:** Contractor will indemnify and hold the Division, the Eligible Users, and the State of Utah harmless from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities, and costs in any action or claim brought against the Division, the Eligible User, or the State of Utah for infringement of a third party's copyright, trademark, trade secret, or other proprietary right. The parties agree that if there are any limitations of Contractor's liability, such limitations of liability will not apply to this section.
26. **OWNERSHIP IN INTELLECTUAL PROPERTY:** The Division, the Eligible User, and Contractor each recognizes that each has no right, title, or interest, proprietary or otherwise, in the intellectual property owned or licensed by the other, unless otherwise agreed upon by the parties in writing.
27. **RESERVED**
28. **ASSIGNMENT:** Contractor may not assign, sell, transfer, subcontract or sublet rights, or delegate any right or obligation under this Contract, in whole or in part, without the prior written approval of the Division.
29. **REMEDIES:** Any of the following events will constitute cause for an Eligible User to declare Contractor in default of this Contract: (i) Contractor's non-performance of its contractual requirements and obligations under this Contract; or (ii) Contractor's material breach of any term or condition of this Contract. An Eligible User may issue a written notice of default providing a ten (10) day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains after Contractor has been provided the opportunity to cure, an Eligible User may do one or more of the following: (i) exercise any remedy provided by law or equity; (ii) terminate this Contract; (iii) impose liquidated damages, if liquidated damages are listed in this Contract; (iv) debar/suspend Contractor from receiving future contracts from the Division; or (v) demand a full refund of any payment that the Eligible User has made to Contractor under this Contract for Procurement Item(s) that do not conform to this Contract.
30. **FORCE MAJEURE:** Neither an Eligible User nor Contractor will be held responsible for delay or default caused by fire, riot, act of God, and/or war which is beyond that party's reasonable control. An Eligible User may terminate a purchase order resulting from this Contract after determining such delay will prevent Contractor's successful performance of this Contract.
31. **CONFIDENTIALITY:** If Confidential Information is disclosed to Contractor, Contractor shall: (i) advise its agents, officers, employees, partners, and Subcontractors of the obligations set forth in this Contract; (ii) keep all Confidential Information strictly confidential; and (iii) not disclose any Confidential Information received by it to any third parties. Contractor will promptly notify an Eligible User of any potential or actual misuse or misappropriation of Confidential Information.

Contractor shall be responsible for any breach of this duty of confidentiality, including any required remedies and/or notifications under applicable law. Contractor shall indemnify, hold harmless, and defend the Eligible User, including anyone for whom the Eligible User is liable, from claims related to a breach of this duty of confidentiality, including any notification requirements, by Contractor or anyone for whom the Contractor is liable.

Upon termination or expiration of this Contract, Contractor will return all copies of Confidential Information to the Eligible User or certify, in writing, that the Confidential Information has been destroyed. This duty of confidentiality shall be ongoing and survive the termination or expiration of this Contract.

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32. **LARGE VOLUME DISCOUNT PRICING:** Eligible Users may seek to obtain additional volume discount pricing for large orders provided Contractor is willing to offer additional discounts for large volume orders. No amendment to this Contract is necessary for Contractor to offer discount pricing to an Eligible User for large volume purchases.
33. **ELIGIBLE USER PARTICIPATION:** Participation under this Contract by Eligible Users is voluntarily determined by each Eligible User. Contractor agrees to supply each Eligible User with Procurement Items based upon the same terms, conditions, and prices of this Contract.
34. **INDIVIDUAL CUSTOMERS:** Each Eligible User that purchases Procurement Items from this Contract will be treated as individual customers. Each Eligible User will be responsible to follow the terms and conditions of this Contract. Contractor agrees that each Eligible User will be responsible for their own charges, fees, and liabilities. Contractor shall apply the charges to each Eligible User individually. The Division is not responsible for any unpaid invoice.
35. **REPORTS AND FEES:**
- Administrative Fee: Contractor agrees to provide a quarterly administrative fee to the State in the form of a check, EFT or online payment through the Division's Automated Vendor Usage Management System. Checks will be payable to the "State of Utah Division of Purchasing" and will be sent to State of Utah, Division of Purchasing, Attn: Cooperative Contracts, PO Box 141061, Salt Lake City, UT 84114-1061. The Administrative Fee will be the amount listed in the Solicitation and will apply to all purchases (net of any returns, credits, or adjustments) made under this Contract.
  - Quarterly Reports: Contractor agrees to provide a quarterly utilization report, reflecting net sales to the State during the associated fee period. The report will show the dollar volume of purchases by each Eligible User. The quarterly report will be provided in secure electronic format through the Division's Automated Vendor Usage Management System found at: <https://statecontracts.utah.gov/Vendor..>
  - Report Schedule: Quarterly utilization reports shall be made in accordance with the following schedule:
 

| Period End   | Reports Due |
|--------------|-------------|
| March 31     | April 30    |
| June 30      | July 31     |
| September 30 | October 31  |
| December 31  | January 31  |
  - Fee Payment: After the Division receives the quarterly utilization report, it will send Contractor an invoice for the total quarterly administrative fee owed to the Division. Contractor shall pay the quarterly administrative fee within thirty (30) days from receipt of invoice.
  - Timely Reports and Fees: If the quarterly administrative fee is not paid by thirty (30) days of receipt of invoice or quarterly utilization reports are not received by the report due date, then Contractor will be in material breach of this Contract.
36. **ORDERING:** Orders will be placed by the using Eligible User directly with Contractor. All orders will be shipped promptly in accordance with the terms of this Contract.
37. **END USER AGREEMENTS:** If Eligible Users are required by Contractor to sign an End User Agreement before participating in this Contract, then a copy of the End User Agreement must be attached to this Contract as an attachment. The term of the End User Agreement shall not exceed the term of this Contract, and the End User Agreement will automatically terminate upon the completion of termination of this Contract. An End User Agreement must reference this Contract, and may not be amended or changed unless approved in writing by the Division. Eligible Users will not be responsible or obligated for any early termination fees if the End User Agreement terminates as a result of completion or termination of this Contract.
38. **PUBLICITY:** Contractor shall submit to the Division for written approval all advertising and publicity matters relating to this Contract. It is within the Division's sole discretion whether to provide approval, which approval must be in writing.
39. **WORK ON STATE OF UTAH OR ELIGIBLE USER PREMISES:** Contractor shall ensure that personnel working on the premises of an Eligible User shall: (i) abide by all of the rules, regulations, and policies of the premises; (ii)

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remain in authorized areas; (iii) follow all instructions; and (iv) be subject to a background check, prior to entering the premises. The Eligible User may remove any individual for a violation hereunder.

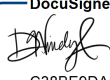
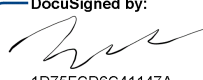
40. **CONTRACT INFORMATION:** During the duration of this Contract the State of Utah Division of Purchasing is required to make available contact information of Contractor to the State of Utah Department of Workforce Services. The State of Utah Department of Workforce Services may contact Contractor during the duration of this Contract to inquire about Contractor's job vacancies within the State of Utah.
41. **WAIVER:** A waiver of any right, power, or privilege shall not be construed as a waiver of any subsequent right, power, or privilege.
42. **SUSPENSION OF WORK:** Should circumstances arise which would cause an Eligible User to suspend Contractor's responsibilities under this Contract, but not terminate this Contract, this will be done by formal written notice pursuant to the terms of this Contract. Contractor's responsibilities may be reinstated upon advance formal written notice from the Eligible User.
43. **PROCUREMENT ETHICS:** Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan, reward, or any promise thereof to any person acting as a procurement officer on behalf of the State of Utah, or to any person in any official capacity who participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization.
44. **CHANGES IN SCOPE:** Any changes in the scope of the services to be performed under this Contract shall be in the form of a written amendment to this Contract, mutually agreed to and signed by both parties, specifying any such changes, fee adjustments, any adjustment in time of performance, or any other significant factors arising from the changes in the scope of services.
45. **ATTORNEY'S FEES:** In the event of any judicial action to enforce rights under this Contract, the prevailing party shall be entitled its costs and expenses, including reasonable attorney's fees incurred in connection with such action.
46. **TRAVEL COSTS:** If travel expenses are permitted by the Solicitation All travel costs associated with the delivery of Services under this Contract will be paid according to the rules and per diem rates found in the Utah Administrative Code R25-7. Invoices containing travel costs outside of these rates will be returned to the vendor for correction.
47. **PERFORMANCE EVALUATION:** The Division may conduct a performance evaluation of Contractor, including Contractor's Subcontractors. Results of any evaluation may be made available to Contractor upon request.
48. **STANDARD OF CARE:** The services performed by Contractor and its Subcontractors shall be performed in accordance with the standard of care exercised by licensed members of their respective professions having substantial experience providing similar services which similarities include the type, magnitude, and complexity of the services that are the subject of this Contract.
49. **REVIEWS:** The Division reserves the right to perform plan checks, plan reviews, other reviews, and/or comment upon the services of Contractor. Such reviews do not waive the requirement of Contractor to meet all of the terms and conditions of this Contract.
50. **DISPUTE RESOLUTION:** Prior to either party filing a judicial proceeding, the parties agree to participate in the mediation of any dispute. The Division or an Eligible User, after consultation with Contractor, may appoint an expert or panel of experts to assist in the resolution of a dispute. If the Division or an Eligible User appoints such an expert or panel, the Division or the Eligible User and Contractor agree to cooperate in good faith in providing information and documents to the expert or panel in an effort to resolve the dispute.
51. **ORDER OF PRECEDENCE:** In the event of any conflict in the terms and conditions in this Contract, the order of precedence shall be: (i) this Attachment A; (ii) Contract Signature Page(s); (iii) the State of Utah's additional terms and conditions, if any; (iv) any other attachment listed on the Contract Signature Page(s); and (v) Contractor's terms and conditions that are attached to this Contract, if any. Any provision attempting to limit the liability of Contractor or limit the rights of an Eligible User, the Division, or the State of Utah must be in writing and attached to this Contract or it is rendered null and void.

State of Utah Cooperative Contract  
**PARTICIPATING ADDENDUM**  
**TIRES, TUBES, AND SERVICES**  
State of Utah Contract #: PA4557

52. **SURVIVAL OF TERMS:** Termination or expiration of this Contract shall not extinguish or prejudice Eligible Users' right to enforce this Contract with respect to any default of this Contract or defect in the Procurement Item(s) that has not been cured, or of any of the following clauses, including: Governing Law and Venue, Laws and Regulations, Records Administration, Remedies, Dispute Resolution, Indemnity, Newly Manufactured, Indemnification Relating to Intellectual Property, Warranty of Procurement Item(s), Insurance.
53. **SEVERABILITY:** The invalidity or unenforceability of any provision, term, or condition of this Contract shall not affect the validity or enforceability of any other provision, term, or condition of this Contract, which shall remain in full force and effect.
54. **ERRORS AND OMISSIONS:** Contractor shall not take advantage of any errors and/or omissions in this Contract. The Contractor must promptly notify the Division of any errors and/or omissions that are discovered.
55. **ENTIRE AGREEMENT:** This Contract constitutes the entire agreement between the parties and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written.
56. **ANTI-BOYCOTT ACTIONS:** In accordance with Utah Code 63G-27 et seq., Contractor certifies that it is not currently engaged in any "economic boycott" nor a "boycott of the State of Israel" as those terms are defined in Section 102. Contractor further certifies that it has read and understands 63G-27 et. seq., that it will not engage in any such boycott action during the term of this Contract, and that if it does, it shall promptly notify the State in writing.

(Revision Date: 7/20/2023)

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

|                                                                                                                                                     |                                                                                                                                                      |
|-----------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------|
| Participating Entity: State of Utah                                                                                                                 | Contractor:                                                                                                                                          |
| Signature: <div>DocuSigned by:<br/><br/>C388E9DAG528424...</div> | Signature: <div>DocuSigned by:<br/><br/>1D75FGB6C41147A...</div> |
| Name: Windy Aphayrath                                                                                                                               | Name: Todd Hanlon                                                                                                                                    |
| Title: Chief Procurement Officer                                                                                                                    | Title: VP, Gov and Def                                                                                                                               |
| Date: 6/10/2024                                                                                                                                     | Date: 6/7/2024                                                                                                                                       |

SEE ATTACHMENT B FOR MASTER AGREEMENT

## Attachment B: Master Agreement

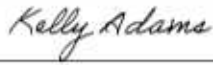
## Iowa Department of Administrative Services

### Contracts Declaration & Execution Page

|                                                                                                                                                                                                                                                                                                                       |                                       |                                 |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------|---------------------------------|
| Title of Contract:<br>Tires, Tubes, and Services                                                                                                                                                                                                                                                                      | Bid Proposal Number<br>RFP0223005113  | Contract Number<br>24156        |
| This Agreement is entered into between the State of Iowa (by and through its agency, the Department of Administrative Services) and the Contractor named below:                                                                                                                                                       |                                       |                                 |
| State Agency's Name:<br>Iowa Department of Administrative Services (DAS)                                                                                                                                                                                                                                              |                                       |                                 |
| Contractor's Name:<br>Michelin North America, Inc.                                                                                                                                                                                                                                                                    |                                       |                                 |
| Contract to Begin:<br>April 1, 2024                                                                                                                                                                                                                                                                                   | Date of Expiration:<br>March 31, 2027 | Annual Extensions:<br>Three (3) |
| The parties agree to comply with the terms and conditions and attachments which are by this reference made a part of the Agreement:<br>Section 1 – NASPO Valuepoint Terms and Conditions .....Page 2<br>Section 2 – Scope of Work.....Page 26<br>Section 3 – Pricing.....Page 34<br>Section 4 – Contacts .....Page 36 |                                       |                                 |

**IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto:**

**Contractor: Michelin North America, Inc.**

|                                                                                                               |                               |
|---------------------------------------------------------------------------------------------------------------|-------------------------------|
| By (Authorized Signature)  | Date Signed<br>March 25, 2024 |
| Printed Name and Title of Person Signing<br>Kelly Adams - Government Contract Manager                         |                               |
| Address<br>One Parkway South Greenville, SC 29615                                                             |                               |

**State of Iowa: Department of Administrative Services – Central Procurement**

|                                                                                                               |                               |
|---------------------------------------------------------------------------------------------------------------|-------------------------------|
| By (Authorized Signature)  | Date Signed<br>March 28, 2024 |
| Printed Name and Title of Person Signing<br>Karl Wendt, Procurement Manager                                   |                               |
| Address<br>1305 E Walnut ST, Des Moines, IA 50319                                                             |                               |

## SECTION 1

### NASPO VALUEPOINT MASTER AGREEMENT TERMS AND CONDITIONS

#### 1.1 Definitions

- 1.1.1 **Acceptance** means acceptance of goods and services as set forth in Section 1.9 of this Master Agreement.
- 1.1.2 **Contractor** means a party to this Master Agreement, whether a person or entity, that delivers goods or performs services under the terms set forth in this Master Agreement.
- 1.1.3 **Embedded Software** means one or more software applications which permanently reside on a computing device.
- 1.1.4 **Intellectual Property** means any and all patents, copyrights, service marks, trademarks, trade secrets, trade names, patentable inventions, or other similar proprietary rights, in tangible or intangible form, and all rights, title, and interest therein.
- 1.1.5 **Lead State** means the State centrally administering any resulting Master Agreement(s) who is a party to this Master Agreement.
- 1.1.6 **Master Agreement** means the underlying agreement executed by and between the Lead State, acting in cooperation with NASPO ValuePoint, and the Contractor, as now or hereafter amended.
- 1.1.7 **NASPO ValuePoint** is a division of the National Association of State Procurement Officials ("NASPO"), a 501(c)(3) corporation. NASPO ValuePoint facilitates administration of the NASPO cooperative group contracting consortium of state chief procurement officials for the benefit of state departments, institutions, agencies, and political subdivisions and other eligible entities (i.e., colleges, school districts, counties, cities, some nonprofit organizations, etc.) for all states, the District of Columbia, and territories of the United States. NASPO ValuePoint is identified in the Master Agreement as the recipient of reports and may perform contract administration functions relating to collecting and receiving reports, as well as other contract administration functions as assigned by the Lead State.
- 1.1.8 **Order or Purchase Order** means any purchase order, sales order, contract or other document used by a Purchasing Entity to order the Products.
- 1.1.9 **Participating Addendum** means a bilateral agreement executed by a Contractor and a Participating Entity incorporating this Master Agreement and any additional Participating Entity- specific language or other requirements (e.g., ordering procedures specific to the Participating Entity, entity-specific terms and conditions, etc.).

**1.1.10 Participating Entity** means a state (as well as the District of Columbia and US territories), city, county, district, other political subdivision of a State, or a nonprofit organization under the laws of some states properly authorized to enter into a Participating Addendum, that has executed a Participating Addendum.

**1.1.11 Participating State** means a state that has executed a Participating Addendum or has indicated an intent to execute a Participating Addendum.

**1.1.12 Product or Products and Services** means any equipment, software (including embedded software), documentation, service, or other deliverable supplied or created by the Contractor pursuant to this Master Agreement. The term Product includes goods and services.

**1.1.13 Purchasing Entity** means a state (as well as the District of Columbia and US territories), city, county, district, other political subdivision of a State, or a nonprofit organization under the laws of some states if authorized by a Participating Addendum, that issues a Purchase Order against the Master Agreement and becomes financially committed to the purchase.

## **1.2 Term of Master Agreement**

### **1.2.1 Initial Term**

The initial term of this Master Agreement is for three (3) years. The term of this Master Agreement may be amended beyond the initial term for three (3) additional one-year terms at the Lead State's discretion and by mutual agreement and upon review of requirements of Participating Entities, current market conditions, and Contractor performance. The Lead State may, prior to execution, adjust the effective date or duration of the initial term or renewal period of any Master Agreement for the purpose of making the Master Agreement coterminous with others.

### **1.2.2 Amendment Limitations**

The terms of this Master Agreement will not be waived, altered, modified, supplemented, or amended in any manner whatsoever without prior written agreement of the Lead State and Contractor.

### **1.2.3 Amendment Term**

The term of the Master Agreement may be amended past the initial term and stated renewal periods for a reasonable period if in the judgment of the Lead State a follow-on competitive procurement will be unavoidably delayed (despite good faith efforts) beyond the planned date of execution of the follow-on master agreement. This subsection will not be deemed to limit the authority of a Lead State under its state law to otherwise negotiate contract extensions.

## **1.3 Pricing, Payment & Leasing**

### **1.3.1 Pricing**

The prices contained in this Master Agreement or offered under this Master Agreement represent the not-to-exceed price to any Purchasing Entity.

**1.3.1.1** All prices and rates must be guaranteed for the initial six (6) month term of the Master Agreement.

**1.3.1.2** Following the initial term of the Master Agreement, any request for a price or rate adjustment must be for an equal guarantee period and must be made at least six (6) months prior to the effective date.

**1.3.1.3** Requests for a price or rate adjustment must include sufficient documentation supporting the request. Any adjustment or amendment to the Master Agreement will not be effective unless approved in writing by the Lead State.

**1.3.1.4** No retroactive adjustments to prices or rates will be allowed.

### **1.3.2 Payment**

Unless otherwise agreed upon in a Participating Addendum or Order, Payment after Acceptance will be made within sixty (60) days following the date the entire order is delivered or the date a correct invoice is received, whichever is later. After sixty (60) days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance, unless a different late payment amount is specified in a Participating Addendum or Order, or otherwise prescribed by applicable law. Payments will be remitted in the manner specified in the Participating Addendum or Order. Payments may be made via a purchasing card with no additional charge.

**1.3.2.1** Michelin authorized dealers will be selling Michelin products on their local books.

**1.3.2.2** Participating Entity is not paying Michelin.

### **1.3.3 Leasing or Alternative Financing Methods**

The procurement and other applicable laws of some Purchasing Entities may permit the use of leasing or alternative financing methods for the acquisition of Products under this Master Agreement. Where the terms and conditions are not otherwise prescribed in an applicable Participating Addendum, the terms and conditions for leasing or alternative financing methods are subject to negotiation between the Contractor and Purchasing Entity.

## **1.4 Ordering**

### **1.4.1 Order Numbers**

Master Agreement order and purchase order numbers must be clearly shown on all acknowledgments, packing slips, invoices, and on all correspondence.

### **1.4.2 Quotes**

Purchasing Entities may define entity-specific or project-specific requirements and informally compete the requirement among companies having a Master Agreement on an "as needed" basis. This procedure may also be used when requirements are aggregated or other firm commitments may be made to achieve reductions in pricing. This procedure may be modified in Participating Addenda and adapted to the Purchasing Entity's rules and policies. The Purchasing Entity may in its sole discretion determine which Master Agreement Contractors should be solicited for a quote. The Purchasing Entity may select the quote that it considers most advantageous, cost, and other factors considered.

#### **1.4.3 Applicable Rules**

Each Purchasing Entity will identify and utilize its own appropriate purchasing procedure and documentation. Contractor is expected to become familiar with the Purchasing Entities' rules, policies, and procedures regarding the ordering of supplies and/or services contemplated by this Master Agreement.

#### **1.4.4 Required Documentation**

Contractor shall not begin work without a valid Purchase Order or other appropriate commitment document under the law of the Purchasing Entity.

#### **1.4.5 Term of Purchase**

Orders may be placed consistent with the terms of this Master Agreement and applicable Participating Addendum during the term of the Master Agreement and Participating Addendum.

**1.4.5.1** Orders must be placed pursuant to this Master Agreement prior to the termination date thereof, but may have a delivery date or performance period up to 120 days past the then-current termination date of this Master Agreement.

**1.4.5.2** Notwithstanding the previous, Orders must also comply with the terms of the applicable Participating Addendum, which may further restrict the period during which Orders may be placed or delivered.

**1.4.5.3** Financial obligations of Purchasing Entities payable after the current applicable fiscal year are contingent upon agency funds for that purpose being appropriated, budgeted, and otherwise made available.

**1.4.5.4** Notwithstanding the expiration, cancellation or termination of this Master Agreement, Contractor shall perform in accordance with the terms of any Orders then outstanding at the time of such expiration or termination. Contractor shall not honor any Orders placed after the expiration, cancellation, or termination of this Master Agreement, or in any manner inconsistent with this Master Agreement's terms.

**1.4.5.5** Orders for any separate indefinite quantity, task order, or other form of indefinite delivery order arrangement priced against this Master Agreement may not be placed after the expiration or termination of this Master

Agreement, notwithstanding the term of any such indefinite delivery order agreement.

**1.4.6 Order Form Requirements**

All Orders pursuant to this Master Agreement, at a minimum, must include:

- 1.4.6.1** The services or supplies being delivered;
- 1.4.6.2** A shipping address and other delivery requirements, if any;
- 1.4.6.3** A billing address;
- 1.4.6.4** Purchasing Entity contact information;
- 1.4.6.5** Pricing consistent with this Master Agreement and applicable Participating Addendum and as may be adjusted by agreement of the Purchasing Entity and Contractor;
- 1.4.6.6** A not-to-exceed total for the products or services being ordered; and
- 1.4.6.7** The Master Agreement number or the applicable Participating Addendum number, provided the Participating Addendum references the Master Agreement number.

**1.4.7 Communication**

All communications concerning administration of Orders placed must be furnished solely to the authorized purchasing agent within the Purchasing Entity's purchasing office, or to such other individual identified in writing in the Order.

**1.4.8 Contract Provisions for Orders Utilizing Federal Funds**

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

**1.5 Order of Precedence**

**1.5.1 Order**

Any Order placed under this Master Agreement will consist of the following documents:

- 1.5.1.1** A Participating Entity's Participating Addendum ("PA");
- 1.5.1.2** NASPO ValuePoint Master Agreement, including all attachments thereto;

**1.5.1.3** A Purchase Order or Scope of Work/Specifications issued against the Master Agreement;

**1.5.1.4** The Solicitation or, if separately executed after award, the Lead State's bilateral agreement that integrates applicable provisions;

**1.5.1.5** Contractor's response to the Solicitation, as revised (if permitted) and accepted by the Lead State.

## **1.5.2 Conflict**

These documents will be read to be consistent and complementary. Any conflict among these documents will be resolved by giving priority to these documents in the order listed above. Contractor terms and conditions that apply to this Master Agreement are only those that are expressly accepted by the Lead State and must be in writing and attached to this Master Agreement as an Exhibit or Attachment.

## **1.5.3 Participating Addenda**

Participating Addenda will not be construed to diminish, modify, or otherwise derogate any provisions in this Master Agreement between the Lead State and Contractor. Participating Addenda will not include a term of agreement that exceeds the term of the Master Agreement.

# **1.6 Participants and Scope**

## **1.6.1 Requirement for a Participating Addendum**

Contractor may not deliver Products under this Master Agreement until a Participating Addendum acceptable to the Participating Entity and Contractor is executed.

## **1.6.2 Applicability of Master Agreement**

NASPO ValuePoint Master Agreement Terms and Conditions are applicable to any Order by a Participating Entity (and other Purchasing Entities covered by their Participating Addendum), except to the extent altered, modified, supplemented or amended by a Participating Addendum, subject to Section III. For the purposes of illustration and not limitation, this authority may apply to unique delivery and invoicing requirements, confidentiality requirements, defaults on Orders, governing law and venue relating to Orders by a Participating Entity, indemnification, and insurance requirements. Statutory or constitutional requirements relating to availability of funds may require specific language in some Participating Addenda in order to comply with applicable law. The expectation is that these alterations, modifications, supplements, or amendments will be addressed in the Participating Addendum or, with the consent of the Purchasing Entity and Contractor, may be included in the ordering document (*e.g.*, purchase order or contract) used by the Purchasing Entity to place the Order.

## **1.6.3 Authorized Use**

Use of specific NASPO ValuePoint Master Agreements by state agencies, political subdivisions and other Participating Entities is subject to applicable state law and the approval of the respective State Chief Procurement Official. Issues of interpretation and

eligibility for participation are solely within the authority of the respective State Chief Procurement Official.

#### **1.6.4 Obligated Entities**

Obligations under this Master Agreement are limited to those Participating Entities who have signed a Participating Addendum and Purchasing Entities within the scope of those Participating Addenda. States or other entities permitted to participate may use an informal competitive process to determine which Master Agreements to participate in through execution of a Participating Addendum. Participating Entities incur no financial obligations on behalf of other Purchasing Entities.

#### **1.6.5 Notice of Participating Addendum**

Contractor shall email a fully executed PDF copy of each Participating Addendum to [pa@naspovaluepoint.org](mailto:pa@naspovaluepoint.org) to support documentation of participation and posting in appropriate databases.

#### **1.6.6 Eligibility for a Participating Addendum**

Eligible entities who are not states may under some circumstances sign their own Participating Addendum, subject to the consent of the Chief Procurement Official of the state where the entity is located. Coordinate requests for such participation through NASPO ValuePoint. Any permission to participate through execution of a Participating Addendum is not a determination that procurement authority exists; the entity must ensure that they have the requisite procurement authority to execute a Participating Addendum.

#### **1.6.7 Prohibition on Resale**

Subject to any specific conditions included in the solicitation or Contractor's proposal as accepted by the Lead State, or as explicitly permitted in a Participating Addendum, Purchasing Entities may not resell Products purchased under this Master Agreement. Absent any such condition or explicit permission, this limitation does not prohibit: payments by employees of a Purchasing Entity for Products; sales of Products to the general public as surplus property; and fees associated with inventory transactions with other governmental or nonprofit entities and consistent with a Purchasing Entity's laws and regulations. Any sale or transfer permitted by this subsection must be consistent with license rights granted for use of intellectual property.

#### **1.6.8 Individual Customers**

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

#### **1.6.9 Release of Information**

Throughout the duration of this Master Agreement, Contractor must secure from the Lead State prior approval for the release of information that pertains to the potential work or activities covered by the Master Agreement. This limitation does not preclude publication about the award of the Master Agreement or marketing activities consistent with any proposed and accepted marketing plan.

#### **1.6.10 No Representations**

The Contractor shall not make any representations of NASPO ValuePoint, the Lead State, any Participating Entity, or any Purchasing Entity's opinion or position as to the quality or effectiveness of the services that are the subject of this Master Agreement without prior written consent.

### **1.7 NASPO ValuePoint Provisions**

#### **1.7.1 Applicability**

NASPO ValuePoint is not a party to the Master Agreement. The terms set forth in Section 1.5 are for the benefit of NASPO ValuePoint as a third-party beneficiary of this Master Agreement.

#### **1.7.2 Administrative Fees**

##### **1.7.2.1 NASPO ValuePoint Fee**

Contractor shall pay to NASPO ValuePoint, or its assignee, a NASPO ValuePoint Administrative Fee of one-quarter of one percent (0.25% or 0.0025) no later than sixty (60) days following the end of each calendar quarter. The NASPO ValuePoint Administrative Fee must be submitted quarterly and is based on all sales of products and services under the Master Agreement (less any charges for taxes or shipping). The NASPO ValuePoint Administrative Fee is not negotiable. This fee is to be included as part of the pricing submitted with a vendor's response to the Lead State's solicitation.

##### **1.7.2.2 State Imposed Fees**

Some states may require an additional fee be paid by Contractor directly to the state on purchases made by Purchasing Entities within that state. For all such requests, the fee rate or amount, payment method, and schedule for such reports and payments will be incorporated into the applicable Participating Addendum. Unless agreed to in writing by the state, Contractor may not adjust the Master Agreement pricing to include the state fee for purchases made by Purchasing Entities within the jurisdiction of the state. No such agreement will affect the NASPO ValuePoint Administrative Fee percentage or the prices paid by Purchasing Entities outside the jurisdiction of the state requesting the additional fee.

#### **1.7.3 NASPO ValuePoint Summary and Detailed Usage Reports**

##### **1.7.3.1 Sales Data Reporting**

In accordance with this section, Contractor shall report to NASPO ValuePoint all Orders under this Master Agreement for which Contractor has invoiced the

ordering entity or individual, including Orders invoiced to Participating Entity or Purchasing Entity employees for personal use if such use is permitted by this Master Agreement and the applicable Participating Addendum ("Sales Data"). Timely and complete reporting of Sales Data is a material requirement of this Master Agreement. Reporting requirements, including those related to the format, contents, frequency, or delivery of reports, may be updated by NASPO ValuePoint with reasonable notice to Contractor and without amendment to this Master Agreement. NASPO ValuePoint shall have exclusive ownership of any media on which reports are submitted and shall have a perpetual, irrevocable, non-exclusive, royalty free, and transferable right to display, modify, copy, and otherwise use reports, data, and information provided under this section.

#### **1.7.3.2 Summary Sales Data**

"Summary Sales Data" is Sales Data reported as cumulative totals by state. Contractor shall, using the reporting tool or template provided by NASPO ValuePoint, report Summary Sales Data to NASPO ValuePoint for each calendar quarter no later than thirty (30) days following the end of the quarter. If Contractor has no reportable Sales Data for the quarter, Contractor shall submit a zero-sales report.

#### **1.7.3.3 Detailed Sales Data**

"Detailed Sales Data" is Sales Data that includes for each Order all information required by the Solicitation or by NASPO ValuePoint, including customer information, Order information, and line-item details. Contractor shall, using the reporting tool or template provided by NASPO ValuePoint, report Detailed Sales Data to NASPO ValuePoint for each calendar quarter no later than thirty (30) days following the end of the quarter. Detailed Sales Data shall be reported in the format provided in the Solicitation or provided by NASPO ValuePoint. The total sales volume of reported Detailed Sales Data shall be consistent with the total sales volume of reported Summary Sales Data.

#### **1.7.3.4 Sales Data Crosswalks**

Upon request by NASPO ValuePoint, Contractor shall provide to NASPO ValuePoint tables of customer and Product information and specific attributes thereof for the purpose of standardizing and analyzing reported Sales Data ("Crosswalks"). Customer Crosswalks must include a list of existing and potential Purchasing Entities and identify for each the appropriate customer type as defined by NASPO ValuePoint. Product Crosswalks must include Contractor's part number or SKU for each Product in Contractor's catalog and identify for each the appropriate Master Agreement category (and subcategory, if applicable), manufacturer part number, product description, eight-digit UNSPSC Class Level commodity code, and (if applicable) EPEAT value and Energy Star rating. Crosswalk requirements and fields may be updated by NASPO ValuePoint with reasonable notice to Contractor and without amendment to this Master Agreement. Contractor shall work in good faith with NASPO ValuePoint to keep Crosswalks updated as Contractor's customer lists and product catalog change.

**1.7.3.5 Executive Summary**

Contractor shall, upon request by NASPO ValuePoint, provide NASPO ValuePoint with an executive summary that includes but is not limited to a list of states with an active Participating Addendum, states with which Contractor is in negotiations, and any Participating Addendum roll-out or implementation activities and issues. NASPO ValuePoint and Contractor will determine the format and content of the executive summary.

**1.7.4 NASPO ValuePoint Cooperative Program Marketing, Training, and Performance Review****1.7.4.1 Staff Education**

Contractor shall work cooperatively with NASPO ValuePoint personnel. Contractor shall present plans to NASPO ValuePoint for the education of Contractor's contract administrator(s) and sales/marketing workforce regarding the Master Agreement contract, including the competitive nature of NASPO ValuePoint procurements, the master agreement and participating addendum process, and the manner in which eligible entities can participate in the Master Agreement.

**1.7.4.2 Onboarding Plan**

Upon request by NASPO ValuePoint, Contractor shall, as Participating Addendums are executed, provide plans to launch the program for the Participating Entity. Plans will include time frames to launch the agreement and confirmation that the Contractor's website has been updated to properly reflect the scope and terms of the Master Agreement as available to the Participating Entity and eligible Purchasing Entities.

**1.7.4.3 Annual Contract Performance Review**

Contractor shall participate in an annual contract performance review with the Lead State and NASPO ValuePoint, which may at the discretion of the Lead State be held in person and which may include a discussion of marketing action plans, target strategies, marketing materials, Contractor reporting, and timeliness of payment of administration fees.

**1.7.4.4 Use of NASPO ValuePoint Logo**

The NASPO ValuePoint logos may not be used by Contractor in sales and marketing until a separate logo use agreement is executed with NASPO ValuePoint.

**1.7.4.5 Obligation to Act in Good Faith**

The parties acknowledge that this Master Agreement and its terms and pricing have been negotiated for the benefit of the parties, NASPO ValuePoint, Participating Entities, and Purchasing Entities. Apart from a Participating Addendum or Order, Contractor shall not intentionally induce a potential Participating Entity or Purchasing Entity to enter into a separate agreement, the pricing and terms of which are derived from this Master

Agreement, for the purpose of avoiding compliance with Contractor's obligations under Section 1.7. Nothing in this Section 1.7.4.5 shall prohibit Contractor from contracting with an entity with substantially similar pricing and terms if such pricing and terms are independently negotiated with the entity or are consistent with pricing and terms ordinarily offered by Contractor to public sector customers.

#### **1.7.5 Cancellation**

In consultation with NASPO ValuePoint, the Lead State may, in its discretion, cancel the Master Agreement or not exercise an option to renew, when utilization of Contractor's Master Agreement does not warrant further administration of the Master Agreement. The Lead State may also exercise its right to not renew the Master Agreement if the Contractor fails to record or report revenue for three consecutive quarters, upon 60-calendar day written notice to the Contractor. Cancellation based on nonuse or under-utilization will not occur sooner than [two years] after execution of the Master Agreement. This subsection does not limit the discretionary right of either the Lead State or Contractor to cancel the Master Agreement or terminate for default subject to the terms herein. This subsection also does not limit any right of the Lead State to cancel the Master Agreement under applicable laws.

#### **1.7.6 Canadian Participation**

Subject to the approval of Contractor, any Canadian provincial government or provincially funded entity in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, Quebec, or Saskatchewan, and territorial government or territorial government funded entity in the Northwest Territories, Nunavut, or Yukon, including municipalities, universities, community colleges, school boards, health authorities, housing authorities, agencies, boards, commissions, and crown corporations, may be eligible to use Contractor's Master Agreement.

#### **1.7.7 Additional Agreement with NASPO**

Upon request by NASPO ValuePoint, awarded Contractor shall enter into a direct contractual relationship with NASPO ValuePoint related to Contractor's obligations to NASPO ValuePoint under the terms of the Master Agreement, the terms of which shall be the same or similar (and not less favorable) than the terms set forth in the Master Agreement.

### **1.8 Shipping and Delivery**

#### **1.8.1 Shipping Terms**

All deliveries will be F.O.B. destination, freight pre-paid, with all transportation and handling charges paid by the Contractor.

**1.8.1.1** Notwithstanding the above, responsibility and liability for loss or damage will remain the Contractor's until final inspection and acceptance after delivery when responsibility will pass to the Purchasing Entity except as to latent defects, fraud, and Contractor's warranty obligations.

**1.8.2 Minimum Shipping**

The minimum shipment amount, if any, must be contained in the Master Agreement. Any order for less than the specified amount is to be shipped with the freight prepaid and added as a separate item on the invoice. Any portion of an Order to be shipped without transportation charges that is back ordered will be shipped without charge.

**1.8.3 Inside Deliveries**

To the extent applicable, all deliveries will be "Inside Deliveries" as designated by a representative of the Purchasing Entity placing the Order. Inside Delivery refers to a delivery to a location other than a loading dock, front lobby, or reception area. Specific delivery instructions will be noted on the order form or Purchase Order. Costs to repair any damage to the building interior (e.g., scratched walls, damage to the freight elevator, etc.) caused by Contractor or Contractor's carrier will be the responsibility of the Contractor. Immediately upon becoming aware of such damage, Contractor shall notify the Purchasing Entity placing the Order.

**1.8.4 Packaging**

All products must be delivered in the manufacturer's standard package. Costs must include all packing and/or crating charges. Cases must be of durable construction, in good condition, properly labeled and suitable in every respect for storage and handling of contents. Each shipping carton must be marked with the commodity, brand, quantity, item code number and the Purchasing Entity's Purchase Order number.

**1.9 Inspection and Acceptance****1.9.1 Laws and Regulations**

Any and all Products offered and furnished must comply fully with all applicable Federal, State, and local laws and regulations.

**1.9.2 Applicability**

Unless otherwise specified in the Master Agreement, Participating Addendum, or ordering document, the terms of this Section 1.9 will apply. This section is not intended to limit rights and remedies under the applicable commercial code.

**1.9.3 Inspection**

All Products are subject to inspection at reasonable times and places before Acceptance. Contractor shall provide right of access to the Lead State, or to any other authorized agent or official of the Lead State or other Participating or Purchasing Entity, at reasonable times, to monitor and evaluate performance, compliance, and/or quality assurance requirements under this Master Agreement.

**1.9.3.1** Products that do not meet specifications may be rejected. Failure to reject upon receipt, however, does not relieve the contractor of liability for material (nonconformity that substantial impairs value) latent or hidden defects subsequently revealed when goods are put to use.

**1.9.3.2** Acceptance of such goods may be revoked in accordance with the provisions of the applicable commercial code, and the Contractor is liable for any

resulting expense incurred by the Purchasing Entity related to the preparation and shipping of Product rejected and returned, or for which Acceptance is revoked.

#### **1.9.4 Failure to Conform**

If any services do not conform to contract requirements, the Purchasing Entity may require the Contractor to perform the services again in conformity with contract requirements, at no increase in Order amount. When defects cannot be corrected by re-performance, the Purchasing Entity may require the Contractor to take necessary action to ensure that future performance conforms to contract requirements and reduce the contract price to reflect the reduced value of services performed.

#### **1.9.5 Acceptance Testing**

Purchasing Entity may establish a process, in keeping with industry standards, to ascertain whether the Product meets the standard of performance or specifications prior to Acceptance by the Purchasing Entity.

**1.9.5.1** The Acceptance Testing period will be thirty (30) calendar days, unless otherwise specified, starting from the day after the Product is delivered or, if installed by Contractor, the day after the Product is installed and Contractor certifies that the Product is ready for Acceptance Testing.

**1.9.5.2** If the Product does not meet the standard of performance or specifications during the initial period of Acceptance Testing, Purchasing Entity may, at its discretion, continue Acceptance Testing on a day-to-day basis until the standard of performance is met.

**1.9.5.3** Upon rejection, the Contractor will have fifteen (15) calendar days to cure. If after the cure period, the Product still has not met the standard of performance or specifications, the Purchasing Entity may, at its option: (a) declare Contractor to be in breach and terminate the Order; (b) demand replacement Product from Contractor at no additional cost to Purchasing Entity; or, (c) continue the cure period for an additional time period agreed upon by the Purchasing Entity and the Contractor.

**1.9.5.4** Contractor shall pay all costs related to the preparation and shipping of Product returned pursuant to the section.

**1.9.5.5** No Product will be deemed Accepted and no charges will be paid until the standard of performance or specification is met.

#### **1.10 Warranty**

Michelin's written Limited Warranty and Owner's Manual shall apply to applicable Michelin products. Michelin's written Limited Warranty and Owner's Manual may be amended from time to time. If a Michelin product is involved in, or suspected to have caused or contributed to the cause of an accident, the Fleet Account shall promptly notify Michelin's local commercial representative. In the event that Michelin desires to inspect any such Michelin product, the Fleet Account shall arrange for transportation at the expense of Michelin in accordance with its

instructions. EXCEPT AS EXPRESSLY STATED IN THE LIMITED WARRANTY, MICHELIN HEREBY DISCLAIMS ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY.

## **1.11 Product Title**

### **1.11.1 Conveyance of Title**

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

## **1.12 Indemnification**

### **1.12.1 General Indemnification**

The Contractor shall defend, indemnify and hold harmless NASPO, NASPO ValuePoint, the Lead State, Participating Entities, and Purchasing Entities, along with their officers and employees, from and against third-party claims, damages or causes of action including reasonable attorneys' fees and related costs for any death, injury, or damage to tangible property arising from any act, error, or omission of the Contractor, its employees or subcontractors or volunteers, at any tier, relating to performance under this Master Agreement.

### **1.12.2 Intellectual Property Indemnification**

The Contractor shall defend, indemnify and hold harmless NASPO, NASPO ValuePoint, the Lead State, Participating Entities, Purchasing Entities, along with their officers and employees ("Indemnified Party"), from and against claims, damages or causes of action including reasonable attorneys' fees and related costs arising out of the claim that the Product or its use infringes Intellectual Property rights of another person or entity ("Intellectual Property Claim").

**1.12.2.1** The Contractor's obligations under this section will not extend to any combination of the Product with any other product, system or method, unless the Product, system or method is:

**1.12.2.1.1** provided by the Contractor or the Contractor's subsidiaries or affiliates;

**1.12.2.1.2** specified by the Contractor to work with the Product;

**1.12.2.1.3** reasonably required to use the Product in its intended manner, and the infringement could not have been avoided by substituting another reasonably available product, system or method capable of performing the same function; or

**1.12.2.1.4** reasonably expected to be used in combination with the Product.

- 1.12.2.2** The Indemnified Party shall notify the Contractor within a reasonable time after receiving notice of an Intellectual Property Claim. Even if the Indemnified Party fails to provide reasonable notice, the Contractor shall not be relieved from its obligations unless the Contractor can demonstrate that it was prejudiced in defending the Intellectual Property Claim resulting in increased expenses or loss to the Contractor. If the Contractor promptly and reasonably investigates and defends any Intellectual Property Claim, it shall have control over the defense and settlement of the Intellectual Property Claim. However, the Indemnified Party must consent in writing for any money damages or obligations for which it may be responsible.
- 1.12.2.3** The Indemnified Party shall furnish, at the Contractor's reasonable request and expense, information and assistance necessary for such defense. If the Contractor fails to vigorously pursue the defense or settlement of the Intellectual Property Claim, the Indemnified Party may assume the defense or settlement of the Intellectual Property Claim and the Contractor shall be liable for all costs and expenses, including reasonable attorneys' fees and related costs, incurred by the Indemnified Party in the pursuit of the Intellectual Property Claim.
- 1.12.2.4** Unless otherwise set forth herein, Section 1.12 is not subject to any limitations of liability in this Master Agreement or in any other document executed in conjunction with this Master Agreement.

## **1.13 Insurance**

### **1.3.1 Term**

Contractor shall, during the term of this Master Agreement, maintain in full force and effect, the insurance described in this section. A Participating Entity may negotiate alternative Insurance requirements in their Participating Addendum.

### **1.3.2 Class**

Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in each Participating Entity's state and having a rating of A-, Class VII or better, in the most recently published edition of A.M. Best's Insurance Reports. Failure to buy and maintain the required insurance may result in this Master Agreement's termination or, at a Participating Entity's option, result in termination of its Participating Addendum.

### **1.3.3 Coverage**

Coverage must be written on an occurrence basis. The minimum acceptable limits will be as indicated below:

- 1.3.3.1** Contractor shall maintain Commercial General Liability insurance covering premises operations, independent contractors, completed operations, blanket contractual liability, personal injury (including death), advertising liability, and property damage, with a limit of not less than \$1 million per occurrence and \$2 million general aggregate;

**1.3.3.2** Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.

**1.3.3.3** Contractor is self-insured for product liability, with coverages similar to those under its Commercial General Liability.

**1.3.4 Notice of Cancellation**

Contractor shall pay premiums on all insurance policies. Contractor shall provide notice to a Participating Entity who is a state within five (5) business days after Contractor is first aware of expiration, cancellation or nonrenewal of such policy or is first aware that cancellation is threatened or expiration, nonrenewal or expiration otherwise may occur.

**1.3.5 Notice of Endorsement**

Prior to commencement of performance, Contractor shall provide to the Lead State a written endorsement to the Contractor's general liability insurance policy or other documentary evidence acceptable to the Lead State that (1) provides that written notice of cancellation will be delivered in accordance with the policy provisions, and (2) provides that the Contractor's liability insurance policy will be primary, with any liability insurance of any Participating State as secondary and noncontributory.

**1.3.6 Participating Entities**

Contractor shall provide to Participating States and Participating Entities the same insurance obligations and documentation as those specified in Section XIII, except the endorsement is provided to the applicable Participating State or Participating Entity.

**1.3.7 Furnishing of Certificates**

Contractor shall furnish to the Lead State copies of certificates of all required insurance in a form sufficient to show required coverage within thirty (30) calendar days of the execution of this Master Agreement and prior to performing any work. Copies of renewal certificates of all required insurance will be furnished within thirty (30) days after any renewal date to the applicable state Participating Entity. Failure to provide evidence of coverage may, at the sole option of the Lead State, or any Participating Entity, result in this Master Agreement's termination or the termination of any Participating Addendum.

**1.3.8 Disclaimer**

Insurance coverage and limits will not limit Contractor's liability and obligations under this Master Agreement, any Participating Addendum, or any Purchase Order.

**1.14 General Provisions**

**1.4.1 Records Administration and Audit**

**1.4.1.1** The Contractor shall maintain books, records, documents, and other evidence pertaining to this Master Agreement and Orders placed by Purchasing Entities under it to the extent and in such detail as will adequately reflect

performance and administration of payments and fees. Contractor shall permit the Lead State, a Participating Entity, a Purchasing Entity, the federal government (including its grant awarding entities and the U.S. Comptroller General), and any other duly authorized agent of a governmental agency, to audit, inspect, examine, copy and/or transcribe Contractor's books, documents, papers and records directly pertinent to this Master Agreement or orders placed by a Purchasing Entity under it for the purpose of making audits, examinations, excerpts, and transcriptions. This right will survive for a period of six (6) years following termination of this Agreement or final payment for any order placed by a Purchasing Entity against this Master Agreement, whichever is later, or such longer period as is required by the Purchasing Entity's state statutes, to assure compliance with the terms hereof or to evaluate performance hereunder.

- 1.4.1.2** Without limiting any other remedy available to any governmental entity, the Contractor shall reimburse the applicable Lead State, Participating Entity, or Purchasing Entity for any overpayments inconsistent with the terms of the Master Agreement or Orders or underpayment of fees found as a result of the examination of the Contractor's records.
- 1.4.1.3** The rights and obligations herein exist in addition to any quality assurance obligation in the Master Agreement that requires the Contractor to self-audit contract obligations and that permits the Lead State to review compliance with those obligations.

#### **1.4.2 Confidentiality, Non-Disclosure, and Injunctive Relief**

##### **1.4.2.1 Confidentiality**

Contractor acknowledges that it and its employees or agents may, in the course of providing a Product under this Master Agreement, be exposed to or acquire information that is confidential to Purchasing Entity or Purchasing Entity's clients.

- 1.4.2.1.1** Any and all information of any form that is marked as confidential or would by its nature be deemed confidential obtained by Contractor or its employees or agents in the performance of this Master Agreement, including but not necessarily limited to (1) any Purchasing Entity's records, (2) personnel records, and (3) information concerning individuals, is confidential information of Purchasing Entity ("Confidential Information").
- 1.4.2.1.2** Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated in the same manner as the Confidential Information.

**1.4.2.1.3** Confidential Information does not include information that (1) is or becomes (other than by disclosure by Contractor) publicly known; (2) is furnished by Purchasing Entity to others without restrictions similar to those imposed by this Master Agreement; (3) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Master Agreement; (4) is obtained from a source other than Purchasing Entity without the obligation of confidentiality, (5) is disclosed with the written consent of Purchasing Entity; or (6) is independently developed by employees, agents or subcontractors of Contractor who can be shown to have had no access to the Confidential Information.

**1.4.2.2 Non-Disclosure**

Contractor shall hold Confidential Information in confidence, using at least the industry standard of confidentiality, and shall not copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than what is necessary to the performance of Orders placed under this Master Agreement.

**1.4.2.2.1** Contractor shall advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall use commercially reasonable efforts to assist Purchasing Entity in identifying and preventing any unauthorized use or disclosure of any Confidential Information.

**1.4.2.2.2** Without limiting the generality of the foregoing, Contractor shall advise Purchasing Entity, applicable Participating Entity, and the Lead State immediately if Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Master Agreement, and Contractor shall at its expense cooperate with Purchasing Entity in seeking injunctive or other equitable relief in the name of Purchasing Entity or Contractor against any such person.

**1.4.2.2.3** Except as directed by Purchasing Entity, Contractor will not at any time during or after the term of this Master Agreement disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Master Agreement, and that upon termination of this Master Agreement or at Purchasing Entity's request, Contractor shall turn over to Purchasing Entity all documents, papers, and other matter in Contractor's possession that embody Confidential Information.

**1.4.2.2.4** Notwithstanding the foregoing, Contractor may keep one copy of such Confidential Information necessary for quality assurance,

audits, and evidence of the performance of this Master Agreement.

**1.4.2.3 Injunctive Relief**

Contractor acknowledges that Contractor's breach of Section 14.2 would cause irreparable injury to the Purchasing Entity that cannot be inadequately compensated in monetary damages. Accordingly, Purchasing Entity may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Purchasing Entity and are reasonable in scope and content.

**1.4.2.4 Purchasing Entity Law**

These provisions will be applicable only to extent they are not in conflict with the applicable public disclosure laws of any Purchasing Entity.

**1.4.2.5 NASPO ValuePoint**

The rights granted to Purchasing Entities and Contractor's obligations under this section will also extend to NASPO ValuePoint's Confidential Information, including but not limited to Participating Addenda, Orders or transaction data relating to Orders under this Master Agreement that identify the entity/customer, Order dates, line-item descriptions and volumes, and prices/rates. This provision does not apply to disclosure to the Lead State, a Participating State, or any governmental entity exercising an audit, inspection, or examination pursuant to this Master Agreement. To the extent permitted by law, Contractor shall notify the Lead State of the identity of any entity seeking access to the Confidential Information described in this subsection.

**1.4.2.6 Public Information**

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

**1.4.2.7 Contractor Confidential Information**

Contractor Confidential information shall mean information in any form, disclosed or made available by Contractor that meets the applicable jurisdiction's definition of confidential, proprietary, or otherwise non-public information. Contractor Confidential Information shall not include any information that: (i) was rightfully in the receiving party's possession prior to Contractor's disclosure without any obligation to maintain its confidentiality; (ii) was independently developed by the receiving party or its Partners without the use of or reference to Contractor Confidential Information; (iii) is now, or hereafter becomes, publicly available other than through disclosure by the receiving party in breach of this Master Agreement or any Participating Addendum; (iv) is identified by the Contractor to receiving party as no longer confidential or (v) is, or is included in, any Contract Document, except for the sections identified as confidential in the Summary section of the Master Agreement. Contractor Confidential Information shall be afforded the same protections as Confidential Information under Section 1.4.2; provided, however, that nothing herein shall prohibit Lead State or any Participating

Entity from disclosing any Contractor Confidential Information to the extent required by applicable law (including, for clarity, applicable freedom of information laws).

#### **1.4.3 Assignment/Subcontracts**

**1.4.3.1** Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Master Agreement, in whole or in part, without the prior written approval of the Lead State.

**1.4.3.2** The Lead State reserves the right to assign any rights or duties, including written assignment of contract administration duties, to NASPO ValuePoint and other third parties.

#### **1.4.4 Changes in Contractor Representation**

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

#### **1.4.5 Independent Contractor**

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

#### **1.4.6 Cancellation**

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

#### **1.4.7 Force Majeure**

Neither party to this Master Agreement shall be held responsible for delay or default caused by fire, riot, unusually severe weather, other acts of God, or acts of war which are beyond that party's reasonable control. The Lead State may terminate this Master

Agreement upon determining such delay or default will reasonably prevent successful performance of the Master Agreement.

#### **1.4.8 Defaults and Remedies**

**1.4.8.1** The occurrence of any of the following events will be an event of default under this Master Agreement:

**1.4.8.1.1** Nonperformance of contractual requirements;

**1.4.8.1.2** A material breach of any term or condition of this Master Agreement;

**1.4.8.1.3** Any certification, representation or warranty by Contractor in response to the solicitation or in this Master Agreement that proves to be untrue or materially misleading;

**1.4.8.1.4** Institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within thirty (30) calendar days after the institution or occurrence thereof; or

**1.4.8.1.5** Any default specified in another section of this Master Agreement.

**1.4.8.2** Upon the occurrence of an event of default, the Lead State shall issue a written notice of default, identifying the nature of the default, and providing a period of fifteen (15) calendar days in which Contractor shall have an opportunity to cure the default. The Lead State shall not be required to provide advance written notice or a cure period and may immediately terminate this Master Agreement in whole or in part if the Lead State, in its sole discretion, determines that it is reasonably necessary to preserve public safety or prevent immediate public crisis. Time allowed for cure will not diminish or eliminate Contractor's liability for damages, including to the extent provided for under this Master Agreement.

**1.4.8.3** If Contractor is afforded an opportunity to cure and fails to cure the default within the period specified in the written notice of default, Contractor shall be in breach of its obligations under this Master Agreement and the Lead State shall have the right to exercise any or all of the following remedies:

**1.4.8.3.1** Any remedy provided by law;

**1.4.8.3.2** Termination of this Master Agreement and any related Contracts or portions thereof;

**1.4.8.3.3** Suspension of Contractor from being able to respond to future bid solicitations;

**1.4.8.3.4** Suspension of Contractor's performance; and

**1.4.8.3.5** Withholding of payment until the default is remedied.

**1.4.8.4** Unless otherwise specified in the Participating Addendum, in the event of a default under a Participating Addendum, a Participating Entity shall provide a written notice of default as described in this section and shall have all of the rights and remedies under this paragraph regarding its participation in the Master Agreement, in addition to those set forth in its Participating Addendum. Unless otherwise specified in an Order, a Purchasing Entity shall provide written notice of default as described in this section and have all of the rights and remedies under this paragraph and any applicable Participating Addendum with respect to an Order placed by the Purchasing Entity. Nothing in these Master Agreement Terms and Conditions will be construed to limit the rights and remedies available to a Purchasing Entity under the applicable commercial code.

#### **1.4.9 Waiver of Breach**

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

#### **1.4.10 Debarment**

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

#### **1.4.11 No Waiver of Sovereign Immunity**

**1.4.11.1** In no event will this Master Agreement, any Participating Addendum or any contract or any Purchase Order issued thereunder, or any act of the Lead State, a Participating Entity, or a Purchasing Entity be a waiver of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the

United States or otherwise, from any claim or from the jurisdiction of any court.

- 1.4.11.2** This section applies to a claim brought against the Participating Entities who are states only to the extent Congress has appropriately abrogated the state's sovereign immunity and is not consent by the state to be sued in federal court. This section is also not a waiver by the state of any form of immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

#### **1.4.12 Governing Law and Venue**

- 1.4.12.1** The procurement, evaluation, and award of the Master Agreement will be governed by and construed in accordance with the laws of the Lead State sponsoring and administering the procurement. The construction and effect of the Master Agreement after award will be governed by the law of the state serving as Lead State. The construction and effect of any Participating Addendum or Order against the Master Agreement will be governed by and construed in accordance with the laws of the Participating Entity's or Purchasing Entity's state.

- 1.4.12.2** Unless otherwise specified in the RFP, the venue for any protest, claim, dispute or action relating to the procurement, evaluation, and award is in the state serving as Lead State. Venue for any claim, dispute or action concerning the terms of the Master Agreement will be in the state serving as Lead State. Venue for any claim, dispute, or action concerning any Order placed against the Master Agreement or the effect of a Participating Addendum will be in the Purchasing Entity's state.

- 1.4.12.3** If a claim is brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for (in decreasing order of priority): the Lead State for claims relating to the procurement, evaluation, award, or contract performance or administration if the Lead State is a party; a Participating State if a named party; the state where the Participating Entity or Purchasing Entity is located if either is a named party.

#### **1.4.13 Assignment of Antitrust Rights**

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

**1.4.14 Survivability**

Unless otherwise explicitly set forth in a Participating Addendum or Order, the terms of this Master Agreement as they apply to the Contractor, Participating Entities, and Purchasing Entities, including but not limited to pricing and the reporting of sales and payment of administrative fees to NASPO ValuePoint, shall survive expiration of this Master Agreement and shall continue to apply to all Participating Addenda and Orders until the expiration thereof.

## **SECTION 2**

### **Scope of Work**

**2.1** This Scope of Work describes the Deliverables being sought through this Contract.

#### **2.2 Master Agreement Objectives**

The purpose of this Master Agreement(s) is to provide competitive pricing for tire products and services through retail distribution networks to all Participating States.

This Master Agreement may be used by state governments (including departments, agencies, institutions), institutions of higher education, political subdivisions (i.e., colleges, school districts, counties, cities, etc.), the District of Columbia, territories of the United States, and other eligible entities subject to approval of the using entities chief procurement official and compliance with local statutory and regulatory provisions.

#### **2.3 Master Agreement Deliverables**

The scope of this Contract includes specific full lines of tires and tubes as covered in the Manufacturer's Price List (MPL) and related services in the subcategories listed below.

##### **2.3.1 Tires and Tubes Subcategories**

1. Pursuit and Performance Tires
2. Automobile/Passenger Vehicles
3. Light Duty Trucks: Radial and Bias
4. Medium Commercial/Heavy Duty Trucks/Buses
5. Off-the-Road OTR: Radial and Bias
6. Agriculture/Farm
7. Industrial
8. Specialty Tires
9. EV Tires
10. Retread

##### **2.3.2 Product and Service Specifications**

###### **2.3.2.1 General Tire Specifications**

The quality for all tires shall be the equivalent or greater than Original Equipment Manufacturers (OEM) as original for automobiles, trucks, tractors, buses, backhoes, loaders, motor graders, and other heavy equipment. Tires supplied must be marked with Federal Department of Transportation (DOT) compliance symbol. Tires must conform to all applicable Federal Specifications.

All tires in subcategories one (1) through nine (9) must be new, unused and must have been produced or manufacturer within the last one (1) year prior to delivery to the purchasing Entity. Should an Authorized Dealer deliver a tire(s) with a manufacturing date exceeding the one (1) year limit, the Authorized

Dealer must pick up the expired tire(s) and replace them with tire(s) that meet the manufacturing date requirement for no additional fee to the Purchasing Entity.

All tires must have the size, manufacturer's name, DOT number, serial number, and indication of body material molded in side-wall at time of cure. The application of any of the above by any other means such as branding, application of decals, etc. must not be acceptable.

Tires offered must have been tested to meet or exceed American Society of Testing and Materials (ASTM) Standard F1922 for highway tires, F1923 for Off Road/Low Speed tires, and meet operations performance levels and marking requirements of Federal Standards FMVSS 109 for new pneumatic passenger tires, FMVSS 139 for new pneumatic radial tires for light vehicles, and FMVSS 119 for new pneumatic non-passenger Multi-Passenger Vehicles (MPVs), trucks, buses, and trailers.

#### **2.3.2.1.1 Pursuit and Performance Tires**

Pursuit and performance tires include tires for police and other pursuit vehicles and for other high-speed, performance vehicles. This subcategory includes any tire that is H, V, W, Y, or ZR rated or above. An H rating is the minimum speed rating for tires in this subcategory.

Tires must be new, standard production tires expressly designed and certified by manufacturer for high speed operation and must exhibit exceptional safety, stability, handling, and stopping characteristics. Contractor must maintain evidence/certifications that such tires meet all laboratory test and size requirements of Federal Standards MVSS 109.

#### **2.3.2.1.2 Automobile/Passenger Vehicles**

These tires include common passenger car tires and are designated with a "P" at the beginning of the tire size. Common applications for these types of tires would be passenger cars and minivans.

Tires must be of standard OEM quality equal to or superior in every respect to those normally furnished as original equipment for such vehicles.

#### **2.3.2.1.3 Light Duty Trucks Radial and Bias**

These tires can usually be identified by the letters "LT" at the beginning of the tire size. Common applications for these types of tires would be pickup trucks, sport utility vehicles, full size vans, and some trailers.

Tires must be of standard OEM quality equal to or superior in every respect to those normally furnished as original equipment for such vehicles.

**2.3.2.1.4 Medium Commercial/Heavy Duty Trucks/Buses**

These tires do not have a letter at the beginning of the tire size. Common applications for these types of tires would be medium and heavy trucks, buses, semi-trucks, cargo, vans, and trailer tires. Tires in this subcategory have a diameter that is equal to or greater than twenty (20) inches. Tires must be of standard OEM quality equal to or superior in every respect to those normally furnished as original equipment for such vehicles.

**2.3.2.1.5 Off-the-Road OTR and Low Speed Off Highway Tires (Radial and Bias)**

Common applications are heavy construction equipment such as wheel loaders, backhoes, graders, and trenchers.

Tires must be of standard OEM quality equal to or superior in every respect to those normally furnished as original equipment for such vehicles.

**2.3.2.1.6 Agricultural/Farm (Radial and Bias)**

Common applications are farm tractors, wagons, harvesters, and other farm implements requiring tires with high traction qualities and tires with high flotation qualities at low inflation pressures.

Tires must be of standard OEM quality equal to or superior in every respect to those normally furnished as original equipment for such vehicles.

**2.3.2.1.7 Industrial**

Common applications are specialty industrial equipment, some construction equipment, and material handling equipment such as skid loaders and forklifts and include pneumatic, nonpneumatic, and press on tires.

Tires must be of standard OEM quality equal to or superior in every respect to those normally furnished as original equipment for such vehicles.

**2.3.2.1.8 Specialty Tires**

Specialty tires may include, but are not limited to, recreational, all-terrain-vehicle (ATV), boat trailer, yard and garden, and aviation tires. This category also includes all other tires not identified above. Tires must be of standard OEM quality equal to or superior in every respect to those normally furnished as original equipment for such vehicles.

**2.3.2.1.9 Electric Vehicle (EV) Tires**

Common applications are electric sedans and trucks requiring tires with high load index.

Tires must be of standard OEM quality equal to or superior in every respect to those normally furnished as original equipment for such vehicles.

#### **2.3.2.1.10 Retread Tires – Optional Service**

A retread tire undergoes a manufacturing process to replace the worn tread on used tires to extend the longevity of the tire.

#### **2.3.2.2 Low Roll Resistance Tires**

Contractor must provide certified, low rolling resistance tires and identify them as low roll resistance tires in the MPL. Contractor is to also provide the fuel economy rating of the low roll resistance tires offered, for example, miles per gallon fuel efficiency increase or percentage of fuel economy increase.

#### **2.3.2.3 Tubes**

All inner tubes must be standard production first line, heavy duty butyl tubes or natural rubber of fresh stock. All tubes must be of quality not less than the tubes normally furnished in representative quantities by OEM as original equipment for automobiles, trucks, tractors, buses, backhoes, loaders, motor graders, and other heavy equipment. Tubes must conform to all applicable federal specifications. All tubes must be new and must have been produced or manufactured within the last one (1) year prior to installation or delivery to the purchasing Entity.

#### **2.3.2.4 Detailed Services Specifications**

Contractor is asked to provide pricing on each of the below mentioned listed services that may be performed by their approved Authorized Dealers to include any parts and labor. If a Contractor does not offer one of the items listed below, the Contractor should mark it as NA. Approved Authorized Dealers must honor the services pricing in the Contract.

Contractor must provide a list of its approved Authorized Dealers for each state. The Contractor is responsible for the timeliness and quality of all services provided by the approved Distributors under this Contract. NASPO ValuePoint Participating States may elect to use these services listed below at their discretion.

Product installation and repairs, such as mounting, rotation, and balancing, must be in accordance with manufacturer's recommended procedures of warranted new virgin-product tires for each product subcategory.

**a.** Tire installation with purchase in store includes dismount of used tires and tubes

**b.** Change tire, dismount and mount

- c.** Flat repair, remove, repair and mount
- d.** Flat repair, off vehicle
- e.** Rotate mounted tires (per tire)
- f.** New valve stem rubber or metal
- g.** Wheel balance – computer spin balance (per spin)
- h.** Wheel balance – computer spin balance and valve stem combination
- i.** Foam filled
- j.** Alignment Services – If Contractor provides this service, the prices should be listed in this Contract as a percentage discount from list price for parts and a fixed price per hour for labor.
- k.** Studding – Metal implants in the surface of the tread to improve traction on ice.
- l.** Siping – The small slots that are cut or molded into a tire tread surface. These slots are meant to aid in increasing traction in snow, ice, mud, and wet road surfaces.
- m.** Used tire recycle and disposal fee (per tire) – Some NASPO ValuePoint Participating States have statutes that only allow up to a specific fee to be charged. The Participating States with statute regulated fee caps will only pay the proposed amount or the statute price, whichever is lower.
- n.** Bulk Disposal of Tires (Optional Service) – This is considered an additional chargeable service.

Contractor must, when requested, place trailers on-site at any requesting using Entity for the disposal of scrap tires. Contractor must, on a will-call basis, within five (5) days' notification from requesting Purchasing Entity, remove and replace full trailers with empty trailers. Trailer capacity must be a minimum of six (6) tons or scrap tires. Contractor must dispose of scrap tires that are removed in Contractor provided trailers at an approved waste tire recovery area, other approved disposal methods. Contractor must invoice for disposal of scrap tires at the established Master Agreement price per ton. Contractor must submit with invoice, documentation of scrap tire disposal weight from a disposal site, if this is the method of disposal utilized by the Contractor. Contractor may return scrap tires mounted to wheels to Purchasing Entity if dismounting is required. With prior approval from the designated Purchasing Entity contract representative, Contractor may dismount scrap tires from

wheels and invoice at the established Master Agreement price for such service. Contractor must return wheels to purchasing Entity for disposition unless instructed otherwise by purchasing Entity.

**o. Tire Pressure Monitoring System (TPMS)** – Vehicles all come with a TPMS which is built into the tire valve. When new tires are mounted on a vehicle with the TPMS system, the TPMS system is reinstalled with a new washer, valve, and valve cap (TPMS service kit).

### **2.3.3 Customer Service**

**2.3.3.1** The Contractor must provide a website dedicated to any Participating State that includes, but, is not limited to, services, cost, technical specifications, online ordering, and payment capability.

**2.3.3.2** The Contractor must provide a dedicated customer service representative(s) for the Master Agreement. The representative must be available to respond to all Participating Entity inquiries within two (2) business day. The representative must be available to resolve any customer service issues.

**2.3.3.3** The Contractor must report Key Performance Indicators (KPIs) measuring their customer service and response time. The KPI report must be issued to the Contract Administrator no later than sixty (60) days following the end of each calendar year.

**2.3.3.4** A Contractor representative(s) must attend an annual meeting with the Lead State Contract Administrator and sourcing team to review usage and discuss any issues that are occurring, if requested. The Contractor must be prepared to discuss overall effectiveness of contract, total sales, and customer service. The representative must be responsible to conduct and/or coordinate sales meetings, training sessions, and product demonstrations if required.

### **2.3.4 Multi-Accounts within a Using Entity**

Using Entities may have different agencies, departments, or divisions utilizing the goods and/or services provided by Contractor(s). Therefore, Contractor(s) must be able to process multiple individual accounts and unique users within a Purchasing Entity.

### **2.3.5 Payment Types**

Contractor must accept mailed and electronic payments/P-Cards and cannot charge additional transaction fees under this Master Agreement. Contractor must accept each Participating Entity's payment terms established in their Participating Addendum.

### **2.3.6 Recruiting and Education of Approved Distributors**

Contractor must agree to continue recruiting dealers to become Approved Distributors for Participating Entities for the duration of the Master Agreement. Contractor must further agree to continue outreach with regards to the training of Approved Distributors on the terms and requirements of the Master Agreement and relaying billing procedures for each respective Participating Entity.

## **2.4 Contractor Responsibilities and Tasks**

### **2.4.1 Administrative Fees**

- 2.4.1.1** The Contractor must pay to NASPO ValuePoint, or its assignee, a NASPO ValuePoint Administrative Fee of one-quarter of one percent (0.25% or 0.0025) no later than sixty (60) days following the end of each calendar quarter. The NASPO ValuePoint Administrative Fee must be submitted quarterly and is based on all sales of products and services under the Master Agreement (less any charges for taxes and shipping). The NASPO ValuePoint Administrative Fee is not negotiable. This fee is to be included as part of the Contract pricing.
- 2.4.1.2** Additionally, some Participating Entities may require an additional administrative fee be paid directly to the state only on purchases made within that state. For all such requests, the fee level, payment method, and schedule for such reports and payments must be incorporated into the Participating Addendum that is made part of this Master Agreement. The Contractor may adjust the Master Agreement pricing accordingly for such purchased made by Purchasing Entities within the jurisdiction of the state. All such payments must not affect the NASPO ValuePoint Administrative Fee percentage or the prices paid by the Purchasing Entities outside the jurisdiction of the state requesting the additional fee. The NASPO ValuePoint Administrative Fee must be based on the gross amount of all sales (less any charges for taxes and shipping) at the adjusted prices (if any) in Participating Addenda.

### **2.4.2 NASPO ValuePoint Summary and Detailed Usage Reports**

The Contractor must provide the following NASPO ValuePoint reports.

- 2.4.2.1** Summary Sales Data – The Contractor must submit quarterly sales reports directly to NASPO ValuePoint using the NASPO ValuePoint Quarterly Sales/Administrative Fee Reporting Tool found at: <https://calculator.naspovaluepoint.org/>
- 2.4.2.2** Contractor agrees, as Participating Addendums become executed, if requested by ValuePoint personnel to provide plans to launch the program within the Participating State. Plans must include time frames to launch the agreement and confirmation that the Contractor's website has been updated to properly reflect the contract offer as available in the participating state.
- 2.4.2.3** Contractor agrees, absent anything to the contrary outlined in a Participating Addendum, to consider Participating Entities proposed terms and conditions, as deemed important to the Participating Entity, for possible inclusion into the Participating Addendum. Contractor must ensure that their sales force is aware of this contracting option.
- 2.4.2.4** Contractor agrees to participate in an annual contract performance review at a location selected by the Lead State and NASPO ValuePoint, which may include

a discussion of marketing action plans, target strategies, marketing materials, as well as Contractor reporting and timeliness of administrative fees.

#### **2.4.3 Price and Rate Guarantee Period**

All prices and rates must be guaranteed for the initial six (6) month period of the Master Agreement. Following the initial six (6) month period of the Master Agreement, the Contractor may request for a price or rate adjustment for an equal guarantee period of six (6) months, and must be made at least sixty (60) days prior to the effective date. Requests for price or rate adjustment must include sufficient documentation supporting the request. Any adjustment or amendment to the Master Agreement must not be effective unless approved by the Lead State. No retroactive adjustments to prices or rate must be allowed.

### **2.5 Lead State Responsibilities and Tasks**

#### **2.5.1 Adjustment in Pricing**

The Lead State Contract Administrator and Multistate Sourcing Team must review the Contractor's request for a price or rate adjustment at least forty-five (45) days prior to the effective date. The Lead State Contact must notify the Contractor their requested price or rate adjustment was approved or must be resubmitted for approval at least thirty (30) days prior to the effective date.

#### **2.5.2 Contract Extensions**

The Lead State Contract Administrator must give the Contractor written notice of its intent whether to exercise each renewal option no later than ninety (90) days before the end of the Contract's then-current term.

#### **2.5.3 Annual Review Meeting**

The Lead State Contract Administrator must coordinate a date and time that aligns with the Contractor, Contract Administrator, and Multistate Sourcing Teams schedule for the annual review meeting. The meeting must be held in Des Moines, Iowa.

#### **2.5.4 Participating Addendum Escalation Contact**

The Lead State Contract Administrator must be the escalation contact for a Participating Entity when the Contractor fails to respond to correspondence with the Participating Entity or if an issue or problem is not resolved in a timely fashion.

## SECTION 3 Pricing

### 3.1 Tires

| Tires and Tubes by Subcategory |                                           |                  |           |          |
|--------------------------------|-------------------------------------------|------------------|-----------|----------|
| Subcategory #                  | Tire and Tube Type                        | Percent Discount | MPL Name  | MP: Date |
| B1                             | Pursuit and Performance Tires             | 50%              | Gov_NASPO | 4/1/2024 |
| B2                             | Automobile/Passenger Vehicles             | 50%              | Gov_NASPO | 4/1/2024 |
| B3                             | Light Duty Trucks:                        | 50%              | Gov_NASPO | 4/1/2024 |
|                                | 3a. Radial                                | 50%              | Gov_NASPO | 4/1/2024 |
|                                | 3b. Bias                                  | 50%              | Gov_NASPO | 4/1/2024 |
| B4                             | Medium Commercial/Heavy Duty Trucks/Buses | 60%              | Gov_NASPO | 4/1/2024 |
| B5                             | Off Road                                  | 50%              | Gov_NASPO | 4/1/2024 |
|                                | 5a. Off Road Radial                       | 50%              | Gov_NASPO | 4/1/2024 |
|                                | 5b. Off Road Bias                         | 50%              | Gov_NASPO | 4/1/2024 |
| B6                             | Agriculture/Farm                          | 50%              | Gov_NASPO | 4/1/2024 |
| B7                             | Industrial Tires                          | 50%              | Gov_NASPO | 4/1/2024 |
| B8                             | Specialty Tires                           | 50%              | Gov_NASPO | 4/1/2024 |
| B9                             | EV Tires                                  | 50%              | Gov_NASPO | 4/1/2024 |
| B10                            | Retread                                   | 50%              | Gov_NASPO | 4/1/2024 |

### 3.2 Services

| NASPO ValuePoint Pricing for Services                                                                  |                                             |                   |                                  |                         |                         |                  |                 |                         |                         |                          |
|--------------------------------------------------------------------------------------------------------|---------------------------------------------|-------------------|----------------------------------|-------------------------|-------------------------|------------------|-----------------|-------------------------|-------------------------|--------------------------|
| Type of Service                                                                                        | Product Category                            | Sub-Category #1   | Product Sub-Category #5          | Product Sub-Category #6 | Product Sub-Category #9 | Product Category | Sub-Category #6 | Product Sub-Category #7 | Product Sub-Category #8 | Product Sub-Category #10 |
|                                                                                                        | Pursuit, Performance, Passenger, Automobile | Light Duty Trucks | Medium Commercial/Heavy Duty/Bus |                         | Off Road                | Agriculture/Farm | Industrial      | Specialty               | EV Tires                | Retread                  |
|                                                                                                        |                                             |                   | Single                           | Dual                    |                         |                  |                 |                         |                         |                          |
| 1. Tire installation w/purchase in store, includes dismount of used tire and tubes (per tire)          | LDQ                                         | LDQ               | LDQ                              | LDQ                     | LDQ                     | LDQ              | LDQ             | LDQ                     | LDQ                     | LDQ                      |
| 2. Change tire, dismount and mount                                                                     | LDQ                                         | LDQ               | LDQ                              | LDQ                     | LDQ                     | LDQ              | LDQ             | LDQ                     | LDQ                     | LDQ                      |
| 3. Flat Repair, remove, repair and mount                                                               | LDQ                                         | LDQ               | LDQ                              | LDQ                     | LDQ                     | LDQ              | LDQ             | LDQ                     | LDQ                     | LDQ                      |
| 4. Flat repair, off vehicle                                                                            | LDQ                                         | LDQ               | LDQ                              | LDQ                     | LDQ                     | LDQ              | LDQ             | LDQ                     | LDQ                     | LDQ                      |
| 5. Rotate mounted tires (per tire)                                                                     | LDQ                                         | LDQ               | LDQ                              | LDQ                     | LDQ                     | LDQ              | LDQ             | LDQ                     | LDQ                     | LDQ                      |
| 6. New valve stem rubber or metal (per tire)                                                           | LDQ                                         | LDQ               | LDQ                              | LDQ                     | LDQ                     | LDQ              | LDQ             | LDQ                     | LDQ                     | LDQ                      |
| 7. Wheel balance-computer spin balance (Per Tire)                                                      | LDQ                                         | LDQ               | LDQ                              | LDQ                     | LDQ                     | LDQ              | LDQ             | LDQ                     | LDQ                     | LDQ                      |
| 8. Wheel balance/valve stem combo (per tire)                                                           | LDQ                                         | LDQ               | LDQ                              | LDQ                     | LDQ                     | LDQ              | LDQ             | LDQ                     | LDQ                     | LDQ                      |
| 9. Alignment services (Minor parts shall be included in the pricing of the individual services below.) | LDQ                                         | LDQ               | LDQ                              | LDQ                     | LDQ                     | LDQ              | LDQ             | LDQ                     | LDQ                     | LDQ                      |
| 9a. Standard two wheel alignment                                                                       | LDQ                                         | LDQ               | LDQ                              | LDQ                     | LDQ                     | LDQ              | LDQ             | LDQ                     | LDQ                     | LDQ                      |
| 9b. Four wheel alignment                                                                               | LDQ                                         | LDQ               | LDQ                              | LDQ                     | LDQ                     | LDQ              | LDQ             | LDQ                     | LDQ                     | LDQ                      |
| 9c. Bushing & jam alignment                                                                            | LDQ                                         | LDQ               | LDQ                              | LDQ                     | LDQ                     | LDQ              | LDQ             | LDQ                     | LDQ                     | LDQ                      |
| 10. Studding (per tire) - To be performed on new tires only.                                           | LDQ                                         | LDQ               | LDQ                              | LDQ                     | LDQ                     | LDQ              | LDQ             | LDQ                     | LDQ                     | LDQ                      |
| 11. Sizing (per tire)                                                                                  | LDQ                                         | LDQ               | LDQ                              | LDQ                     | LDQ                     | LDQ              | LDQ             | LDQ                     | LDQ                     | LDQ                      |
| 12. Used tire recycle/disposal fee (per tire)                                                          | LDQ                                         | LDQ               | LDQ                              | LDQ                     | LDQ                     | LDQ              | LDQ             | LDQ                     | LDQ                     | LDQ                      |
| 13. Bulk tire disposal (min. of six tons capacity)                                                     | LDQ                                         | LDQ               | LDQ                              | LDQ                     | LDQ                     | LDQ              | LDQ             | LDQ                     | LDQ                     | LDQ                      |
| 14. Tire pressure monitoring kit (per Tire)                                                            | LDQ                                         | LDQ               | LDQ                              | LDQ                     | LDQ                     | LDQ              | LDQ             | LDQ                     | LDQ                     | LDQ                      |

### **3.3 Price and Rate Guarantee Period**

The percentage discounts off MPL for tires and tubes must remain the same for the duration of the Contract. The Contractor will provide an updated tire and tube price list annually with updated effective dates.

Tire and tube pricing updates are allowed annually. A request for price increase must be submitted to the Lead State Contract Administrator sixty (60) days prior to March 31 each year for approval by the Lead State. Acceptable supporting documentation could include providing a comparison of indices from the Producer Price Index which show an increase in the tire manufacturing costs over a period of several years. Acceptable supporting documentation could also include a copy of a letter from a supplier stating they are increasing their price to the Contractor. The Lead State will determine whether the supporting documentation provided is sufficient to justify the requested price increase and reserves the right to clarify or request additional documentation.

The Lead State will provide written acceptance or denial of the proposed price increases to the Contractor within 30 days of receipt of the request for price adjustment.

## **SECTION 4 CONTACTS**

- 4.1 Michelin**  
Kelly Adams  
864.630.3979  
[kelly.adams@michelin.com](mailto:kelly.adams@michelin.com)
  
- 4.2 State of Iowa – DAS/Procurement Contact**  
Karl Wendt  
515.281.7073  
[karl.wendt@iowa.gov](mailto:karl.wendt@iowa.gov)
  
- 4.3 NASPO-Valuepoint**  
Josh Descoteaux  
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