



**Participating Addendum  
To  
Master Agreement # 19103**

**TIRES, TUBES AND SERVICES**

**Contractor: CONTINENTAL TIRE THE AMERICAS, LLC**

**Participating Entity: COMMONWEALTH OF VIRGINIA**

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

- All products and services listed in the Contractor's Master Agreement # 19103 (also referred to as the "Master Agreement").

The following products or services are not included in this agreement:

- Continental (Police) Pursuit & Performance Tires
- Services which are unrelated to tires, tubes and services as defined in the Contractor' Master Agreement # 19103.

1. **Scope:** This Participating Addendum ("Addendum") amends NASPO ValuePoint Master Agreement #19103 for Tires, Tubes and Services led by the State of Iowa for use by, and only with respect to, the agreement hereby created between the Commonwealth of Virginia, authorized by Virginia's statutes to utilize state contracts with the prior approval of the State's Chief Procurement Official.
2. **Participation:** This Addendum may be used by all state agencies, institutions of higher education, political subdivisions and other entities authorized to use statewide contracts in Virginia, including private institutions of higher education in the Commonwealth of Virginia. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official. This Addendum is optional use.
3. **Entire Agreement:** The "Commonwealth of Virginia Terms and Conditions" are hereby incorporated into this Addendum. This Addendum is incorporated into and made a part of the Master Agreement, which taken together comprise the "Agreement" and govern all purchases that the Commonwealth of Virginia makes with the Contractor during the Term of the Agreement. The Agreement to the extent necessary to give full effect to this Addendum, the provisions of this Participating Addendum shall supersede any provision of the Master Agreement that limit or is inconsistent with this Addendum. The Code of Virginia will supersede all documents comprising the Agreement.
4. **Term:** The initial term of the Agreement is February 1, 2020 through January 31, 2021. The entire term of this contract shall be effective from February 1, 2020 through March 31, 2024.

5. Primary Contacts: The primary contact individuals for this Agreement are as follows:

Contractor

Contractor Name:	Alex Lier Account Manager CONTINENTAL TIRE THE AMERICAS, LLC
Address:	1830 MacMillian Park Drive Fort Mill, SC 29707
Telephone:	704-587-6589
Fax:	
Email:	alex.2.lair@conti-na.com

Participating Entity

Name:	Dennis M. Donahue Sourcing and Contracting Officer Commonwealth of Virginia Department of General Services (DGS)/ Division of Purchases & Supplies (DPS)
Address:	1111 E. Broad Street Richmond, VA 23219
Telephone:	804-786-5410
Fax:	804-786-5413
Email:	dennis.donahue@dgs.virginia.gov


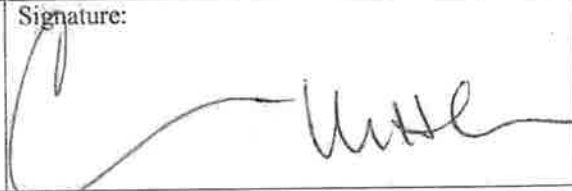
6. Participating Entity Modifications or Additions to the Master Agreement: These modifications and additions to the Master Agreement apply only to actions and relationships within the Participating Entity.

7. Quarterly Sales Report: The Contractor shall provide the Participating Entity with quarterly sales reports which contain the following fields:

- Purchasing Entity Name
- Purchase Date
- Line Item Description
- Total Dollars per Line Item Sold
- Total Dollars Sold Per Quarter

8. Discounts: Contractor's stated prices shall be discounted using the discounts and price lists approved and agreed to with NASPO ValuePoint under the Master Agreement. The stated discounts are considered to be the minimum discount offered. Contractor may offer, within written quotes, a higher discount than the approved minimum discount for volume purchases or for competitive reasons.

9. **Delivery:** F.O.B. Destination. Prices are the delivered price to any Purchasing Entity. All deliveries, all transportation and handling charges are paid by the Contractor. No minimum order limits apply.
10. **Authorized Point-of-Sale:** The list of Contractor's Approved Distributors who are authorized to supply tires, and services under the Master Agreement for the Commonwealth of Virginia are referenced herein (ref. Attachment C, "Authorized Dealers List"). The "Authorized Dealers List" will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement, this Addendum, and the Approved Distributor (Dealer) Agreement.
11. **Purchase Orders:** Notwithstanding anything to the contrary herein, any purchase order or invoice which is issued in connection herewith is for administrative purposes and any general terms or conditions therein shall not be deemed applicable.
12. **Intellectual Property:** Except as may be provided for in the Master Agreement, Contractor is not transferring, conveying, licensing or assigning any intellectual property rights, nor is there a work for hire or similar relationship established hereby.

Participating Entity: COMMONWEALTH OF VIRGINIA	Contractor: CONTINENTAL TIRES THE AMERICAS, LLC
Signature: 	Signature: 
Name: Dennis M. Donahue	Name:  William H Caldwell Senior V.P. Sales and Marketing  <b>Christopher E Charity</b>
Title: Statewide Sourcing & Contracting Officer	Title: <b>Vice President Sales</b>
Date: 1/21/2020	Date: 1/17/20



## COMMONWEALTH OF VIRGINIA

### TERMS AND CONDITIONS

1. **TERMS AND CONDITIONS FOR COVERED PURCHASES:** The attached “Virginia Terms and Conditions” are hereby incorporated in this Addendum. This Addendum shall be deemed a part of the contract governing any purchase that the Commonwealth of Virginia makes under the Master Agreement Contract.
2. **SUPERVISORY ROLE OF DGS:** The provisions of this Addendum cannot be waived or modified by any Purchasing Agency. This Addendum is for the benefit of, and is enforceable by, each Purchasing Agency and DGS, or either of them. Any payment or other obligation for orders or purchases shall be solely the responsibility of the Purchasing Agency and not DGS. Nothing in this Addendum shall limit DGS's right and authority to approve or disapprove future use of the Master Agreement by Purchasing Agencies.
3. **ADJUSTMENTS TO MASTER AGREEMENT:** This Addendum does not prevent the Contractor and a Purchasing Agency from supplementing or altering the Master Agreement solely for that Purchasing Agency’s order; however, any adjustments must be within the general scope of what is included in the contract. In addition, this Addendum does not prevent the Contractor and Lead Entity from supplementing or altering the Master Agreement for orders placed after the Purchasing Agency has notice of such amendment. However, in both cases, if any such additional or different provision or modification is inconsistent with a provision of this Addendum, the inconsistent provision shall not apply to Purchasing Agencies and shall be superseded by the Addendum provision. The Contractor shall promptly notify DGS of any amendments to the Master Agreement made by the Contractor and Lead Entity.
4. **OVERLAPPING TERMINOLOGY:** This Addendum uses Virginia provisions, which include words or phrases that may also appear in the Master Agreement or other documents originating with the Contractor or Lead Entity, and may even be given specific definitions in the Master Agreement Contract. Any such overlapping terminology is coincidental and not intended to alter the meaning of the words as used in the Virginia provisions. Similarly, the fact that the Contractor and DGS have agreed to certain definitions in this Addendum shall not be deemed to affect the meaning of those words as used in the Master Agreement, unless the intention to do so is clearly stated.
5. **NOTICES:** Unless either Party provides the other Party with written notice of a different name and address for notices, any notices between DGS and the Contractor shall be sent to the representative at the physical or electronic address set forth on page 2, paragraph 5 of the Participating Addendum.
6. **COMPLETE AGREEMENT; MODIFICATION:** This one -page document, as amended, together with the Participating Addendum, the Master Agreement, the attached “Virginia General Terms and Conditions,” as amended, and “Virginia Special Terms and Conditions,” as amended, constitute the complete and final expression of the agreement between DGS and the Contractor regarding any purchase that a Purchasing Agency makes under the Master Agreement. This Addendum can be modified only in a writing signed by DGS and the Contractor.
7. **VENDORS MANUAL:** The Addendum, Master Agreement, and every related purchase order by a Purchasing Agency (all of the foregoing being referred to collectively and individually in this Addendum as the “contract”) are subject to the provisions of the Commonwealth of Virginia Vendors Manual and any changes or revisions thereto, which are hereby incorporated into the contract in their entirety. The procedure for filing contractual claims against any authority, department, agency, or institution of the Commonwealth of Virginia is in section 7.19 of the Vendors Manual. A copy of the

manual is normally available for review at the purchasing office and is accessible on the Internet at [www.eVA.virginia.gov](http://www.eVA.virginia.gov) under the "I Sell To Virginia" tab.

8. **APPLICABLE LAWS AND COURTS:** The contract shall be governed solely and in all respects by the laws of the Commonwealth of Virginia without regard to its choice-of-law rules, and any litigation with respect thereto shall be brought solely in the courts of the Commonwealth. The Purchasing Agency and the Contractor are encouraged to resolve any contractual dispute using Alternative Dispute Resolution (ADR) procedures (Code of Virginia, § 2.2-4366). ADR procedures are described in Chapter 9 of the Vendors Manual. The Contractor shall comply with all applicable federal, state, and local laws, rules and regulations.
  
9. **ANTI-DISCRIMINATION:** Contractor certifies to the Commonwealth that it will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the Virginia Public Procurement Act (VPPA). If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (Code of Virginia, § 2.2-4343.1E).

In every contract over \$10,000 the provisions in 1 and 2 below apply:

- A. During the performance of the contract, the Contractor agrees as follows:
  - i. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
  - ii. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
  - iii. Notices, advertisements and solicitations placed in accordance with federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting these requirements.
  - iv. The requirements of these provisions 1. and 2. are a material part of the contract. If the Contractor violates one of these provisions, the Commonwealth may terminate the affected part of this contract for breach, or at its option, the whole contract. Violation of one of these provisions may also result in debarment from State contracting regardless of whether the specific contract is terminated.
  - v. In accordance with Executive Order 61 (2017), a prohibition on discrimination by the contractor, in its employment practices, subcontracting practices, and delivery of goods or services, on the basis of race, sex, color, national origin, religion, sexual orientation, gender

identity, age, political affiliation, disability, or veteran status, is hereby incorporated in this contract.

B. The Contractor will include the provisions of 1 above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

10. **ETHICS IN PUBLIC CONTRACTING:** The Contractor certifies that its bid or proposal underlying the contract was made without collusion or fraud and that it did not offer or receive any kickbacks or inducements from any other supplier, manufacturer or subcontractor in connection with such bid or proposal, and it has not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.
11. **NONDISCRIMINATION OF CONTRACTORS:** A bidder, offeror, or contractor shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, national origin, age, disability, faith-based organizational status, any other basis prohibited by state law relating to discrimination in employment or because the bidder or offeror employs ex-offenders unless the state agency, department or institution has made a written determination that employing ex-offenders on the specific contract is not in its best interest. If the award of this contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.
12. **eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION, CONTRACTS, AND ORDERS:** The eVA Internet electronic procurement solution, web site portal [www.eVA.virginia.gov](http://www.eVA.virginia.gov), streamlines and automates government purchasing activities in the Commonwealth. The eVA portal is the gateway for vendors to conduct business with state agencies and public bodies. All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution by completing the free eVA Vendor Registration. All vendors must register in eVA and pay the Vendor Transaction Fees specified below.

It is anticipated that the contract may result in multiple bulk purchase orders (i.e. one for each bulk delivery requirement) with the eVA transaction fee specified below assessed for each order.

Vendor transaction fees are determined by the date the original purchase order is issued and the current fees are as follows:

- a. For orders issued July 1, 2014, and after, the Vendor Transaction Fee is:
- (i) DSBSD-certified Small Businesses: 1%, capped at \$500 per order.
  - (ii) Businesses that are not DSBSD-certified Small Businesses: 1%, capped at \$1,500 per order.

For orders issued prior to July 1, 2014, the vendor transaction fees can be found at [www.eVA.virginia.gov](http://www.eVA.virginia.gov).

The specified vendor transaction fee will be invoiced, by the Commonwealth of Virginia Department of General Services, typically within 60 days of the order issue date. Any adjustments (increases/decreases) will be handled through purchase order changes.

13. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** The Contractor certifies that the Contractor does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.
14. **DEBARMENT STATUS:** Contractor certifies that it is not currently debarred by the Commonwealth of Virginia from submitting bids or proposals on contracts for the type of goods and/or services covered by the contract, nor is it an agent of any person or entity that is currently so debarred.

If a vendor is created or used for the purpose of circumventing a debarment decision against another vendor, the non-debarred vendor will be debarred for the same time period as the debarred vendor.

15. **ANTITRUST:** By acceptance of the Purchasing Agency's payment for a purchase order under the contract, subject to the terms of the Master Agreement, the Contractor conveys, sells, assigns, and transfers to the Purchasing Agency all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Purchasing Agency under that purchase order.
16. **DRUG-FREE WORKPLACE:** Applicable for all contracts over \$10,000: During the performance of the contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a purchase order issued by a Purchasing Agency to the Contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

17. **AVAILABILITY OF FUNDS:** It is understood and agreed between the parties herein that the Purchasing Agency shall be bound hereunder only to the extent that the legislature has appropriated that are legally available or may hereafter become legally available for the purpose of the contract.
18. **AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH:** If the Contractor is organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership, the Contractor shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law. If the Contractor is described above, it shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract. The Purchasing Agency may void any purchase order if the Contractor is described above and fails to remain in compliance with the provisions of this section.



19. **QUALIFICATIONS OF CONTRACTOR:** The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the Contractor to perform the services/furnish the goods, and the Contractor shall furnish to the Commonwealth all such information and data for this purpose as may be requested.

20. **TESTING AND INSPECTION:** Subject to the terms of the Master Agreement, the Commonwealth reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.

21. **ASSIGNMENT OF CONTRACT:** This Agreement shall not be assignable by the Contractor in whole or in part without the written consent of the Commonwealth.

22. **CHANGES TO THE PURCHASE ORDER:** Changes can be made in connection with a purchase order from a Purchasing Agency in any of the following ways:

A. The parties (Purchasing Agency and Contractor) may agree in writing to modify the scope of the purchase order. An increase or decrease in the price of the purchase order resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the purchase order.

B. The Purchasing Agency may order changes within the general scope of the purchase order at any time by written notice to the Contractor. Changes within the scope of the purchase order include, but are not limited to, things such as goods to be provided, the method of packing or shipment, and the place of delivery or installation. The Contractor shall accept or reject such changes within three (3) business days of receipt. The Purchasing Agency shall compensate the Contractor for any additional costs incurred as the result of such order and shall give the Purchasing Agency a credit for any savings. Said compensation shall be determined by one of the following methods:

i. By mutual agreement between the parties in writing; or

ii. By agreeing upon a unit price or using a unit price set forth in the Master Agreement, if the work to be done can be expressed in units, and the Contractor accounts for the number of units of work performed, subject to the Purchasing Agency's right to audit the Contractor's records and/or to determine the correct number of units independently; or

C. By ordering the Contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The Contractor shall present the Purchasing Agency with all vouchers and records of expenses incurred and savings realized. The Purchasing Agency shall have the right to commercially reasonably audit the records of the Contractor pursuant to Section 28 herein as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Purchasing Agency within thirty (30) days from the date of receipt of the written order from the Purchasing Agency. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the disputes provisions of the Commonwealth of Virginia Vendors Manual. Neither the existence of a claim nor a dispute resolution

process, litigation or any other provision of this contract shall excuse the Contractor from promptly complying with the terms of the Agreement or any modifications agreed to by the parties, or with the performance of the contract generally.

**23. DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, and provided that an order for such goods or services was duly made by a Purchasing Agency and accepted in writing by the Contractor, the Purchasing Agency, after written notice, may procure the goods or services from other sources and hold the Contractor responsible for any resulting additional and reasonable purchase costs. This remedy shall be in addition to any other remedies which the Commonwealth may have.

**24. PAYMENT:**

A. To Prime Contractor:

- i. Invoices for items ordered, delivered and accepted shall be submitted by the contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the state contract number and/or purchase order number.
- ii. Any payment terms requiring payment in less than 30 days for state agencies or less than 45 days for localities will be regarded as requiring payment 30/45 days (as applicable) after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30/45 days (as applicable), however.
- iii. All goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the contractor at the contract price, regardless of which ordering entity is being billed.
- iv. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or for state agencies the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.
- v. Unreasonable Charges. Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be resolved in accordance with Code of Virginia § 2.2-4363 and -4364. Upon determining that invoiced charges are not reasonable, the ordering entity shall promptly notify the contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an ordering entity of its prompt payment obligations with respect to those charges which are not in dispute (Code of Virginia, § 2.2-4363).

B. To Subcontractors:

- i. Within seven (7) days of the contractor's receipt of payment from the Commonwealth, a contractor awarded a contract under this solicitation is hereby obligated:
  - (a) To pay the subcontractor(s) for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
  - (b) To notify the ordering entity and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.

iii. The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from the ordering entity, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the ordering entity.

C. Each prime contractor who wins an award in which provision of a SWaM procurement plan is a condition to the award, shall deliver to DPS, on or before request for final payment, evidence and certification of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the SWaM procurement plan. Final payment under the contract in question may be withheld until such certification is delivered and, if necessary, confirmed by DPS, or other appropriate penalties may be assessed in lieu of withholding such payment.

D. DPS encourages contractors and subcontractors to accept electronic and credit card payments.

25. **TAXES:** Sales to the Commonwealth of Virginia are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request. Deliveries against the contract to any Purchasing Agency shall usually be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.

If sales or deliveries against the contract are not exempt, the contractor shall be responsible for the payment of such taxes unless the tax law specifically imposes the tax upon the buying entity and prohibits the contractor from offering a tax-included price.

26. **TRANSPORTATION AND PACKAGING:** Contractor certifies and warrants that the price offered for FOB destination includes only the actual freight rate costs and is based upon the actual weight of the goods to be shipped. Except as otherwise specified herein, standard commercial packaging, packing and shipping containers shall be used. All shipping containers shall be legibly marked or labeled on the outside with purchase order number, commodity description, and quantity.

27. **INSURANCE:** Contractor certifies that it will have the following insurance coverage at the time the Master Agreement is awarded for goods when installation is required, services, and construction. The Contractor further certifies that the Contractor and any subcontractors will maintain these insurance coverages during the entire term of the contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

A. Workers' Compensation – Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the Commonwealth of increases in the number of employees that change their workers' compensation requirements under the Code of Virginia during the course of the contract shall be in noncompliance with the contract.

B. Employer's Liability - \$100,000.

C. Commercial General Liability - \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury. The Commonwealth of Virginia shall be added as an additional insured to the policy by blanket endorsement.

28. **CURRENCY**: The Contractor shall state prices in US dollars.
29. **AUDIT**: The contractor shall retain all books, records, and other documents related to the Agreement for five (5) years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The agency, its authorized agents, and/or state auditors shall have commercially reasonable access to and the right to examine any of said materials during said period.
30. **CANCELLATION OF CONTRACT**: Either party reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon 60 days written notice to the other party. Any contract cancellation notice shall not relieve the contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.
31. **RENEWAL OF CONTRACT**: This contract may be renewed by the Commonwealth upon written agreement of both parties for four (4) successive one year periods), under the terms of the current contract, and at a reasonable time (approximately 90 days) prior to the expiration.
32. **WARRANTY (COMMERCIAL)**: The Contractor agrees that the goods or services furnished shall be covered by the standard commercial warranties the Contractor gives any customer for such goods or services and that the rights and remedies provided therein are in addition to and do not limit those available to the Commonwealth by any other clause of this solicitation and rights and remedies permitted under applicable law.
33. **MANDATORY ACCEPTANCE OF SMALL PURCHASE CHARGE CARD (SPCC)**: Purchasing charge cards offer Commonwealth of Virginia agencies and public entities the opportunity to streamline their procedures for procuring and paying for small dollar goods and/or services.

**Charge Card Levels**: The amount of data passed for each charge card payment depends on the level at which the charge card is established. Payment for orders issued against the contract(s) resulting from this solicitation must allow for the Purchase Order Number to be passed at the time of charge so that the Purchase Order Number is received by the card platform and passed to the Card provider. The levels are delineated below and vendors must establish their card account at Level 2, which is mandatory, or Level 3, which is optional. Information on the various levels for the Purchase Card is indicated below.

**Level 1** - vendors provide basic charge card purchase information, including but not limited to the data listed below. By passing "Basic Data", the vendor has a standard interchange cost.

- Supplier Name
- Merchant Category Code
- Date
- Total Purchase Amount

**Level 2** - vendors provide additional information to the Level 1 elements, including but not limited to the data listed below. By passing Level 2 detail, the vendor will receive lower interchange costs. Level 2 is **mandatory** for any vendors who do business with the Commonwealth of Virginia and accept the Purchasing Card.

- Customer Code (PCO Number from eVA); and
- Vendor Tax ID

**Level 3** - vendors provide line item detail, in addition to the Level 1 and Level 2 elements, including but not limited to the data listed below. By passing Level 3 (**optional**) data which is considered "Superior Data", the vendor will receive the lowest interchange costs.

- Item Description
- Item Quantity
- Item Unit of Measure
- Product Code
- Freight Amount
- Extended line Item Amount

34. **REPORTING REQUIREMENTS AND SURCHARGE ADJUSTMENT FEE (SCA):**

**A. CONTRACTOR'S QUARTERLY REPORT OF SALES:** Contractor shall provide electronic reports in Microsoft Excel format on a quarterly basis showing total invoiced sales data, which means all invoices issued within the reporting period. Reports shall be provided no later than the 15th of each month, reporting total invoiced sales and return transactions that took place in the immediately preceding quarter. Reports shall be sent to the DPS Contracting Officer and to the following email address: [vssireport@dgs.virginia.gov](mailto:vssireport@dgs.virginia.gov). Failure to submit information in the required format and time may result in cancellation of the contract.

**B. SURCHARGE ADJUSTMENT FEE (SCA):** The Contractor must pay the Department of General Services (DGS), a Surcharge Adjustment fee under this Contract. **DGS will not issue invoices or statements.** The Contractor must remit the SCA fee by the last day of the month following the end of the calendar quarter. The SCA fee equals two percent (2%) of the quarterly reported total invoiced sales. The SCA fee amount due must be paid by check with identification of "Contract Number," "Report Amounts," and "Report Period" on either the check stub or other remittance material. DGS may, at its discretion, agree to an electronic funds transfer, in lieu of a check, however in the absence of an express written agreement from DGS that validates the agreement, then the payment shall be made by check as described herein.

Checks shall be payable to: Treasurer, Commonwealth of Virginia.

Checks shall be mailed to:

DGS/Division of Purchases and Supply

ATTN: VSSI Coordinator

PO Box 1199

Richmond, VA 23218-1199

If the full amount of the SCA fee is not paid within 30 calendar days of due date, it shall constitute a debt that the Contractor is obligated contractually to pay to the Commonwealth of Virginia, and the Commonwealth may exercise all rights and remedies available under law. Failure to submit sales reports, falsification of sales reports, and or failure to pay the SCA fee in a timely manner may result in termination or cancellation of this contract.

**Schedules:**

<u>Report Period</u>	<u>Sales Months</u>	<u>Quarterly Report Due</u>
1st Quarter	Jan, Feb, Mar	April 15 <sup>th</sup>
2nd Quarter	Apr, May, June	July 15 <sup>th</sup>
3rd Quarter	July, Aug, Sept	October 15 <sup>th</sup>
4th Quarter	Oct, Nov, Dec	January 15 <sup>th</sup>

<u>SCA Fee Period</u>	<u>Sales Months</u>	<u>Quarterly Payment Due</u>
1st Quarter	Jan, Feb, Mar	April 30 <sup>th</sup>
2nd Quarter	Apr, May, June	July 31 <sup>st</sup>
3rd Quarter	July, Aug, Sept	October 31 <sup>st</sup>
4th Quarter	Oct, Nov, Dec	January 31 <sup>st</sup>

**35. CONTRACTUAL DISPUTES:** In accordance with Code of Virginia § 2.2-4363, contractual claims, whether for money or other relief, shall be submitted in writing to the Authorized User no later than sixty (60) days after final payment; however, written notice of the Contractor’s intention to file such claim must be given to the Authorized User at the time of the occurrence or beginning of the work upon which the claim is based. Pendency of claims shall not delay payment of amounts agreed due in the final payment. The Authorized User shall render a final decision in writing within thirty (30) days after its receipt of the Contractor’s written claim.

- The Contractor may not invoke any available administrative procedure under Code of Virginia § 2.2-4365 nor institute legal action prior to receipt of the Commonwealth’s decision on the claim, unless the Commonwealth fails to render its decision within thirty (30) days. The decision of the Commonwealth shall be final and conclusive unless the Contractor, within six (6) months of the date of the final decision on the claim, invokes appropriate action under Code of Virginia § 2.2-4364 or the administrative procedure authorized by Code of Virginia § 2.2-4365.
- The Commonwealth or any Authorized User, and their officers, agents and employees, including without limitation, the contracting and Ordering Officers, are executing this Agreement and any Orders issued hereunder, solely in its or their statutory and regulatory capacities as agent of the Commonwealth agency or Authorized User that is purchasing and

receiving the goods or services in question and need not be joined as a party to any dispute that may arise there under.

- In the event of any breach by the Commonwealth or any Authorized User, Contractor's remedies shall be limited to claims for damages and Prompt Payment Act interest and, if available and warranted, equitable relief, all such claims to be processed pursuant to this Section. In no event shall Contractor's remedies include the right to terminate any services hereunder.

**36. EXCLUSIVITY OF TERMS AND CONDITIONS:** No employee or agent of the Commonwealth or Authorized User shall be required to sign or execute any additional contract, license or other agreement containing contractual terms and conditions. Any documents signed by persons other than the Director of DPS or their authorized designee shall have no validity or effect upon the Contract.

**37. PRICING SCHEDULES:** Posting of Prices and Dealer Information: The Contractor gives permission for DPS to post this Purchase Agreement, pricing data, dealership information and any other information necessary to facilitate the use of this Purchase Agreement by authorized Users on the DPS website.

**38. INVOICES AND METHODS OF PAYMENT:**

**A. INVOICES:**

As applicable, all invoices shall be rendered promptly to any Authorized User after all goods and/or services covered by the invoice have been provided. The Contractor shall invoice monthly in arrears. No invoice may include any cost other than those identified in the Contract or individual order referencing this Contract.

Invoices shall provide at a minimum:

1. Name of Authorized User (the ordering entity)
2. Authorized User point of contact name
3. Description of the Goods and/or Services provided
4. Invoice number
5. Invoice date
6. Monthly charges
7. Purchase Order Number

Contractor shall render invoices for any Authorized User in accordance with the instructions contained in the order. Inspection on delivery and approval of Contractor's invoice is the responsibility of receiving state agency or public body.

**B. METHODS OF PAYMENT:**

1. Small Purchase Charge Card
2. Check, EDI, etc., as agreed upon by using agency and Contractor's dealers.

Payment will be made thirty (30) days for state agencies and forty five (45) days for state localities after receipt of goods and/or services or a valid invoice, whichever is later.

Contractor shall submit a valid invoice to the invoice address designated in any order issued by an Authorized User in accordance with the invoice mailing instructions therein.

For valid invoices in the amount of \$5,000 or less, or any then-current charge card small dollar usage threshold, Contractor shall accept payment using the Commonwealth of Virginia's Small Purchase Charge Card (SPCC), if the SPCC card is offered for payment. For any amount exceeding \$5,000, or any then-current charge card small dollar usage threshold, Contractor shall accept payment by the Commonwealth's Gold Card, if the Gold Card is offered for payment.

Payment may be made by any other duly authorized official payment method or card as mutually agreed upon between any Authorized User and the Contractor.

39. **UNAUTHORIZED TERMS:** Any provision of the contract that purports to do the following shall be of no effect and shall not be deemed a part of the contract even if specifically agreed to by the Purchasing Agency: (1) requiring the Commonwealth or Purchasing Agency to indemnify or hold the Contractor, its subcontractors, suppliers, or any of their officers, agents, or employees harmless; (2) imposing interest charges contrary to that specified by the Code of Virginia, § 2.2-4347 through 2.2-4354; binding the Commonwealth or Purchasing Agency to any arbitration process; (3) obligating the Commonwealth or Purchasing Agency to pay costs of collection or attorney's fees; (4) granting the Contractor a security interest in property of the Commonwealth or Purchasing Agency; (5) prohibiting the Commonwealth or Purchasing Agency from disclosing prices; (6) prohibiting the Commonwealth or Purchasing Agency from complying with any law applicable to them; or (7) bestowing any right or incurring any obligation that is beyond the legal authority of the Purchasing Agency's representative to bestow or incur on behalf of the Commonwealth or Purchasing Agency.



**ATTACHMENT A**

**TUBES AND TIRE PRICES**

Tubes and tire prices are on the Statewide Contracts list on eVA in a separate document entitled Attachment A, "Tubes and Tire Prices."

Attachment A is hereby incorporated into and made an integral part of Contract 19103 between the Commonwealth of Virginia and the Contractor. In the event of any discrepancy between this Attachment A and the Contract, the provisions of the Contract shall control.

**ATTACHMENT B**

**TIRE & TUBES**  
**PERCENTAGE DISCOUNTS & SERVICE PRICES**

Percentage discounts off tires and tube prices and service pricing is attached hereto and on the Statewide Contracts list in the eVA system entitled "Attachment B Tire & Tubes Percentage Discounts & Service Prices."

Attachment B is hereby incorporated into and made an integral part of Contract 19103 between the Commonwealth of Virginia and the Contractor. In the event of any discrepancy between this Attachment B and the Contract, the provisions of the Contract shall control.

**CONTINENTAL TIRE/TUBE DISCOUNTS AND SERVICE PRICING**

**1.1 Tires and Tubes Percentage Discounts by Subcategory**

Tire and Tube pricing includes all anticipated charges, including but not limited to, freight to dealer locations, cost of product and services, transaction fees, overhead, profits, and other costs or expenses incidental to the Contractor's performance. Tire and Tube pricing does not include delivery to Purchasing Entities. Contractor's discount off of Manufacturer's Price List (MPL) pricing is shown below:

<b>Tire and Tube Percentage Discounts by Subcategory</b>					
<b>Sub-category #</b>	<b>Tire and Tube Type</b>	<b>Percent Discount</b>	<b>MPL Name</b>	<b>MPL Date</b>	<b>MPL REF. Numbers</b>
<b>B1</b>	<b>Pursuit and Performance Tires</b>	63.25%	Government Price List	7/12/2018	G3
<b>B2</b>	<b>Automobile/Passenger Vehicles</b>	49%	Government Price List	7/12/2018	G3
<b>B3</b>	<b>Light Duty Trucks:</b>	49%	Government Price List	7/12/2018	G3
	<b>3a. Radial</b>	49%	Government Price List	7/12/2018	G3
	<b>3b. Bias</b>	49%	Government Price List	7/12/2018	G3
<b>B4</b>	<b>Medium Commercial/Heavy Duty Trucks/Buses</b>	39%	Government Price List	7/12/2018	G3
<b>B5</b>	<b>Off Road</b>		Government Price List	7/12/2018	G3
	<b>5a. Off Road Radial</b>	35%	Government Price List	7/12/2018	G3
	<b>5b. Off Road Bias</b>	35%	Government Price List	7/12/2018	G3
<b>B6</b>	<b>Agriculture/Farm</b>	58%	Government Price List	7/12/2018	G3
<b>B7</b>	<b>Industrial Tires</b>	58%	Government Price List	7/12/2018	G3
<b>B8</b>	<b>Specialty Tires</b>	58%	Government Price List	7/12/2018	G3

## 1.2 Tire Service Pricing

Tire services include all minor parts and labor as a total service rate. Flat rate pricing and availability of services is shown below:

Type of Service		Product Sub-Category 1 & 2	Product Sub-Category #3
		Pursuit, Performance, Passenger	Light Duty Trucks
1	Tire Installation w/purchase in store includes dismount of used tires and tubes (per tire)	\$10.00	\$12.00
2	Change tire, dismount and mount	\$10.00	\$12.00
3	Flat Repair, remove, repair and mount	\$17.00	\$19.00
4	Flat repair, off vehicle	\$17.00	\$19.00
5	Rotate mounted tires (per tire)	\$5.00	\$7.00
6	New valve stem rubber or metal (per tire)	\$8.00	\$10.00
7	Wheel balance-computer spin balance (Per Tire)	\$13.00	\$15.00
8	Wheel balance/Valve stem combo (per tire)	\$21.00	\$23.00

## 1.3 Price and Rate Guarantee Period

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

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

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

**ATTACHMENT C**

**AUTHORIZED DEALERS LIST**

Manufacturers' authorized dealers in Virginia are listed on the Statewide Contracts list on eVA in separate document entitled "Authorized Dealers List."

## ATTACHMENT D

### PURCHASING INSTRUCTIONS

Purchasing instructions are listed below and on the Statewide Contracts list on eVA in a separate document entitled Attachment D, "Purchasing Instructions"

#### **A. Instructions**

1. Reference Statewide Contracts on eVA for this contract "Tires - Participating Addendum Continental Tires Master Agreement # 19103. Open Attachments for "Tubes and Tire Prices" or "Service Prices." Find the tubes, tires or services needed.
2. Among the price list for services are tire removal, installation of new tires, wheel balancing and alignments.
3. Use the manufacturer's Authorized Dealers List to locate a participating dealer in your area. Purchase tires, tubes and services as an over the counter sale using a purchase card, or enter a purchase order into Virginia's eVA procurement system for purchases.

#### **B. Orders**

1. Orders must be placed with participating dealers identified on the Authorized Dealers List.
2. Over the counter purchases may be made up to the Small Purchasing Charge Card limit.
3. All orders not over the counter shall be processed in the eVA procurement system.