

PARTICIPATING ADDENDUM

NASPO ValuePoint

Small Package Delivery Services

State of Utah

(hereinafter "Lead Entity")

Master Agreement

Contract Number: CL21-26 / MA454 FedEx

FedEx

(hereinafter "Contractor")

and

State of Arkansas

(hereinafter "Participating State/Entity")

1. **SCOPE:**

This participating addendum (PA) covers the NASPO ValuePoint contract for Small Package Delivery Services administered by the Lead Entity for use by State agencies and other entities located in the State of Arkansas as authorized by that State's statutes to utilize cooperative contracts.

2. **PARTICIPATION:**

All eligible purchasers within the State of Arkansas, including State agencies, K-12 educational institutions, and local public procurement units (cities, counties, municipalities), are authorized to purchase products under the terms and conditions of this participating addendum.

3. **INDIVIDUAL CUSTOMER:**

Each state agency and political subdivision, as a Participating Entity, that purchase products/services **shall** be treated as if they are Individual Customers. Except to the extent modified by the State of Arkansas Participating Addendum, each agency and political subdivision will be responsible to follow the terms and conditions of the Master Agreement; and they will have the same rights and responsibilities for their purchases as the State has in the Master Agreement and this Participating Addendum. Each agency and political subdivision **shall** be responsible for their own charges, fees, and liabilities. Each agency and political subdivision **shall** have the same rights to any indemnity or to recover any costs allowed in the contract for their purchases. The Contractor **shall** apply the charges to each Participating Entity individually.

4. **ORDER OF PRECEDENCE:**

- A. Arkansas's Participating Addendum (PA); Arkansas's Participating Addendum **shall not** diminish, change, or impact the rights of the Lead State with regard to the Lead State's contractual relationship with the Contractor under the Terms of the Lead State's Master Agreement.
- B. Lead State's Master Agreement (includes negotiated Terms & Conditions)
- C. The Solicitation including all Addendums; and
- D. Contractor's response to the solicitation.

These documents **shall** be read to be consistent and complementary. Any conflict among these documents **shall** be resolved by giving priority to these documents in the order listed above. Contractor terms and conditions that apply to the Master Agreement are only those that are expressly accepted by the Lead State and **must** be in writing and attached to the Master Agreement as an Exhibit or Attachment. Notwithstanding the foregoing, ordering documents (purchase orders) may contain transaction-specific terms and each ordering document that is accepted by the Contractor **shall** become a part of this Agreement as to the products and services listed on the ordering document only. No other terms and conditions **shall** apply, including terms and conditions listed in the Contractor's response to the Solicitation, or terms listed or references on the Contractor's website, in the Contractor's quotation/sales order or in similar documents subsequently provided by the Contractor (unless such terms are referenced in the Master Agreement).

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5. PAYMENTS AND INVOICE PROVISIONS:

Payment will be made in accordance with applicable State of Arkansas accounting procedures upon acceptance by the Agency. The Participating State may not be invoiced in advance of delivery and acceptance of any products or services. Payment will be made only after the Contractor has successfully satisfied the ordering agency as to the goods and/or services purchased, rented or leased. Contractors should invoice the ordering agency by an itemized list of charges. Purchase Order Number and/or Contract Number should be referenced on each invoice.

Payments will be submitted to the Contractor at the address shown on the invoice. Payment should be tendered to the Contractor within thirty (30) days of the date of invoice. After the sixtieth (60th) day from the date of the invoice, unless mutually agreed to, interest may be paid on the unpaid balance due to the Contractor at the rate of one half of one percent per month in accordance with Arkansas Code Annotated §19-11-224. The Purchasing Entity will make a good-faith effort to pay within thirty (30) days after date of invoice. Payments may also be made via a Purchasing Entity's Purchasing Card ("P-Card"). The State shall have the right to dispute billed goods or services and withhold payment for those goods or services that are in dispute. Interest shall not be charged on disputed amounts while in dispute.

Contractor **shall** ensure that all invoices are sent directly to the State agency or local public procurement unit that purchased products from them.

All invoices should be forwarded to:

Agency Name
Attention: Accounts Payable
Address
City, Arkansas Zip Code

6. PRICING OPTIONS

The State of Arkansas selects the Multiple Carrier pricing program option which does not include a Money Back Guarantee.

7. PURCHASE ORDER INSTRUCTIONS:

All Participating Entities issuing valid purchase orders within the jurisdiction of this Participating Addendum should include the following:

- A. NASPO ValuePoint Master Agreement number **454 FedEx**
- B. State contract number **4600049761 / P000000147**
- C. Agency Name, Address, Contact, and Phone-Number
- D. Applicable approvals
- E. Orders shall be made out to the Contractor or Reseller

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The Purchasing Entities shall not be required, by the Contractor or its subcontractors, to sign any additional terms and conditions when utilizing this Agreement.

The parties acknowledge and agree that orders submitted to the Contractor from a Participating Entity through the Participating Entity's business P-Card are authorized purchase orders under the NASPO ValuePoint Master Agreement 454 FedEx.

8. **RECORD RETENTION:**

Financial and accounting records relevant to State of Arkansas transactions under this Addendum **shall** be subject to examination by appropriate Arkansas government authorities for a period of five (5) years from the expiration date and final payment under this Addendum or extension thereof, provided, however, that such government authorities will provide thirty (30) days written notice to the Contractor of its intent to conduct such examination contemplated by this section.

9. **GOVERNING LAW:**

The laws of the State of Arkansas **shall** govern this agreement. Nothing under this agreement or the Master Agreement **shall** be deemed or construed as a waiver of the State's right to sovereign immunity.

10. **VENUE AND JURISDICTION:**

Venue for any claim, dispute, or action concerning an order placed against the contract **shall** be Pulaski County, Arkansas. Any claims against the State, whether sounding in tort or in contract, **shall** be brought before the Arkansas State Claims Commission as provided by Arkansas law, and **shall** be governed accordingly.

11. **TAXES:**

Personal Property tax will not be charged to Arkansas state agencies.

12. **TRAVEL EXPENSES:**

Expenses for travel **shall not** be reimbursed unless specifically permitted under the duties of the Contractor. All travel **must** be approved in advance by the State. Approved expenditures made by the Contractor for travel will be reimbursed at the current rate paid by the State and in accordance with Arkansas Travel Guidelines and Procedures.

13. **CANCELLATION:**

A. **For Convenience.** The State may cancel this Agreement for any reason by giving the Contractor written notice of such cancellation sixty (60) days prior to the date of cancellation.

B. **For Cause.** The State may cancel this Agreement for cause when the Contractor fails to perform its obligations under it by giving the Contractor written notice of such cancellation at least thirty (30) days prior to the date of proposed cancellation. In any written notice of cancellation for cause, the State will advise the Contractor in writing of the reasons why the State is considering cancelling the Agreement, and provide the Contractor with an

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opportunity to avoid cancellation for cause by curing any deficiencies identified in the notice of cancellation for cause prior to the date of proposed cancellation. The parties may endeavor to agree to reasonable modifications in the Agreement to accommodate the causes of the cancellation for cause and avoid the cancellation, to the extent permitted by law, and at the discretion of each party individually.

- C. If upon cancellation the Contractor has provided services which the State has accepted, and there are no funds legally available to pay for the services, the Contractor may file a claim with the Arkansas Claims Commission under the laws and regulations governing the filing of such claims.

14. INDEMNIFICATION:

The following indemnification clause replaces in its entirety the Indemnification Clause specified in the Master Agreement.

INDEMNIFICATION – The Contractor **shall** be fully liable for the actions of its agents and employees, partners, and subcontractors and **shall** fully indemnify, defend, and hold harmless the Purchasing Entity and the State, and their officers, agents, and employees from suits, actions, damages, and costs of every name and description, including reasonable attorney's fees arising from or related to personal injury and damage to real or personal property, alleged to be caused in whole or in part by the Contractor, its agents, or employees, partners, and subcontractors. Language in this clause **shall not** be construed or deemed as the State's waiver of its right of sovereign immunity. The Contractor agrees that any claims against the State, whether sounding in tort or in contract, **shall** be brought before the Arkansas State Claims Commission as provided by Arkansas law, and **shall** be governed accordingly. This section is not subject to any limitations of liability in the Master Agreement or in any other document executed in conjunction with the Master Agreement.

15. CONFIDENTIAL INFORMATION:

Under Arkansas law, the release of public records is governed by The Arkansas Freedom of Information Act found at Section 25-19-101 et. seq. of the Arkansas Statutes.

16. CONTINGENT FEE:

The Contractor guarantees that Contractor has not retained a person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies maintained by the Contractor for the purpose of securing business.

17. DISCLOSURE:

Under Arkansas law, OSP is required to have a copy of EO 98-04 Disclosure Form on file for the Contractor. Contractor **shall** submit the disclosure form prior to entering into this Addendum. Failure to make any disclosure required by Governor's Executive Order 98-04, or any violation of any rule, regulation, or policy adopted pursuant to that order, **shall** be a material breach of the terms of this PA. Any Contractor, whether an individual or entity, who fails to make the required disclosure or who violates any rule, regulation, or policy **shall** be subject to all legal

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remedies available to the State.

18. RESTRICTION OF BOYCOTT OF ISRAEL:

Pursuant to Arkansas Code Annotated § 25-1-503, a public entity **shall not** enter into a contract with a company unless the contract includes a written certification that the person or company is not currently engaged in and agrees for the duration of the contract not to engage in, a boycott of Israel. By signing this Participating Addendum, a Prospective Contractor agrees and certifies that they do not, and will not for the duration of the contract, boycott Israel.

19. VENDOR REGISTRATION:

In order to receive payment, Contractor **must** register online at <https://www.ark.org/vendor/index.html>

20. FOR SERVICE CONTRACTS ONLY:

A. **Equal Opportunity Policy.** In compliance with Arkansas Code Annotated § 19-11-104, if a state agency is purchasing services, the Office of State Procurement (OSP) is required to have a copy of the Contractor's *Equal Opportunity (EO) Policy* prior to entering into this Addendum. *EO Policies* may be submitted in electronic format to the following email address: eeopolicy.osp@dfa.arkansas.gov or Contractor may submit a hard copy with this Addendum. The submission of an *EO Policy* to OSP is a one-time requirement. Contractor is responsible for providing updates or changes to its policy, and for supplying *EO Policies* upon request to other State agencies that must also comply with this statute. If Contractor is not required by law to have an *EO Policy*, Contractor **must** submit a written statement to that effect.

B. **Prohibition of Employment of Illegal Immigrants.** Pursuant to Arkansas Code Annotated § 19-11-105, if a state agency is purchasing services, the Office of State Procurement (OSP) is required to have a certification on file from the Contractor stating that the Contractor does not employ or contract with illegal immigrants.

By signing this Participating Addendum, the Contractor agrees and certifies that they do not employ or contract with illegal immigrants and that they will not employ or contract with illegal immigrants during the aggregate term of the contract.

C. **Performance Standards** Under Arkansas law, all state agencies, boards, commissions, and institutions of higher education must include performance standards when purchasing services. Performance standards **shall** be mutually agreed upon by the parties hereto for any services purchased.

21. TERMS:

The Participating State/Entity is agreeing to the terms of the Master Agreement only to the extent the terms are not in conflict with Arkansas law.

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22. PRIMARY CONTACTS:

The primary contacts for this participating addendum are as follows (or their named successors):

Lead Entity

Name:	State of Utah, Office of State Purchasing
Contact Person:	Cherilyn Hess
Address:	4315 S. 2700 W., FL 3, Taylorsville, UT 84129-2128
Telephone:	801-957-7133
E-Mail:	chess@utah.gov

Contractor

Company Name:	FedEx
Contact Person	David Guanella
Address:	900 7 th Street, NW, Suite 550, Washington, DC 20001
Telephone:	800.463.3339
E-Mail:	daguanella@fedex.com

Arkansas Contact

Company Name:	TSS Office of State Procurement
Contact Person	Heather Bailey
Address:	501 Woodlane Street, Suite 220, Little Rock, AR 72201-1023
Telephone:	501.324.9320
E-Mail:	Heather.v.bailey@arkansas.gov

Participating Entity

Name:	
Address:	
Telephone:	
E-Mail:	

The contacts listed above can be changed by the parties from time to time in writing. Such updates do not require an amendment to this Addendum.

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This Participating Addendum and Master Agreement 454 FedEx administered by the State of Utah/NASPO ValuePoint together with its exhibits (including any terms referenced in the Master Agreement), set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Addendum or the Master Agreement, together with its exhibits, **shall not** be added to or incorporated into this Participating Addendum or the Master Agreement and its exhibits, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Participating Addendum and the Master Agreement and its exhibits **shall** prevail and govern in the case of any such inconsistent or additional terms within the Participating State.

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

Participating State: Arkansas	Contractor: FedEx Corporate Services, Inc
By: <i>Camber Thompson</i>	By: <i>David Guanella</i>
Name: Camber Thompson	Name: David Guanella
Title: Sr. Procurement Manager - Department of Transformation and Shared Services, Office of State Procurement	Title: Worldwide Account Manager
Date: 11/16/2021	Date: 11/16/2021