

**PARTICIPATING ADDENDUM**



**AUTOMOTIVE PARTS**

Led by the **State of California**

Master Agreement #: 7-21-99-41-01

Contractor: Factory Motor Parts

Participating Entity: **STATE OF NORTH DAKOTA**

This Participating Addendum is entered into by Contractor and Participating Entity (collectively, the "Parties").

**Scope and Participation:**

1. Scope:

☒ This Participating Addendum includes the entire scope of the products and services available through the Master Agreement referenced above.

Any scope exclusions specified herein apply only to this Participating Addendum and shall not amend or affect other participating addendums or the Master Agreement itself.

2. Participation: This Participating Addendum covers participation of Participating Entity in the above-referenced Master Agreement between the State of North Dakota and Contractor for Automotive Parts. This Participating Addendum may be used by all state agencies, institutions of higher education, cities, counties, districts, and other political subdivisions of the state, and nonprofit organizations within the state if authorized herein and by law. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.

3. Term:

☒ This Participating Addendum shall become effective as of the date of the last signature below and shall terminate upon the expiration or termination of the Master Agreement, as amended, unless the Participating Addendum is terminated sooner in accordance with the terms set forth herein.

☐ This Participating Addendum shall become effective as of the date of the last signature below and shall terminate on [date], unless terminated sooner or otherwise amended in accordance with the terms set forth herein. Notwithstanding the previous, in no event shall the term of the Participating Addendum exceed the term of the Master Agreement, as amended.

4. Primary Contacts: The following (or their named successors) are the primary contact individuals for this Participating Addendum:

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**CONTRACTOR:**

Name:	<u>FACTORY MOTOR PARTS</u>
Address:	<u>2525 VERMONT AVE BISMARCK ND 58504</u>
Telephone:	<u>720-251-1776</u>
Fax:	
Email:	<u>D.CARNEY@FMPCO.COM</u>

**PARTICIPATING ENTITY:**

Name:	Chad Keech
Address:	State Procurement Office, 600 E Boulevard Ave, Dept. 012, Bismarck ND 58505
Telephone:	701.328.2767
Fax:	701.328.1615
Email:	<a href="mailto:ckeech@nd.gov">ckeech@nd.gov</a>

**Participating Entity Modifications and Additions to the Master Agreement**

- ☐ This Participating Addendum incorporates all terms and conditions of the Master Agreement as applied to the Participating Entity and Contractor.
- ☒ This Participating Addendum incorporates all terms and conditions of the Master Agreement as applied to the Participating Entity and Contractor, **subject to the following limitations, modifications, and additions:**

1. Coterminous: The term of this Participating Addendum shall be coterminous with the State of California Master Agreement Number 7-21-99-41-01.
2. 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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3. 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.
4. 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.
5. 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. [chapter 39-04.2 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.
6. 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*.
7. Indemnification: In addition to any indemnity obligations found within the Master Agreement, Contractor agrees that any attorney appointed to represent the Participating Entity 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.
8. Alternative dispute resolution – Jury Trial: Participating Entity does not agree to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute



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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.

9. 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.

Any limitations, modifications, or additions specified herein apply only to the agreement and relationship between Participating Entity and Contractor and shall not amend or affect other participating addendums or the Master Agreement itself.

5. Subcontractors: All contractors, dealers, and resellers authorized to provide sales and service support in Participating Entity's state, as shown on Contractor's NASPO ValuePoint-specific webpage, may provide sales and service support to users of this Participating Addendum. Participation of Contractor's contractors, dealers, and resellers will be in accordance with the terms and conditions set forth in the Master Agreement.
6. Orders: Any order placed by Participating Entity or a Purchasing Entity for a product or service offered through this Participating Addendum shall be deemed to be a sale under, and subject to the pricing 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 the order.

NASPO ValuePoint  
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IN WITNESS WHEREOF, the Parties have executed this Participating Addendum.

**PARTICIPATING ENTITY**

**CONTRACTOR**

Signature: 	Signature: 
Name: Chad Keech	Name: <u>DANA CARNEY</u>
Title: Procurement Manager	Title: <u>FLEET SALES AND OPERATIONS MGR</u>
Date: 3/03/2022	Date: <u>3-3-2022</u>

For questions regarding NASPO ValuePoint Participating Addendums, please contact the Cooperative Contract Coordinator team at [info@naspovaluepoint.org](mailto:info@naspovaluepoint.org).

Fully executed NASPO ValuePoint Participating Addendums must be submitted via email in PDF format to [pa@naspovaluepoint.org](mailto:pa@naspovaluepoint.org).