

PARTICIPATING ADDENDUM
for
TIRES, TUBES AND SERVICE (State of Iowa #24155)
Between
The State of Delaware and Michelin North America, Inc.
Contract: NASPO ValuePoint # 24155

Vendor Name: Michelin North America, Inc.

Delaware Contract Number: GSS24004-TIRES
Tires, Tubes and Service

1. SCOPE

- a. This Participating Addendum is made between the State of Delaware, Office of Management and Budget, Government Support Services and Michelin North American, Inc. (Contractor), to establish tires, tubes, and related service.
- b. Under Delaware Code, Title 29 §6933 and §6987, The State of Delaware is authorized to participate in, sponsor, conduct or administer a cooperative purchasing agreement for the procurement of materiel or nonprofessional services, or professional services with 1 or more public procurement units either within the State or within another state in accordance with an agreement entered into between the participants.
- c. The requirements herein are in addition to those in the executed NASPO ValuePoint contract and shall continue through June 30, 2027. At the sole discretion of Government Support Services, this Participating Addendum may further be extended to include any extensions as agreed to, by and between NASPO ValuePoint and Michelin North America, Inc.
- d. RESERVED.

2. CHANGES

a. MANDATORY INSURANCE REQUIREMENTS (29 Del. C. § 6929)

Contractor must obtain at its own cost and expense and keep in force and effect during the term of this Participating Addendum, including all extensions, the minimum coverage limits specified below with a carrier satisfactory to the State. Contractor must carry the following coverage depending on the type of service or product being delivered.

- a. Worker's Compensation and Employer's Liability Insurance in accordance with applicable law.
- b. Commercial General Liability - \$1,000,000 per occurrence/\$3,000,000 per aggregate.
- c. Automotive Liability Insurance covering all automotive units used in the work (including all units leased from and/or provided by the State to Contractor pursuant to this Participating Addendum as well as all units used by Contractor, regardless of the identity of the registered owner, used by Contractor for completing the Work required by this Participating Addendum to include but not limited to transporting Delaware clients or staff), providing coverage on a primary non-contributory basis with limits of not less than:

1. \$1,000,000 combined single limit each accident, for bodily injury;

2. \$250,000 for property damage to others;
3. \$25,000 per person per accident Uninsured/Underinsured Motorists coverage;
4. \$25,000 per person, \$300,000 per accident Personal Injury Protection (PIP) benefits as provided for in 21 *Del. C.* § 2118; and
5. Comprehensive coverage for all leased vehicles, which shall cover the replacement cost of the vehicle in the event of collision, damage or other loss.

The Contractor must carry at least one of the following depending on the scope of work being performed.

- a. Medical/Professional Liability - \$1,000,000 per occurrence/\$3,000,000 per aggregate
- b. Miscellaneous Errors and Omissions - \$1,000,000 per occurrence/\$3,000,000 per aggregate
- c. Product Liability - \$1,000,000 per occurrence/\$3,000,000 aggregate

Should any of the above described policies be cancelled before expiration date thereof, notice will be delivered in accordance with the policy provisions.

Before any work is done pursuant to this Participating Addendum, the Certificate of Insurance and/or copies of the insurance policies, referencing the contract number stated herein, shall be filed with the State. The certificate holder is as follows:

State of Delaware
Government Support Services
Contract No: GSS24004-TIRES
600A S. Bay Road
Dover, DE 19901-4604

Nothing contained herein shall restrict or limit the Contractor's right to procure insurance coverage in amounts higher than those required by this Participating Addendum. To the extent that the Contractor procures insurance coverage in amounts higher than the amounts required by this Participating Addendum, all said additionally procured coverages will be applicable to any loss or claim and shall replace the insurance obligations contained herein.

To the extent that Contractor has complied with the terms of this Participating Addendum and has procured insurance coverage for all vehicles Leased and/or operated by Contractor as part of this Participating Addendum, the State of Delaware's self-insured insurance program shall not provide any coverage whether coverage is sought as primary, co-primary, excess or umbrella insurer or coverage for any loss of any nature.

In no event shall the State of Delaware be named as an additional insured on any policy required under this Participating Addendum.

Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

b. ELECTRONIC CATALOG

At the discretion of Government Support Services, the Contractor may be required to submit its items list in an electronic format designated by the State.

By example, but not limited to, the following items may be required:

- Electronic catalogs,
- Electronic catalogs converted to a CSV format with Master Contract specific pricing,
- Items designated by commodity/classification code: United Nations Standard Products and Services Code (UNSPSC), and/or
- A unique item ID for all items in your system and/or our award.

c. SEVERABILITY

If any term or provision of this Participating Addendum is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Participating Addendum, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.

d. PERMITS AND LICENSES

All necessary permits, licenses, insurance policies, etc. required by local, State or Federal laws, shall be provided by the Contractor at its own expense.

e. PATENTED DEVICES, MATERIAL AND PROCESSES

1. If applicable the Contractor shall provide for the use of any patented design, device, material, or process to be used or furnished under this Participating Addendum by suitable legal agreement with the patentee or owner and if requested, shall provide representation that they have properly contracted with others.
2. The Contractor and the surety shall hold and save harmless the State of Delaware, the Agency, the Director, their Officers or Agents from any and all claims because of the use of such patented design, device, material, or process in connection with the work agreed to be performed under this Participating Addendum.

f. STATE OF DELAWARE BUSINESS LICENSE

Prior to commence performance under this agreement, the Contractor shall either furnish Government Support Services with proof of State of Delaware Business Licensure or initiate the process of application, where required. An application may be requested in writing to: Division of Revenue, Carvel State Building, P. O. Box 8750, 820 N. French Street, Wilmington, DE 19899 or by telephone: 302-577-8778.
<http://revenue.delaware.gov/services/BusServices.shtml>

Information regarding the State of Delaware's decision to enter into this participating addendum will be given to the Division of Revenue. Failure to comply with the State of Delaware licensing requirements may subject your organization to applicable fines and/or interest penalties.

g. EMERGENCY TERMINATION OF PARTICIPATING ADDENDUM

1. Due to restrictions which may be established by the United States Government on material, or work, this Participating Addendum may be terminated by the cancellation of all or portions of this Participating Addendum.
2. In the event the Contractor is unable to obtain the material required to complete the items of work included in this Participating Addendum or related Purchase Order(s) because of restrictions established by the United States Government and if, in the opinion of the Agency, it is impractical to substitute other available material, or the work cannot be completed within a reasonable time, the incomplete portions of the work may be cancelled, or this Participating Addendum and/or related Purchase Order(s) may be terminated.

h. INDEMNIFICATION

1. General Indemnification

The Contractor will indemnify and otherwise hold harmless the State of Delaware, its agents and employees from any and all liability, suits, actions, or claims, together with all costs, expenses for attorney's fees, arising out of the Contractor's, its agents, and employees' performance work or services in connection with this Participating Addendum.

2. Proprietary Rights Indemnification

Contractor shall warrant that all elements of its solution, including all equipment, software, documentation, services and deliverables, do not and will not infringe upon or violate any patent, copyright, trade secret or other proprietary rights of any third party. In the event of any claim, suit or action by any third party against the State of Delaware, the State of Delaware shall promptly notify the Contractor in writing, and Contractor shall defend such claim, suit or action at Contractor's expense, and Contractor shall indemnify the State of Delaware against any loss, cost, damage, expense or liability arising out of such claim, suit or action (including, without limitation, litigation costs, lost employee time, and counsel fees) whether or not such claim, suit or action is successful.

If any equipment, software, services (including methods) products or other intellectual property used or furnished by the Contractor (collectively "Products") is or in Contractor's reasonable judgment is likely to be, held to constitute an infringing product, Contractor shall at its expense and option either:

- a. Procure the right for the State of Delaware to continue using the Product(s); Replace the product with a non-infringing equivalent that satisfies all the requirements of this Participating Addendum; or
- b. Modify the Product(s) to make it or them non-infringing, provided that the modification does not materially alter the functionality or efficacy of the product or cause the Product(s) or any part of the work to fail to conform to the requirements of this Participating Addendum, or only alters the Product(s) to a degree that the State of Delaware agrees to and accepts in writing.

i. NON-PERFORMANCE

In the event the Contractor does not fulfill its obligations under the terms and conditions of this Participating Addendum, in addition to proceeding with termination of this Participating Addendum, the ordering agency may the expiration of the, which is the Contractor of its failure to perform, purchase equivalent product on the open market. Any difference in cost between the contract prices herein and the price of open market product shall be the responsibility of the Contractor. Under no circumstances shall monies be due the Contractor

in the event open market products can be obtained below contract price. Any monies charged to the Contractor may be deducted from an open invoice.

j. OPPORTUNITY BUYS

The Director for the State of Delaware, Office of Management and Budget, Government Support Section can waive use of a central contract pursuant to 29 *Del. C.* § 6911(e). A process has been developed to permit any contractor the opportunity to submit an Opportunity Buy offer to the State for goods and/or services for consideration despite the existence of a central contract. See [Opportunity Buy Flowchart](#).

The Director will afford any contractor on an existing central contract an opportunity to match or to beat the Opportunity Buy offer made by a non-contracted contractor prior to a waiver being granted.

k. I FOUND IT CHEAPER

Director for the State of Delaware, Office of Management and Budget, Government Support Section can waive use of a central contract pursuant to 29 *Del. C.* § 6911(e). A process has been developed to permit any State employee or contractor to identify a lower price for material and or services for consideration despite the existence of a central contract. See [I Found It Cheaper Flowchart](#).

The Director will afford any contractor on an existing central contact an opportunity to match or to beat the I Found It Cheaper suggestion and if not matched or beaten, approve the purchase via a waiver.

l. REQUIRED REPORTS

One of the primary goals in administering this Participating Addendum is to keep accurate records regarding its actual value/usage. This information is essential in order to update the contents of this Participating Addendum and to establish proper bonding levels, if they are required. The integrity of future contracts revolves around our ability to convey accurate and realistic information to all interested parties.

A complete and accurate Usage Report (Attachment A) shall be furnished in an Excel format and submitted electronically, no later than the 15th (or next business day after the 15th day) of each month, detailing the purchasing of all items and/or services on this Participating Addendum. The reports shall be completed in Excel format, using the template provided, and submitted as an attachment to vendorusage@delaware.gov, with a copy going to the contract officer identified as your point of contact. Submitted reports shall cover the full month (Report due by January 15th will cover the period of December 1 – 31.), contain accurate descriptions of the products, goods or services procured, purchasing agency information, quantities procured, and prices paid. Reports are required monthly, including those with “no spend”. Any exception to this mandatory requirement or failure to submit complete reports, or in the format required, may result in corrective action, up to and including the possible cancellation of this Participating Addendum. Failure to provide the report with the minimum required information may also negate any extension clauses of this Participating Addendum. Additionally, if the Contractor is determined to be in default of this mandatory report requirement may have such conduct considered against them, in assessment of responsibility, in the evaluation of future proposals.

In accordance with [Executive Order 49](#), the State of Delaware is committed to supporting its diverse business industry and population. The Contractor will be required to accurately

report on the participation by Diversity Suppliers which includes minority (MBE), woman (WBE), veteran owned business (VOBE), or service-disabled veteran owned business (SDVOBE) under this Participating Addendum. The reported data elements shall include but not be limited to; name of state contract/project, the name of the Diversity Supplier, Diversity Supplier contact information (phone, email), type of product or service provided by the Diversity Supplier and any minority, women, veteran, or service-disabled veteran certifications for the subcontractor (State OSD certification, Minority Supplier Development Council, Women's Business Enterprise Council, VetBiz.gov). The format used for Subcontracting 2nd Tier reporting is shown as Attachment B.

Accurate 2nd Tier reports shall be submitted to the contracting Agency's Office of Supplier Diversity at vendorusage@delaware.gov or the 15th (or next business day) of the month following each quarterly period. For consistency quarters shall be considered to end the last day of March, June, September and December of each calendar year. Contract spend during the covered periods shall result in a report even if this Participating Addendum has expired by the report due date.

m. DELAWARE ECONOMIC IMPACT

Contractor shall provide an annual report of the economic impact of their operations in Delaware. This report shall be submitted by February 15th of each calendar year and shall report on the immediately prior one full calendar year of operations.

The following basic information is required under this Participating Addendum:

- # of Delaware Locations
- # of Delaware Employees
- Annual Taxes, licenses & Fees Paid to Delaware
 - This may be payroll, franchise, service taxes, etc.
- Major Delaware Investments/ Partnerships
 - Amount paid to Major partners or Suppliers in Delaware
 - Highlight of Delaware MWBE, Veteran, Small Business (SBA criteria) and Disabled Veteran partnerships/ supply chain
 - Rent to Delaware Locations or value of Delaware real property
 - Utility Expenses paid to Delaware utilities

The report shall be submitted to contracting@delaware.gov.

n. INDEPENDENT CONTRACTORS

The Contractor is an independent contractor to one another, and nothing herein shall be deemed to cause this Participating Addendum to create an agency, partnership, joint venture or employment relationship between parties. Each party shall be responsible for compliance with all applicable workers compensation, unemployment, disability insurance, social security withholding and all other similar matters. Neither party shall be liable for any debts, accounts, obligations or other liability whatsoever of the other party or any other obligation of the other party to pay on the behalf of its employees or to withhold from any compensation paid to such employees any social benefits, workers compensation insurance premiums or any income or other similar taxes.

o. TEMPORARY PERSONNEL ARE NOT STATE EMPLOYEES UNLESS AND UNTIL THEY ARE DIRECTLY HIRED

Contractor agrees that any individual or group of temporary staff person(s) provided to the State of Delaware pursuant to this Solicitation shall remain the employee(s) of Contractor for all purposes including any required compliance with the Affordable Care Act by the Contractor. Contractor agrees that it shall not allege, argue, or take any position that individual temporary staff person(s) provided to the State pursuant to this Solicitation must be provided any benefits, including any healthcare benefits by the State of Delaware and Contractor agrees to assume the total and complete responsibility for the provision of any healthcare benefits required by the Affordable Care Act to aforesaid individual temporary staff person(s). In the event that the Internal Revenue Service, or any other third-party governmental entity determines that the State of Delaware is a dual employer or the sole employer of any individual temporary staff person(s) provided to the State of Delaware pursuant to this Solicitation, Contractor agrees to hold harmless, indemnify, and defend the State to the maximum extent of any liability to the State arising out of such determinations.

Notwithstanding the content of the preceding paragraph, should the State of Delaware subsequently directly hire any individual temporary staff employee(s) provided pursuant to this Solicitation, the aforementioned obligations to hold harmless, indemnify, and defend the State of Delaware shall cease and terminate for the period following the date of hire. Nothing herein shall be deemed to terminate the Contractor's obligation to hold harmless, indemnify, and defend the State of Delaware for any liability that arises out of compliance with the ACA prior to the date of hire by the State of Delaware. Contractor will waive any separation fee provided an employee works for both the Contractor and hiring agency, continuously, for a three (3) month period and is provided thirty (30) days written notice of intent to hire from the agency. Notice can be issued at second month if it is the State's intention to hire.

p. WORK PERFORMED IN A STATE BUILDING

Awarded Vendor(s) who have any employees carrying out any work related to the awarded contract at a State facility shall have those employees comply with any health mandate or policy issued by the State related to a pandemic or other State of Emergency issued by any State authority during the term of the awarded contract, including those that apply directly to State employees.

q. FAIR BACKGROUND CHECK PRACTICES

Pursuant to 29 *Del. C.* [§ 6909B](#), the State does not consider the criminal record, criminal history, credit history or credit score of an applicant for state employment during the initial application process unless otherwise required by state and/or federal law. Contractors doing business with the State are encouraged to adopt fair background check practices. Contractors can refer to 19 *Del. C.* [§ 711\(g\)](#) for applicable established provisions.

r. CONTRACTOR BACKGROUND CHECK REQUIREMENTS

If Contractor has access state property or will come in contact with vulnerable populations, including children and youth, it shall complete background checks on employees serving the State's on premises contracts. Unless otherwise directed, at a minimum, this shall include a check of the following registry:

- Delaware Sex Offender Central Registry at: <https://sexoffender.dsp.delaware.gov/>

Individuals that are listed in the registry shall be prevented from direct contact in the service of this Participating Addendum but may provide support or off-site premises service for contract contractors. Should an individual be identified, and the Contractor believes its employee's service does not represent a conflict with this requirement, may apply for a waiver to the primary

agency listed in the solicitation. The Agency's decision to allow or deny access to any individual identified on a registry database is final and at the Agency's sole discretion.

By Agency request, the Contractor shall provide a list of all employees serving this Participating Addendum and certify adherence to the background check requirement. Individual(s) found in the central registry in violation of the terms stated, shall be immediately prevented from a return to state property in service of this Participating Addendum. A violation of this condition represents a violation of the terms and conditions of this Participating Addendum, and may subject the Contractor to penalty, including cancellation for cause of this Participating Addendum.

Individual Purchase Orders may require additional background checks and/or security clearance(s), depending on the nature of the services to be provided or locations accessed, but any other requirements shall be stated in the contract scope of work or be a matter of common law. The Contractor shall be responsible for the background check requirements of any authorized Subcontractor providing service to an agency pursuant to this Participating Addendum.

s. SERVICING SUBCONTRACTORS

1. Contractor may use State-approved Subcontractors or Dealer under this Participating Addendum for sales and service functions as defined herein.
2. Contractor shall be responsible for successful performance and compliance with all requirements in accordance with the terms and conditions under this Participating Addendum even if work is performed by Servicing Subcontractors.
3. Contractor will be the sole point of contact with regard to Participating Addendum contractual matters, reporting and administrative requirements.
4. For the purposes of this Participating Addendum, Approved Dealer Subcontractors are classified as follows:
 - a. "Approved Reseller"
 - i. Approved Resellers may provide quotes, accept purchase orders, fulfill purchase orders, perform maintenance/warranty services and accept payment from ordering agencies for products and associated services offered under this Participating Addendum.
 - ii. Approved Resellers are responsible for sending a copy of all purchase orders and invoices to the Contractor for compliance with quarterly usage reporting and administrative requirements.
 - iii. All purchase documents to Approved Resellers shall reference this Participating Addendum Number and Michelin North America, Inc. as the Contractor Approved Dealer
 - b. "Agent"
 - i. Agents are only authorized to provide quotes, sales assistance, configuration guidance and ordering support for products and associated services offered under this Participating Addendum.
 - ii. Agents are not authorized to accept orders or payments.
5. Subject to the approval of the State, Servicing Subcontractors may be added or deleted during this Participating Addendum term.
6. Proposed Servicing Subcontractors, as well as the Contractor, must complete the registration process at <http://esupplier.erp.delaware.gov>.

7. State-approved Servicing Subcontractors will be posted on the [State's Contracting website](#).

t. ORDERING PROCEDURE

Contractor is required to have either a local telephone number within the (302) area code, a toll free (800) number, or agree to accept collect calls. Depending on the nature and scope of the event, each State agency or other governmental entity shall be responsible for contacting the Contractor directly for all required resources. All consumables delivered by the Contractor and received by a State agency or other governmental entity, become the property of that State agency or entity. Orders may be accomplished by written purchase order, telephone, fax or computer on-line systems. All Purchase Orders **must** include the State's contract number.

u. BILLING

The Contractor is required to "Bill as Shipped" to the respective ordering agency(s). Ordering agencies shall provide contract number, ship to and bill to address, contact name and phone number. Per *Del. C. § 6516 (d) (4)*, the Contractor shall not charge a late fee that exceeds more than one percent (1%) per month, not to exceed twelve percent (12%) per annum.

Agencies will make every effort to achieve available discount opportunities under this Participating Addendum. Contractors shall be required to report semi-annually opportunities to enhance the discounts achieved.

v. METHOD OF PAYMENT

1. For each P.O. issued as part of this Participating Addendum, the State will pay Contractor monthly, within thirty (30) days of receipt of the Contractor's billing, the amount which is legitimately earned by the Contractor, and supported by payroll data and an itemized accounting of reasonable reimbursable direct non-salary costs. A current progress report of the work shall accompany each billing.

Final settlement for total payment to the Contractor will be made within thirty (30) days from the date of final written State acceptance of the work and services as agreed to in the P.O.

2. No premium time for overtime will be paid without prior written State authorization. Indirect overhead cost shall not be applied to the premium portion of the overtime.
3. The agencies or school districts using this Participating Addendum will authorize and process for payment each invoice within thirty (30) days after the date of receipt of a correct invoice. The State of Delaware intends to maximize the use of the P-Card for payment for goods and services provided under this Participating Addendum. Contractors shall not charge additional fees for acceptance of this payment method and shall incorporate any costs into their proposals. Additionally, there shall be no minimum or maximum limits on any P-Card transaction under this Participating Addendum. While it is the State's intention to utilize the P-card payment method the State reserves, at its discretion, the right to pay by ACH/ ACl or check. Should the Contractor wish to provide a financial incentive to not process payment by P-Card, they are to prepare a proposal to clearly outline any incentives for alternative payment methods the Contractor is willing to accept.

w. FORMAL CONTRACT AND/OR PURCHASE ORDER

No employee of the Contractor is to begin any work prior to receipt of a State of Delaware Purchase Order signed by authorized representatives of the agency requesting service, properly processed through the State of Delaware Accounting Office. A purchase order, email, telephone, fax or State of Delaware's credit card shall serve as the authorization to proceed with work in accordance with the work specifications and the special instructions, once it is received by the Contractor.

x. MINIMUM WAGE RATES

Work performed under this solicitation may fall under the [State of Delaware Minimum Wage Rates](#) or the Delaware Prevailing Wage rates. Prior to issuing a purchase order, the ordering agencies must obtain from the Department of Labor a determination if prevailing wage applies to the project and, if appropriate, what the applicable prevailing wage rates would be for the work to be performed. No work shall proceed without a determination by the Department of Labor. Request for prevailing wage certification can be found at: <http://dia.delawareworks.com/labor-law/prevailing-wage.php>

y. PREVAILING WAGE

The prevailing wage law, 29 Del. C. [§6960](#), is enforced by the Department of Labor and states that the specifications for every contract or aggregate of contracts relating to a public works project in excess of \$100,000 for new construction (including painting and decorating) or \$15,000 for alteration, repair, renovation, rehabilitation, demolition or reconstruction (including painting and decorating of building or works) to which this State or any subdivision thereof is a party and for which the State appropriated any part of the funds and which requires or involves the employment of mechanics and/or laborers shall contain a provision stating the minimum wages to be paid various classes of laborers and mechanics which shall be based upon the wages that will be determined by the Delaware Department of Labor, Division of Industrial Affairs, to be prevailing in the county in which the work is to be performed. [Prevailing Wage Determination](#)

z. DISPUTE RESOLUTION

At the option of the parties, they shall attempt in good faith to resolve any dispute arising out of or relating to this Participating Addendum promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this Participating Addendum. All offers, promises, conduct and statements, whether oral or written, made in the course of the negotiation by any of the parties, their agents, employees, experts and attorneys are confidential, privileged and inadmissible for any purpose, including impeachment, in arbitration or other proceeding involving the parties, provided evidence that is otherwise admissible or discoverable shall not be rendered inadmissible.

If the matter is not resolved by negotiation, as outlined above, or, alternatively, the parties elect to proceed directly to mediation, then the matter will proceed to mediation as set forth below. Any disputes, claims or controversies arising out of or relating to this Agreement shall be submitted to a mediator selected by the parties. If the matter is not resolved through mediation, it may be submitted for arbitration or litigation. The Agency reserves the right to proceed directly to arbitration or litigation without negotiation or mediation. Any such proceedings held pursuant to this provision shall be governed by State of Delaware law, and jurisdiction and venue shall be in the State of Delaware. Each party shall bear its own costs of mediation, arbitration, or litigation, including attorneys' fees.

aa. REMEDIES

Except as otherwise provided in this solicitation, including but not limited to Section bb above, all claims, counterclaims, disputes, and other matters in question between the State of Delaware and the Contractor arising out of, or relating to, this solicitation, or a breach of it may be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State of Delaware.

bb. TERMINATION OF INDIVIDUAL ORDERS OR PURCHASE ORDERS

As a central contract, this Participating Addendum shall include individual orders from state agencies and other entities authorized by law to procure from this Participating Addendum. The individual orders may be terminated as follows:

1. Termination for Cause

If, for any reasons, or through any cause, the Contractor fails to fulfill in timely and proper manner his obligations, or if the Contractor violates any of the covenants, agreements, or stipulations of this Participating Addendum, the Agency shall have the right to terminate the P.O. by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the Contractor in the performance of the P.O. shall, at the option of the Agency, become its property, and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials which is usable to the Agency.

2. Termination for Convenience

The Agency may terminate the P.O. at any time by giving written notice of such termination and specifying the effective date thereof, at least sixty (60) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, models, photographs, reports, supplies, and other materials shall, at the option of the department, become its property and the Contractor shall be entitled to receive compensation for any satisfactory work completed on such documents and other materials which are usable to the Agency.

3. Termination for Non-appropriation

In the event the General Assembly fails to appropriate the specific funds necessary to enter into or continue the Purchase Order, in whole or part, the Purchase Order shall be terminated as to any obligation of the State requiring the expenditure of money for which no specific appropriation is available at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds. This is not a termination for convenience and will not be converted to such.

cc. TERMINATION OF PARTICIPATING ADDENDUM

As a central contract, this Participating Addendum may be terminated as follows by Government Support Services.

1. Termination for Cause

If, for any reasons, or through any cause, the Contractor fails to fulfill in timely and proper manner its obligations under this Participating Addendum, or if the Contractor violates any of the covenants, agreements, or stipulations of this Participating Addendum, the State shall thereupon have the right to terminate this Participating Addendum by giving written notice to the Contractor of such termination and specifying the effective date thereof, at

least thirty (30) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the Contractor under this Participating Addendum shall, at the option of the State, become its property, and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials which is usable to the State.

On receipt of this Participating Addendum cancellation notice from the State, the Contractor shall have not less than five (5) days to provide a written response and may identify a method(s) to resolve the violation(s). The Contractor's response shall not affect or prevent this Participating Addendum cancellation unless the State provides a written acceptance of the Contractor's response. If the State does accept the Contractor's method and/or action plan to correct the identified deficiencies, the State will define the time by which the Contractor must fulfill its corrective obligations. Final retraction of the State's termination for cause will only occur after the Contractor successfully rectifies the original violation(s). At its discretion the State may reject in writing the Contractor's proposed action plan and proceed with the original Participating Addendum cancellation timeline.

2. Termination for Convenience

The State may terminate this Participating Addendum at any time by giving written notice of such termination and specifying the effective date thereof, at least sixty (60) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, models, photographs, reports, supplies, and other materials shall, at the option of the State, become its property and the Contractor shall be entitled to receive compensation for any satisfactory work completed on such documents and other materials, and which is usable to the State.

3. Termination for Non-Appropriations

In the event the General Assembly fails to appropriate the specific funds necessary to enter into or continue this Participating Addendum, in whole or part, this Participating Addendum shall be terminated as to any obligation of the State requiring the expenditure of money for which no specific appropriation is available at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds. This is not a termination for convenience and will not be converted to such.

dd. PUBLICATION, REPRODUCTION AND USE OF MATERIAL

No material produced in whole or part under this Participating Addendum shall be subject to copyright in the United States or in any other country. The State shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data, or other materials prepared under this Participating Addendum; provided, however, that the State agrees not to use any design or engineering plans prepared by the Contractor for anything other than their intended purpose under this Participating Addendum. Notwithstanding the foregoing, the parties hereto agree that the design, engineering and other intellectual property associated with the products and services provided hereunder are the sole and exclusive property of Contractor and are not subject to disclosure or use by the State for any purposes. The Contractor shall have the right to publish any and all scientific findings. Appropriate acknowledgment and credit for the State's support shall be given in the publication.

ee. RIGHTS AND OBLIGATIONS

The rights and obligations of each party to this Participating Addendum shall not be effective, and no party shall be bound by the term of this Participating Addendum, unless and until a valid executed purchase order has been approved by the State of Delaware Secretary of Finance, and all reasonable procedures of the State of Delaware Department of Finance have been complied with. A separate purchase order shall be issued for every project or order.

ff. ASSIGNMENT OF ANTITRUST CLAIMS

The Contractor hereby grants, conveys, sells, assigns, and transfers to the State of Delaware all of its right, title and interest in and to all known or unknown causes of action it presently has or may now or hereafter acquire under the antitrust laws of the United States and the State of Delaware, regarding the specific goods or services purchased or acquired for the State pursuant to this Participating Addendum. Upon either the State's or the Contractor notice of the filing of or reasonable likelihood of filing of an action under the antitrust laws of the United States or the State of Delaware, the State and Contractor shall meet and confer about coordination of representation in such action.

gg. AUDIT ACCESS TO RECORDS

The Contractor shall maintain books, records, documents, and other evidence pertaining to this Participating Addendum to the extent and in such detail as shall adequately reflect performance hereunder. The Contractor agrees to preserve and make available to the State, upon request, such records for a period of five (5) years from the date services were rendered by the Contractor. Records involving matters in litigation shall be retained for one (1) year following the termination of such litigation. The Contractor agrees to make such records available for inspection, audit, or reproduction to any official State representative in the performance of their duties under this Participating Addendum. Upon notice given to the Contractor, representatives of the State or other duly authorized State or Federal agency may inspect, monitor, and/or evaluate the cost and billing records or other material relative to this Participating Addendum. The cost of any audit disallowances resulting from the examination of the Contractor's financial records will be borne by the Contractor. Reimbursement to the State for disallowances shall be drawn from the Contractor's own resources and not charged to this Participating Addendum or Purchase Order cost or cost pools indirectly charging costs.

hh. IRS 1075 Publication (If Applicable)

1. Performance

In performance of this Participating Addendum, the Contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:

All work will be performed under the supervision of the Contractor or the Contractor's responsible employees.

The Contractor and the Contractor's employees with access to or who use FTI must meet the background check requirements defined in IRS Publication 1075.

Any Federal tax returns or Federal tax return information (hereafter referred to as returns or return information) made available shall be used only for the purpose of carrying out the provisions of this Participating Addendum. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this Participating Addendum. Inspection by or disclosure to anyone other than an officer or employee of the Contractor is prohibited.

All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output and products will be given the same level of protection as required for the source material.

No work involving returns and return information furnished under this Participating Addendum will be subcontracted without prior written approval of the IRS.

The Contractor will maintain a list of employees authorized access. Such list will be provided to the Agency and, upon request, to the IRS reviewing office.

The Agency will have the right to void this Participating Addendum if the Contractor fails to provide the safeguards described above.

The contractor shall comply with agency incident response policies and procedures for reporting unauthorized disclosures of agency data.

- Certification that contractor personnel accessing FTI and contractor information systems containing FTI are all located within the United States or territories, given that FTI is not allowed offshore. See Exhibit 6 (pub. 1075).
- Requires external providers to notify designated agency personnel within three business days of any personnel transfers or terminations of external personnel who possess organizational credentials and/or badges or who have system privileges. See PS-7 External Personnel Security (SSR).

2. Criminal/Civil Sanctions

Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as five years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized future disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized

disclosure. These penalties are prescribed by IRCs 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.

Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Participating Addendum. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this Participating Addendum. Inspection by or disclosure to anyone without an official need-to-know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000.00 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee [United States for Federal employees] in an amount equal to the sum of the greater of \$1,000.00 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. The penalties are prescribed by IRCs 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.

Additionally, it is incumbent upon the Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of Contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

Granting Contractor access to FTI must be preceded by certifying that each individual understands the agency's security policy and procedures for safeguarding IRS information. Contractor must maintain its authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the agency's files for review. As part of the certification and at least annually afterwards, Contractor must be advised of the provisions of IRCs 7431, 7213, and 7213A (see Exhibit 4, Sanctions for Unauthorized Disclosure, and Exhibit 5, Civil Damages for Unauthorized Disclosure). The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10) For both the initial certification and the annual certification, the Contractor must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

3. Inspection

The IRS and the Agency, with 24-hour notice, shall have the right to send its inspectors into the offices and plants of the contractor to inspect facilities and operations performing any work with FTI under this Participating Addendum for compliance with requirements defined in IRS Publication 1075. The IRS' right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process or transmit FTI. On the basis of such inspection, corrective actions may be required in cases where the Contractor is found to be noncompliant with contract safeguards.

ii. SUBCONTRACTS

.Subcontracting is permitted under this Participating Addendum. However, every subcontractor, authorized representative or reseller shall be identified (Attachment C) and agreed to in writing by the State or as are specifically authorized in writing by the Agency during the performance of this Participating Addendum. Any substitutions in or additions to such subcontractors, associates, or consultants will be subject to the prior written approval of the State.

The Contractor shall be responsible for compliance by the subcontractor or reseller with all terms, conditions and requirements of the Master Agreement and this Participating Addendum and with all local, State and Federal Laws. The Contractor shall be liable for any noncompliance by any subcontractor or reseller. Further, nothing contained herein or in any subcontractor agreement shall be construed as creating any contractual relationship between the subcontractor and the State.

jj. CONTRACTOR EMERGENCY RESPONSE POINT OF CONTACT

The Contractor shall provide the name(s), telephone, or cell phone number(s) of those individuals who can be contacted twenty-four (24) hours a day, seven (7) days a week where there is a critical need for commodities or services when the Governor of the State of Delaware declares a state of emergency under the Delaware Emergency Operations Plan or in the event of a local emergency or disaster where a state governmental entity requires the services of the Contractor.

In the event of a serious emergency, pandemic, or disaster outside the control of the State, the State may negotiate, as may be authorized by law, emergency performance from the Contractor to address the immediate needs of the State, even if not contemplated under the original Participating Addendum. Payments are subject to appropriation and other payment terms.

kk. POTENTIAL CONTRACT OVERLAP

Contractors shall be advised that the State, at its sole discretion, shall retain the right to solicit for goods and/or services as required by its agencies and as it serves the best interest of the State. As needs are identified, there may exist instances where contract deliverables, and/or goods or services to be solicited and subsequently awarded that overlap this Participating Addendum.

II. SUPPLEMENTAL SOLICITATION

The State reserves the right to advertise a supplemental solicitation during the term of this Participating Addendum if deemed in the best interest of the State.

mm. RESERVED

nn. RESERVED

oo. TAX EXEMPTION

- a. In accordance with the Internal Revenue Service regulations, the State of Delaware is generally exempt from federal excise tax for communications, certain fuels, sales by manufacturers and the tax on heavy trucks, trailers, and tractors. More detail is included in IRS Publication 510 Excise Taxes located at <https://www.irs.gov/publications/p510>. Per IRS regulations, all exemption certificates must be specific to the vendor and the type of excise tax. If an exemption certificate is requested by a vendor, the Division of Accounting will work with the agency and vendor to complete the appropriate certificate. Such taxes shall not be included in prices quoted.
- b. Any material which is to be incorporated in the work or any equipment required for the work contemplated in the proposal may be consigned to the Agency. If the shipping papers show clearly that any such material is so consigned, the shipment will be exempt from the tax on the transportation of property under provisions of Section 3475 (b) of the Internal Revenue Code, as amended by Public Law 180 (78th Congress). All transportation charges shall be paid by the Contractor.

pp. RESERVED

qq. DOCUMENT EXECUTION

The State of Delaware requires a new vendor to complete the registration process through the Delaware Supplier Portal at <http://esupplier.erp.delaware.gov>. Successful completion of this registration enables the creation of a State of Delaware supplier record. The Taxpayer ID (SSN or EIN) and Applicant (supplier) name are submitted to the Internal Revenue Service for "matching"/ If the Taxpayer ID and name do not match, the vendor record cannot be approved.

It is the applicant's responsibility to select the appropriate 1099 Withholding Type and Class. If incorporated, a business is not subject to 1099 reporting unless the business is providing legal or medical services.

Any questions about completing this registration or specific comments about the registration, please contact supplier maintenance by phone at 302-672-5000.

rr. APPLICABLE LAW AND JURISDICTION

This contract, and any and all litigation or other disputes arising therefrom, in connection with, or related hereto shall be governed by the applicable laws, regulations and rules of evidence of the State of Delaware. Contractor submits to personal jurisdiction in the State of Delaware. Any and all litigation or other disputes arising out of, in connection with, or relating to this contract, shall be brought exclusively in a court in the State of Delaware or the United States District Court of the District of Delaware as applicable.

3. PRIMARY CONTACTS

The primary government contact individuals for this Addendum are as follows (or their named successors):

Lead State

Contact: Craig Trotter

Address: _____

Phone: 515-322-8593
Fax: _____
Email: Craig.trotter@iowa.gov

Contractor

Contact: Kelly Adams
Address: _____
Phone: 515-322-8593
Fax: _____
Email: Kelly.Adams@michelin.com

Participating State - Delaware, Government Support Services

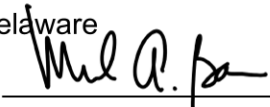
Contact: Takishia Kiah
Address: 600A S. Bay Road, Dover, DE 19901-4604
Phone: 302-857-4551
Fax: 302-739-3779
Email: Takishia.kiah@delaware.gov

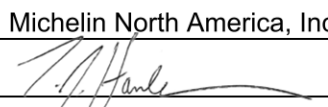
4. CONTRACT NUMBER

The contract number for the State of Delaware is: GSS24004-TIRES.

This Participating Addendum and the Master Price Agreement, Number 24155, (administered by the State of Iowa) together with its exhibits, set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Addendum and the Master Contract, together with its exhibits, shall not be added to or incorporated into this Addendum or the Master Contract and its exhibits, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Addendum and the Master Contract and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms.

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

State of Delaware
By: 
Name: Michael Bacu
Title: Deputy Director, GSS
Date: 08/07/2024

Contractor: Michelin North America, Inc.
By: 
Name: Todd Hanlon
Title: Director, Government & Defense
Date: August 6, 2024