

NATIONWIDE VEHICLE RENTAL SERVICESLed by the State of Oregon

Master Agreement #: 9409

Contractor: **THE HERTZ CORPORATION**Participating Entity: **STATE OF NORTH DAKOTA**Participating Addendum Number & North Dakota State Contract Number: **374**

The following products or services are included in this contract portfolio:

- *All awarded commodities and services listed on the Contractor page of the NASPO ValuePoint website as executed through Master Agreement #9409.*

Master Agreement Terms and Conditions:

1. Scope: This addendum covers the Nationwide Vehicle Rental Services led by the State of Oregon for use by state agencies and other entities located in the Participating State *[or State Entity]* authorized by that State's statutes to utilize State contracts with the prior approval of the State's Chief Procurement Official.
2. Participation: This NASPO ValuePoint Master Agreement may be used by all state agencies, institutions of higher institution, political subdivisions and other entities authorized to use statewide contracts in the State of North Dakota. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.
3. Primary Contacts: The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

Name:	Jeffrey Greene, Government Key Account Manager for The Hertz Corporation
Address:	3323 N. Military Hwy Norfolk, VA 23518
Telephone:	(540) 841-8455
Fax:	
Email:	jgreene@hertz.com

PARTICIPATING ADDENDUM**NATIONWIDE VEHICLE RENTAL SERVICES**

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Participating Entity

Name:	State of ND, Jamie Bostyan
Address:	14 th Floor Capitol Tower 600 E Boulevard Ave, Dept 012 Bismarck, ND 58505-0310
Telephone:	(701) 328-4912
Fax:	(701) 328-1615
Email:	jbostryan@nd.gov

4. PARTICIPATING ENTITY MODIFICATIONS OR ADDITIONS TO THE MASTER AGREEMENT

These modifications or additions apply only to actions and relationships within the Participating Entity.

Participating Entity must check one of the boxes below.

☐ No changes to the terms and conditions of the Master Agreement are required.

☒ The following changes are modifying or supplementing the Master Agreement terms and conditions.

5. Coterminous: The term of this Participating Addendum shall be coterminous with the State of Oregon Contract Number 9409.
6. Confidentiality: Contractor shall not use or disclose any information it receives from Participating Entity under this Participating Addendum that Participating Entity has previously identified as confidential or exempt from mandatory public disclosure except from mandatory public disclosure except as necessary to carry out the purposes of this Participating Addendum or as authorized in advance by Participating Entity. Participating Entity shall not disclose any information it receives from Contractor that Contractor has previously identified as confidential and that Participating Entity determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota open records law, North Dakota Century Code (N.D.C.C) ch. 44-04. The duty of Participating Entity and Contractor to maintain confidentiality of information under this section continues beyond the term of this Participating Addendum.

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7. Compliance with Public Records Laws: Contractor understands that, except for disclosures prohibited in this Participating Addendum, Participating Entity must disclose to the public upon request any records it receives from Contractor. Contractor further understands that any records obtained or generated by Contractor under this Participating Addendum, except for records that are confidential under this Participating Addendum, may, under certain circumstances, be open to the public upon request under the North Dakota public records law. Contractor agrees to contact Participating Entity as soon as reasonably possible upon receiving a request for information under the public records law and to comply with Participating Entity's instructions on how to respond to the request.
8. Spoliation: Contractor shall notify Participating Entity of all potential claims that Contractor is aware of that arise as a result of Contractor's performance under this Participating Addendum. Contractor shall also take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to Participating Entity the opportunity to review and inspect the evidence, including the scene of an accident.
9. Cooperative Purchasing Contract: This Participating Addendum is a cooperative purchasing contract established pursuant to N.D.C.C. § [54-44.4-13](#). This Participating Addendum is made available to state entities, institutions under the jurisdiction of the State Board of Higher Education, other government entities (including counties, cities, townships, public primary and secondary educational entities, governmental boards and commissions), nonprofit entities established on behalf of public entities, tribal agencies, transportation providers under N.D.C.C. [ch. 39-04.2](#), and the International Peace Garden. Participation in this open-ended Participating Addendum is not mandated; therefore, the estimated volume of this Participating Addendum is not known.
10. Governing Law and Venue: This Participating Addendum is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this Participating Addendum must be adjudicated exclusively in the state District Court of Burleigh County, North Dakota. Each party consents to the exclusive jurisdiction of such court and waives any claim of lack of jurisdiction or *forum non conveniens*.
11. Indemnification: In addition to any indemnity obligations found within the Master Agreement, Contractor agrees to defend, indemnify, and hold harmless the state of North Dakota, its agencies, officers and employees (State), from claims resulting from the performance of the contractor or its agent, including all costs, expenses and attorneys' fees, which may in any manner result from or arise out of this agreement, except claims based upon the State's sole negligence or intentional misconduct. The legal defense provided by Contractor to the State under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary. Any attorney appointed to represent the State must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. § 54-12-08. Contractor also agrees to reimburse the State for all costs, expenses and attorneys' fees incurred in

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establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.

12. Insurance: Contractor shall secure and keep in force during the term of this agreement and Contractor shall require all subcontractors, prior to commencement of an agreement between Contractor and the subcontractor, to secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, or provide as a self-insurer, the following insurance coverages.

- a) Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$1,000,000 per occurrence.
- b) Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, used or operated by Contractor, with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- c) Workers compensation coverage meeting all statutory requirements. The policy shall provide coverage for all states of operation that apply to the performance of this contract.
- d) Employer's liability or "stop gap" insurance of not less than \$1,000,000 as an endorsement on the workers compensation or commercial general liability insurance.

The insurance coverages listed above must meet the following additional requirements:

- a) Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor.
- b) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A-" rating must be approved by the State.
- c) The State will be defended, indemnified, and held harmless to the full extent of any coverage actually secured by the Contractor in excess of the minimum requirements set forth above. The duty to indemnify the State under this agreement shall not be limited by the insurance required in this agreement.
- d) The state of North Dakota and its agencies, officers, and employees (State) shall be endorsed on the commercial general liability policy on a primary and noncontributory basis, including any excess policies (to the extent applicable), as additional insured. The State shall have all the benefits, rights and coverages of an additional insured under these policies that shall not be limited to the minimum limits of insurance required by this agreement or by the contractual indemnity obligations of the Contractor.
- e) The insurance required in this agreement, through a policy or endorsement, shall include:
 - i. a "Waiver of Subrogation" waiving any right to recovery the insurance company may have against the State;
 - ii. a provision that Contractor's insurance coverage shall be primary (i.e. pay first) as respects any insurance, self-insurance or self-retention maintained by the

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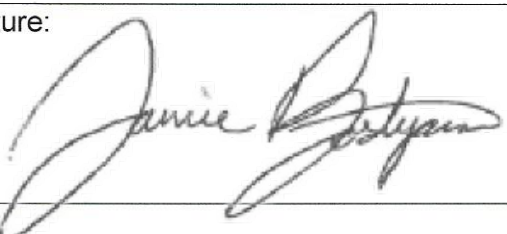


- State and that any insurance, self-insurance or self-retention maintained by the State shall be in excess of the Contractor's insurance and shall not contribute with it;
- iii. cross liability/severability of interest for all policies and endorsements;
 - iv. The legal defense provided to the State under the policy and any endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary;
 - v. The insolvency or bankruptcy of the insured Contractor shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured Contractor from meeting the retention limit under the policy.
- f) The Contractor shall furnish a certificate of insurance to the undersigned State representative prior to commencement of this agreement. All endorsements shall be provided as soon as practicable.
 - g) Failure to provide insurance as required in this agreement is a material breach of contract entitling the State to terminate this agreement immediately.
 - h) Contractor shall provide at least 30-day notice of any cancellation or material change to the policies or endorsements. Contractor shall provide on an ongoing basis, current certificates of insurance during the term of the contract. A renewal certificate will be provided 10 days prior to coverage expiration.
13. Alternative dispute resolution – Jury Trial: Participating Entity does not agree to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute resolution. The parties have the right to enforce their rights and remedies in judicial proceedings. Participating Entity does not waive any right to a jury trial.
14. Attorney Fees: In the event a lawsuit is instituted by Participating Entity to obtain performance due under this Participating Addendum, and Participating Entity is the prevailing party, Contractor shall, except when prohibited by N.D.C.C. § 28-26-04, pay Participating Entity's reasonable attorney fees and costs in connection with the lawsuit.
15. Subcontractors: All contactors, dealers, and resellers authorized in the State of North Dakota, as shown on the dedicated Contractor (cooperative contract) website, are approved to provide sales and service support to participants in the NASPO ValuePoint Master Agreement. The contractor's dealer participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement.
16. Reporting: Contractor shall provide Participating Entity with reports as requested in the Master Agreement. Participating Entity requires quarterly reporting with a fiscal year starting July 1.
17. Substitutions, Additions, and Deletions: Contractor shall provide prompt written notification to the State if the contract item has become unavailable. The State reserves the right to approve a substitute or reject the offered item. The State may choose, by use of written amendment, to add or delete contract items at any time.

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18. Orders: Any order placed by a Participating Entity or Purchasing Entity for a product and/or service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the order agree in writing that another contract or agreement applies to such order.

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

Participating Entity: State of North Dakota	Contractor: <i>The Hertz Corporation</i>
Signature: 	Signature: 
Name: Jamie Bostyan	Name:  Kevin Knorr
Title: State Procurement Officer	Title: Director, Government Sales
Date: 9-27-2019	Date: <i>9-19-19</i>

[Additional signatures may be added if required by the Participating Entity]

PARTICIPATING ADDENDUM



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For questions on executing a participating addendum, please contact:

NASPO ValuePoint

Cooperative Development Coordinator:	Tim Hay
Telephone:	503-428-5705
Email:	thay@naspovaluepoint.org

[Please email fully executed PDF copy of this document to

PA@naspovaluepoint.org

to support documentation of participation and posting in appropriate data bases.]