

Exhibit F – CMS #43718

**DEALER AGREEMENT
FOR TIRE RELATED SERVICES**

The **State of Colorado** has entered into a contract with **Michelin North America, Inc. (Contractor)** to provide tires, tubes, and services to the State and political subdivisions and other State authorized entities within the State resulting from **State of Utah Bid RT12002** and award of **WSCA Master Agreement MA211** on behalf of the **Western States Contracting Alliance (WSCA)** and other participating states. Specific independent Dealers will be authorized by **Michelin North America, Inc.** to provide tires and tire related services related to purchasing the tires (mounting tires, rotating tires, etc.). (“**Dealer**” herein includes **Michelin North America, Inc.** authorized dealers.) The provisions of the **Colorado Participating Addendum, CMS #43718** shall govern the relationship of the **Participating State** and **Contractor** and its **authorized Dealers**.

This **Dealer Agreement** will identify the responsibilities of the **Dealer** for the services provided by the **Dealer**. **Dealers** will need to sign the **Dealer Agreement** before the **Dealer** will be authorized to provide services to the **State of Colorado**. This Agreement will be effective on the last signature date below. The **Dealer** agrees to the following:

1. PROFESSIONAL SERVICES.

Dealer warrants that all services shall be performed in a professional and workmanlike manner consistent with standard industry practice; and in accordance with any approved Statement of Work, if applicable. **Dealer** agrees to abide by all applicable laws, regulations, and industry standards when performing services for the State.

2. HOLD HARMLESS.

The **Dealer** shall release, protect, indemnify and hold the State and its officers, agencies, employees, harmless from and against any damage, cost or liability, including reasonable attorney’s fees for any or all injuries to persons, property or claims arising from acts or omissions of the **Dealer**, its employees or subcontractors or volunteers.

3. INSURANCE REQUIREMENTS.

The **Dealer** shall agree to carry all insurance which may be required by federal and state laws, state and city ordinances, charters, regulations, and codes. The **Dealer** certifies that it has now and will continue to have in full force and effect the following certificates of insurance. Copies of the insurance certificates shall be provided to the State within ten (10) days upon request. All Insurance shall be issued by an insurance company authorized by the Insurance Department to transact business in the **State of Colorado**. No policy shall expire, be canceled or materially changed to effect coverage available to the State without thirty (30) days written notice to the State. All policies evidencing the insurance coverage required hereunder shall be used by insurance companies with A.M. Best rating of A-VII or better.

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

ii. **Non-Public Entities.** If **Dealer** is not a "public entity" within the meaning of the GIA, **Dealer** shall obtain and maintain during the term of this **Dealer Agreement** insurance coverage and policies meeting the same requirements set forth in this **§3(B)** with respect to subcontractors that are not "public entities".

A. Dealers – Subcontractors.

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

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

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

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

iv. **Additional Insured.** The Participating State shall be named as additional insured on all Commercial General Liability Insurance policies (leases and construction contracts require additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent) required of **Dealer** and any subcontractors hereunder.

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

vi. **Cancellation.** The above insurance policies shall include provisions preventing cancellation or non-renewal without at least 30 days prior notice to **Dealer** and **Dealer** shall forward such notice to the Participating State's Primary Contact identified in **§3** of the **Colorado Participating Addendum**, or to the Participating State's assigned replacement Contact within seven days of **Dealer's** receipt of such notice.

vii. **Garage liability including Garage Keepers Legal Liability.** A certificate evidencing coverage with a minimum limit of \$100,000 and to include loss of use of state operated vehicle(s).

B. **Certificates.** **Dealer** shall, and shall cause all subcontractors to, provide certificates showing insurance coverage required hereunder to the Participating State within seven business days of the Effective Date of this **Dealer Agreement**. Prior to the expiration date of any such coverage, **Dealer** and each subcontractor shall deliver to the Participating State certificates of insurance evidencing renewals thereof. In addition, upon request by the Participating State at any other time during the term of this **Dealer Agreement** or any subcontract, **Dealer** shall supply and shall require each subcontractor to supply, within 10 days of such request, to the Participating State a certificate of insurance evidencing compliance with the provisions of this **§3**.

4. TAXES.

- A. **Taxes for the Participating State and State Agencies.** Taxes for The Participating State and State Agencies are exempt from all federal excise taxes under IRC Chapter 32 (No. 84-730123K) and from all Colorado State and local government sales and use taxes under CRS §§39-26-101 and 201 et seq. The Participating State's tax exemption number is 98-02565. Such exemptions apply when materials are purchased or services are rendered to benefit the Participating State or State Agencies; provided however, that certain political subdivisions (e.g., City of Denver) may require payment of sales or use taxes even though the product or service is provided to the Participating State or a State Agency. **Dealer** shall be solely liable for paying such taxes as the Participating State is prohibited from paying or reimbursing **Dealer** for such taxes.
- B. **Taxes for a Colorado Political Subdivision, Non-profit or other Authorized Entity.** For a Colorado Political Subdivision, non-profit, or other authorized entity it is solely responsible for its own tax requirements and is to provide its own Federal Tax ID and Tax Exemption numbers upon Vendor's request.

5. Orders.

Orders may be placed consistent with the terms of the **Colorado Participating Addendum** during the current term. All Orders for Equipment issued pursuant to this **Dealer Agreement**, at a minimum, shall include:

- i. Order date, when the Order was placed by the Ordering Entity;
- ii. A brief description of the Equipment being purchased, including item number and quantity;
- iii. The place and time of delivery;
- iv. The billing address;
- v. The complete name of the Ordering Entity, the name, phone number, and address of the Ordering Entity's representative (example for State Agency designation: "Colo. Dept. of Transportation" or "CDOT" is acceptable with the Division or Unit name as additional identifier);
- vi. The price by item and the total amount of the Order for Equipment being purchased;
- vii. The WSCA **Master Agreement Number: MA211** issued by the State of Utah; and
- viii. The Participating State's statewide Price Agreement Number: **86300YYY42M/WSCA.**

6. PAYMENT TO VENDOR.

All Purchasing Entities issuing valid Orders shall be bound by the terms and conditions of the **Dealer Agreement** including, without limitation, the obligation to pay **Dealer** for Services.

- A. **Discounts.** Any applicable cash discount period or delinquency period shall start from the date of receipt of an acceptable invoice, or from the date of receipt of acceptable Services at the specified destination by an authorized representative of the Purchasing Entity, whichever is later.

B. Payments.

Purchasing Entities:

For the Participating State's State Agencies and Institutions of Higher Education. The Participating State's State Purchasing Entity shall fully pay each invoice within 30 days of receipt thereof if the amount invoiced represents performance by **Dealer** previously accepted by the Purchasing Entity. Uncontested amounts not paid by the Purchasing Entity within 45 days may bear interest on the unpaid balance beginning on the 46th day at a rate not to exceed one percent per month until paid in full; provided, however, that interest shall not accrue on unpaid amounts that are subject to a good faith dispute. **Dealer** shall invoice the Purchasing Entity separately for accrued interest on delinquent amounts. The billing shall reference the delinquent payment, the number of day's interest to be paid and the interest rate.

For Political Subdivisions or Other Authorized Entities of the Participating State. For purchases made by Political Subdivisions or Other Authorized Entities of the Participating State, the State makes no guarantee and further cannot guarantee payment terms for Political Subdivisions or other authorized entities and the Purchasing Entity is solely responsible for timely payment. Vendors are to send invoicing directly to the Purchasing Entity. As the State's minimum payment terms are net thirty (30) days, it is expected that the Purchasing Entity will honor payment terms which customarily are paid within thirty days. Purchasing Entities have historically remitted payment in a timely manner; however, it is the vendor's responsibility to confirm all payment terms with each Purchasing Entity at the time an order is placed.

- C. **Remittance.** Payments from State Agencies will be remitted by mail or via the Participating State's "Purchasing Card." Payments from other Purchasing Entities will be remitted by mail or as otherwise agreed by **Dealer** and such Purchasing Entity. Payments shall be submitted to **Dealer** at the address shown on the invoice, as long as **Dealer** has exercised due diligence in notifying the Participating State and the Purchasing Entity of any changes to that address.

7. CONFIDENTIAL INFORMATION.

Dealer shall comply with the provisions of this **§7** if it becomes privy to confidential information in connection with its performance hereunder. Confidential information includes, but is not necessarily limited to, any state records, personnel records, and other records or information concerning individuals. To facilitate **Dealer's** efforts to protect confidential information, it shall be marked as "confidential" by the Participating State or designated as "confidential" by the State at the time of disclosure. Such information shall not include information required to be disclosed pursuant to the Colorado Open Records Act, CRS §24-72-101, et seq.

- A. **Confidentiality.** **Dealer** shall keep all Participating State confidential information confidential at all times and comply with all laws and regulations concerning confidentiality of information. Any request or demand by a third party for State confidential information in the possession of **Dealer** shall be immediately forwarded to the State Purchasing Agent.
- B. **Notification.** **Dealer** shall notify its agent, employees, subcontractors and assigns who may come into contact with Participating State confidential information that each is subject to the confidentiality requirements set forth herein, and shall provide each with a written explanation of such requirements before permitting them to access such records and information.
- C. **Use, Security, and Retention.** Confidential information of any kind shall not be distributed or sold to any third party or used by **Dealer** or its agents in any way, except as authorized by this **Dealer Agreement** or approved in writing by the Participating State. **Dealer** shall provide and maintain a secure environment that ensures confidentiality of all State Confidential Information wherever located. Confidential information shall not be retained in any files or otherwise by **Dealer** or its agents, except as permitted in this **Dealer Agreement** or approved in writing by the Participating State.
- D. **Disclosure-Liability.** Disclosure of Participating State confidential information by **Dealer** for any reason may be cause for legal action by third parties against **Dealer**, the Participating State, a Purchasing Entity or their respective agents. **Dealer** shall indemnify, save, and hold harmless the Participating State, the Purchasing Entities and their respective employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by **Dealer**, or its employees, agents, subcontractors, or assignees pursuant to this **§7**.

8. **Licenses, Permits, Etc.** Dealer represents and warrants that as of the Effective Date it has, and that at all times during the term hereof it shall have and maintain, at its sole expense, all licenses, certifications, approvals, insurance, permits, and other authorizations required by law to perform its obligations hereunder. Dealer warrants that it shall maintain all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform this **Dealer Agreement** without reimbursement by the Participating State. Additionally, all employees, agents, and subcontractors of Dealer performing Services under this **Dealer Agreement** shall hold all required licenses or certifications, if any, to perform their responsibilities. Any revocation, withdrawal or non-renewal of licenses, certifications, approvals, insurance, permits or any such similar requirements necessary for Dealer to properly perform the terms of the **Dealer Agreement** is a material breach by Dealer and constitutes grounds for termination of this **Dealer Agreement**.

9. **Doing Business in Colorado.** Dealer and its authorized subcontractors shall register with the Colorado Secretary of State in accordance with Colorado Revised Statute (CRS) 7-90-801, and must obtain a rating of “good standing” status and maintain it throughout the term of this **Dealer Agreement**. A copy of Dealer’s Articles of Incorporation and/or Bylaws may be requested by the Participating State.

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

10. **Federal Employer Identification Number (FEIN).** Dealer shall submit to Participating State its F.E.I.N. prior to purchase order issuance and as directed by the Office of the State Controller. Dealer shall also provide a completed W-9, Taxpayer Identification form, to the Participating State.

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

12. **Federal Excise Tax – Consumer Federal Excise Tax Exemption Certificate.** In the event “consumer” State agencies, political subdivisions, non-profits, or other entities (including cooperatives) authorized by Colorado statutes to utilize State contracts, the authorized dealers/distributors may require the entity to provide a signed use certificate prior to purchase of goods/services. The certification is in a form substantially equivalent to **Exhibit G, Sample Consumer Federal Excise Tax Exemption Certificate**, incorporated herein and attached hereto. The purpose of the certificate is for the Dealer to comply with and provide for Federal Excise Tax requirements for such sales.

13. **Participating State’s Primary Contact.** Notices shall be sent to the Participating State’s Primary Contact identified in §3 of the **Colorado Participating Addendum**, or to the Participating State’s assigned replacement Contact. The initial contact information is as follows:

State of Colorado, DPA/State Purchasing Office
 Cheri Miller, Purchasing Agent
 633 17th Street, Suite 1500, Denver, Colorado 80202-3609
 Office: 303-866-4005 / FAX: 303-894-7445 (new)
cheri.miller@state.co.us

14. CONTRACT WITH Michelin North America, Inc.

The **Dealer** agrees to abide by the terms and conditions of the Contract between **Michelin North America, Inc.** and the **State of Colorado** resulting from **State of Utah Bid RT12002**.

IN WITNESS WHEREOF, the authorized representatives of the parties sign and agree to the terms of this Agreement.

DEALER _____

Signature Date

Name and Title of Signer (Type or Print Legibly)

DEALER INFORMATION

Legal Status: Corporation Partnership Sole Proprietor

Dealer Legal Business Name: _____

Legal Business Address: _____

City, State, Zip: _____

Phone: _____ FAX: _____

Contact Name: _____

Email Address: _____

Federal Tax ID #: _____

Colorado Secretary of State Registration #: _____

----- If Business Location is different than LEGAL Business information -----

Dealer Location Name: _____

Location Address: _____

City, State, Zip: _____

*Note1: Send completed Dealer Agreement to the **Michelin North America, Inc.** representative.
Note2: Send Certificates of Insurance (Acord form) to the State Purchasing Office (see #13).*