

## PARTICIPATING ADDENDUM

[Hereinafter "Addendum"]

### WESTERN STATES CONTRACTING ALLIANCE

Tires, Tubes and Services

Utah Contract # MA211

Between

**MICHELIN NORTH AMERICA, INC.**

[hereinafter "Contractor"] and

the **State of Florida**

[hereinafter "Participating State"]

**Participating State Contract Number: 25172500-1-WSCA-15-ACS**

- A. **Scope:** This Addendum will allow the above Participating State to purchase from the WSCA Contract #MA211 for Tires, Tubes and Related Services (together with all attachments thereto as amended from time to time by Lead State and Contractor, the "Contract" and together with this Addendum, the "Agreement") between the State of Utah (the "Lead State") and Contractor.
- B. **Changes:** The following terms and conditions will be added to the Contract for the Participating State:

1. **Changes and Additions to the Contract:** Upon execution of this Addendum, the Department of Management Services ("Department") and all Eligible Users may purchase products and services under the Contract (attached hereto as Exhibit 1) using the Florida alternate contract source number 25172500-1-WSCA-15-ACS. As used herein, the term "Eligible Users" is defined in Rule 60A-1.005 Florida Administrative Code.

The Department and Eligible Users acknowledge and agree to be bound by the terms and conditions of the Contract except as otherwise specified in this Addendum.

The following are modifications to the Contract:

**PUR 1000 Form "General Contract Conditions":** Additional terms set forth in the Department Purchasing Form PUR 1000, General Contract Conditions, as modified herein, attached hereto as Exhibit 2 are incorporated herein. Where the PUR refers to the term Agreement or Contract it shall be interpreted to mean this Participating Addendum.

2. **Changes to the PUR 1000:**

- a) Section 4-Price Changes Applicable only to Term Contracts: is modified to add the following sentence to the end of the section:

All pricing under this Agreement is set forth the Contract as amended from time to time between Contractor and Lead State.

- b) Section 5-Additional Quantities: Not applicable, delete in its entirety.

- c) Section 11-Transportation and Delivery: Delete the provision in its entirety and replace with the following:

Prices shall include all charges for packing, handling, freight, and distribution. Transportation of goods shall be FOB Destination to any point within thirty (30) days after the Customer places an Order, provided that delivery periods of 90 days or more may apply for OTR, loader, grader, and farm/agricultural tires in the event of a backorder situation. All ordering agencies should contact the contractor prior to placing an order to obtain an estimated delivery time schedule. Contractor or dealer, as applicable, within five (5) days after receiving a purchase order, shall notify the Customer of any potential delivery delays. Evidence of inability or intentional delays shall be cause for Contract cancellation and Contractor suspension.

- d) Section 12 Installation: Delete the provision in its entirety and replace with the following:

Unless otherwise designated in the Contract or purchase order, tires will be delivered and installed at the location set forth on the purchase order. Net Price List sets forth product prices and all related installation or service fees, if any. Tires furnished are governed by the applicable Contractor's standard warranties and limitations in effect at the time of delivery and are guaranteed to be free from defects in workmanship and material for original tread life or 48 months whichever comes first. To the extent reasonably practicable, on-site services shall be performed so as to cause the least inconvenience and interference with Customers and with proper consideration of others on-site. Upon completion of the installation, the location and surrounding area of work shall be left clean and in a neat and unobstructed condition as existing prior to installation.

- e) Section 13-Risk of Loss: Add the following sentence to the end of the section:

Upon acceptance, delivered products will be governed by Contractor's standard warranties and limitations in effect at the time of delivery.

- f) Section 16-Taxes: Delete the last sentence and replace with the following:

Any exceptions to this paragraph shall be explicitly noted by the Customer in the special contract conditions section of the Contract, Addendum or purchase order.

- g) Section 19-Indemnification: Delete the provision in its entirety and replace with the following:

Notwithstanding anything in this Addendum to the contrary, Contractor agrees to indemnify and hold harmless the Customer from and against any and all damages, and liabilities, including reasonable attorneys' fees which arise out of injury or damage proximately caused by defective workmanship or materials in Products manufactured by Contractor and leased/sold to the customer pursuant to this Addendum. The Contractor shall not be liable in any way for any errors or omissions by Contractors' authorized independent dealers or franchisees who may provide Services to customers.

- h) Section 20 – Limitation of Liability: The following sentence is added to the end of the second paragraph:

This right to set off is limited to any undisputed amount owed to MICHELIN NORTH AMERICA, INC. by the Customer.

- i) Section 22-Termination for Convenience: Delete the provision in its entirety and replace with the following:

Either party, by 30 days written notice to the other party, may terminate the Contract in whole or in part when it determines in its sole discretion that it is in the party's interest to do so. The Contractor shall not furnish any product after it receives the notice of termination from the Customer, except as necessary to complete the continued portion of the Contract, if any. The Contractor shall not be entitled to recover lost profits.

- j) Section 23 - Termination for Cause: Delete this section in its entirety and replace with the following:

The Customer may terminate the Contract if the Contractor fails to (1) deliver the product within the time specified in the Contract or any extension, (2) maintain adequate progress, thus endangering performance of the Contract, (3) honor any term of the Contract, or (4) abide by any statutory, regulatory, or licensing requirement. Rule 60A-1.006(3), F.A.C., governs the procedure and consequences of default. The Contractor shall continue work on any work not terminated. Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises from events completely beyond the control, and without the fault or negligence, of the Contractor. If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is completely beyond the control of both the Contractor and the subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted products were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule. If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Customer. The rights and remedies of the Customer in this clause are in addition to any other rights and remedies provided by law or under the Contract.

- k) Section 24-Force Majeure, Notice of Delay, and No Damages for Delay: Delete this section in its entirety as this is addressed in the Contract as modified by Attachment D.

- l) Section 26-Renewal: Delete this section in its entirety and replace with the following:

The Agreement will automatically renew upon renewal of the Contract by Lead State and Contractor unless terminated sooner by either party in accordance with the terms under the Addendum.

- m) Section 29-Assignment: Add the following paragraph to the end of the section:

Notwithstanding the foregoing, nothing herein shall prohibit the supply of products or services under this Agreement by Contractor's independent dealers authorized pursuant to this Agreement.

- n) Section 30-Antitrust Assignment: Delete this section in its entirety.
- o) Section 37-Warranty of Ability to Perform: Add the following paragraph to the end of the section.

THE CONTRACTOR'S STANDARD WRITTEN LIMITED WARRANTIES FOR TIRES AND TUBES AND THE WARRANTIES SPECIFIED IN THE CONTRACT, AS MODIFIED BY ATTACHMENT D THERETO, ARE IN LIEU OF ALL OTHER WARRANTIES RELATED TO THE PRODUCTS OR SERVICES. CONTRACTOR EXPRESSLY DISCLAIMS AND MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

- p) Section 39-Leases and Installment Purchases, Section 40-Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE), and Section 41-Products Available from the Blind or Other Handicapped: Delete these sections in their entirety.
- q) Section 42 – Modification of Terms: Add the following sentence to the end of the section.

Notwithstanding the foregoing, the State acknowledges that the WSCA Contract #MA211 for Tires, Tubes and Related Services and the attachments thereto may be modified from time to time between Contractor and the State of Utah which would have the effect of modifying the terms of this Contract in accordance with the priority of documents set forth in Section M of the Participating Addendum.

- C. **Discriminatory Vendors:** An entity or affiliate placed on the discriminatory vendor list pursuant to section 287.134 of the Florida Statutes may not be awarded or perform work as a contractor, supplier, sub-contractor, or consultant under a contract with any public entity; or transact business with any public entity.
- D. **Effective Date:** This Addendum shall become effective on the last date signed below and is coterminous with the Contract (WSCA Utah Contract Number MA211), unless terminated earlier by either party.
- E. **Vendor Registration and Transaction Fees:** In order to complete any transaction between an Eligible User and the Contractor, the Contractor must be registered with the Department of State, Division of Corporations ([www.sunbiz.org](http://www.sunbiz.org)) and in MyFloridaMarketPlace. Section 287.042(1)(h), Florida Statutes, and Rule 60A-1.031, Florida Administrative Code, is hereby incorporated by reference. All transactions are subject to a transaction fee pursuant to the rule.
- F. **Orders:** In order to procure products and services hereunder, Eligible Users shall issue purchase orders or use a Purchasing Card which shall reference the Department of

Management Service's contract number 25172500-1-WSCA-15-ACS. Eligible Users are responsible for reviewing the terms and conditions of this Addendum including all Amendments and Exhibits. Neither the Department nor WSCA-NASPO is a party to any purchase order issued hereunder.

- G. Compliance with Laws:** The Contractor shall comply with all laws, rules, codes, ordinances, and licensing requirements that are applicable to the work covered by this Contract, including those of federal, State, and local agencies having jurisdiction and authority. By way of non-exhaustive example, Chapter 287 of the Florida Statutes and Rule 60A-1 of the Florida Administrative Code govern this Addendum. By way of further non-exhaustive example, the Contractor shall comply with section 274A of the Immigration and Nationalization Act, the Americans with Disabilities Act, and all State of Florida prohibitions against discrimination on the basis of race, religion, sex, creed, national origin, handicap, marital status, or veteran's status. Violation of any laws, rules, codes, ordinances, or licensing requirements shall be grounds for Contract termination or nonrenewal of the contract.
- H. Other Eligible Users:** If any additional ordinance, rule, or other local governmental authority requires additional contract language before an Eligible User can make a purchase from the Contract, the Eligible User is responsible for signing a separate contract with the Contractor and capturing that additional contract language therein.
- I. Provisions of section 287.058, Florida Statutes:** The provisions of section 287.058(1)(a) - (c) and (g), Florida Statutes, are hereby incorporated by reference.
- J. Public Records:** If, under this Addendum, the Contractor is providing services and is acting on behalf of the Department as provided under subsection 119.011(2), Florida Statutes, the Contractor, subject to the terms of paragraph 287.058(1)(c), Florida Statutes, and any other applicable legal and equitable remedies, shall:
- 1) Keep and maintain public records that ordinarily and necessarily would be required by the Department in order to perform the service.
  - 2) Provide the public with access to public records on the same terms and conditions that the Department would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
  - 3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
  - 4) Meet all requirements for retaining public records and transfer, at no cost, to the Department all public records in possession of the Contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the Department in a format that is compatible with the information technology systems of the Department.

The Department may unilaterally cancel this Contract for refusal by the Contractor to comply with this section by not allowing public access to all documents, papers, letters, or other material made or received by the contractor in conjunction with the contract, unless the records are exempt from section

24(a) of Article I of the State Constitution and subsection 119.07(1).

The parties acknowledge at this time, the Contractor will not be providing services or acting on behalf of the Department. Therefore, the requirements of this paragraph 2(A)(i) do not apply to Contractor's performance under this Agreement.

- K. The State of Florida's performance and obligation to pay under this Addendum is contingent upon an annual appropriation by the Legislature. The vendor shall comply with section 11.062, Florida Statutes and section 216.347, Florida Statutes, prohibiting use of funds to lobby the Legislature, Judicial, or state agencies.
- L. **Contract Document:** The Contract and the Addendum and its Exhibits set forth the entire agreement between the parties with respect to the subject matter of the contract.
- M. **Order of Precedence:** The following documents shall have priority in the order set forth below:
1. This Participation Addendum
  2. Exhibit 1, WSCA Utah Contract Number MA211 (including amendments)
- N. **Intellectual Property:** For purposes of clarification, the parties acknowledge that, in the Contractor's delivery of tires, Contractor shall not be developing work product and/or deliverables for the Participating State under this Agreement. Accordingly, any language in this Agreement, including any incorporated attachments, relating to ownership by the Participating State of intellectual property rights in deliverables is inapplicable to this Agreement.
- O. **Employment Eligibility Verification:** Pursuant to State of Florida Executive Orders Nos.: 11-02 and 11-116, Contractor is required to utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment of all new employees hired by the Contractor during the contract term. Also, Contractor shall include in related subcontracts a requirement that subcontractors performing work or providing services pursuant to the contract utilize the E-Verify system to verify employment of all new employees hired by the subcontractor during the Contract term.
- P. **Scrutinized Company List:** In executing this Addendum, Contractor certifies that it is not listed on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to section 215.473, Florida Statutes. Pursuant to subsection 287.135(5), Florida Statutes, Contractor agrees the Department may immediately terminate this contract for cause if the Contractor is found to have submitted a false certification or if Contractor is placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List during the term of the contract.
- Q. **Ordering Instructions:**
1. The Contractor agrees to meet the following requirements:
    - a. Provide appropriate contact information for Eligible Users to use for product and/or service inquiries and purchases, as well as the most up-to-date

product/service offering the Contractor is authorized to provide in accordance with the Contract; and

- b. If orders are to be sent to resellers or distributors for fulfillment then the Contractor is responsible for providing and updating this list of authorized resellers or distributors for use to the Department.

2. Contractor must be able to accept Purchase Orders (PO) via fax, e-mail, or cXML as identified in R.1 below.

**R. Electronic Invoicing:** Purchases by the Participating State and its Eligible Users will be invoiced by, and all payments shall be directed to, the delivering dealer.

The Contractor shall supply, or cause its affiliated dealers to supply, electronic invoices in lieu of paper-based invoices for those transactions processed through the MFMP within ninety (90) days from contract effective date. Electronic invoices shall be submitted to the agency through the Ariba Network (AN) in one of three mechanisms as listed below:

1. cXML (commerce eXtensible Markup Language). This standard establishes the data contents required for invoicing via cXML within the context of an electronic environment. This transaction set can be used for invoicing via the AN for catalog and non-catalog goods and services. The cXML format is the Ariba preferred method for E-Invoicing.
2. EDI (Electronic Data Interchange). This standard establishes the data contents of the Invoice Transaction Set (810) for use within the context of an Electronic Data Interchange (EDI) environment. This transaction set can be used for invoicing via the AN for catalog and non-catalog goods and services.
3. PO Flip via AN. The online process allows Contractor and its dealers to submit invoices via the AN for catalog and non-catalog goods and services. Contractor and its dealers have the ability to create an invoice directly from their Inbox in their AN account by simply "flipping" the PO into an invoice. This option does not require any special software or technical capabilities.

For the purposes of this section, the Contractor warrants and represents that it is authorized and empowered to and hereby grants the State and the third party provider of MFMP, a state contractor, the right and license to use, reproduce, transmit, distribute, and publicly display within the system the information outlined above. In addition, the Contractor warrants and represents that it is authorized and empowered to and hereby grants the State and the third party provider the right and license to reproduce and display within the system the Contractor's trademarks, system marks, logos, trade dress, or other branding designation that identifies the products made available by the Contractor under the contract.

The Contractor will work with the MFMP management team to obtain specific requirements for the electronic invoicing if needed.

**S. Contract Quarterly Reports:** The Contractor shall submit a Quarterly Report (format provided to include necessary information) in the required format electronically to the Department within 30 days of the end of the quarter. The Department reserves the right to require the Contractor to provide additional reports within 30 days written notice, for which the Contractor may be compensated to the extent the additional reporting requirements impose additional costs.

Initiation and submission of the Report are the responsibility of the Contractor without prompting or notification by the Department.

Sales will be reviewed on a quarterly basis. Should no sales be recorded in two consecutive contract quarters, the either party may terminate this Addendum.

**T. Business Review Meetings:** The Department reserves the right to schedule business review meetings as is reasonably necessary. The Department will provide the format for the Contractor's agenda. Prior to the meeting, the Contractor shall submit the completed agenda to the Department for review and acceptance. The Contractor shall address the agenda items and any of the Department's additional concerns at the meeting.

**U. Commitment to Diversity in Government Contracting:** The State of Florida is committed to supporting its diverse business industry and population through ensuring participation by minority-, women-, wartime-, and service-disabled veteran business enterprises in the economic life of the State. The State of Florida Mentor Protégé Program connects minority-, women-, wartime-, and service-disabled veteran business enterprises with private corporations for business development mentoring. We strongly encourage firms doing business with the State of Florida to consider this initiative. For more information on the Mentor Protégé Program, please contact the Office of Supplier Diversity at (850) 487-0915 or [osdhelp@dms.myflorida.com](mailto:osdhelp@dms.myflorida.com).

Upon request, the Contractor shall report to the Department spend with certified and other minority business enterprises. These reports will include the period covered, the name, minority code and Federal Employer Identification Number of each minority vendor utilized during the period. Commodities and services provided by the minority business enterprise, and the amount paid to each minority vendor on behalf of each purchasing agency ordering under the terms of the contract. Contractor shall comply with the requested information on spend with minority business enterprises to the extent it currently collects and monitors such spend information. In no event shall Contractor be required to report such information more than once in a twelve (12) month period.

**V. Florida Business Requirements.** The Contractor shall be responsible for (i) reporting all contract sales of all affiliated and authorized independent dealers providing goods and services hereunder and (ii) the payment of all MFMP transaction fees associated with such sales.

**W. Warrant of Authority:** Each person signing this Addendum warrants that he or she is duly authorized to do so and to bind the respective party.

**X. Primary Contact:** The primary Participating State contact individual for the Agreement is as follows:

**Name:** Karla Dixon  
**Participating Entity:** State of Florida  
**Address:** 4050 Esplanade Way  
**City:** Tallahassee  
**State:** FL 32399  
**Telephone:** 850-487-2304  
**Fax:** 850-414-6122  
**E-mail:** [karla.dixon@dms.myflorida.com](mailto:karla.dixon@dms.myflorida.com)

Y. **Authorized Dealers.** Contractor shall provide the contract manager a list of dealers authorized to provide services under this Agreement in the State of Florida. Copies of dealer agreements executed by independent dealers who are authorized to provide services hereunder will be provided to the State of Florida and kept on file by Contractor. Updates and changes to the authorized dealer list will be sent to the contract manager.

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

<b>Participating State:</b> State of Florida	<b>Contractor:</b> MICHELIN NORTH AMERICA, INC.
<b>By:</b> <i>Chad Poppell</i> on behalf of	<b>By:</b> <i>Joe O'Connor</i>
<b>Name:</b> Chad Poppell	<b>Name:</b> Joe O'Connor
<b>Title:</b> Secretary	<b>Title:</b> Director, Government and Military Sales
<b>Date:</b> 8-21-15	<b>Date:</b> July 29, 2015