

NASPO ValuePoint

PARTICIPATING ADDENDUM**SMALL PACKAGE DELIVERY SERVICES**Led by the **State of Utah**Master Agreement #: **MA065**Contractor: **UPS**Participating Entity: **STATE OF NORTH DAKOTA****Scope and Participation:**1. Scope:

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

☐ This Participating Addendum includes the entire scope of the products and services available through the Master Agreement, except the following:

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 Utah and Contractor for Small Package Delivery Services. 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. Non-profit entity established on behalf of a public entity may be required to show documentation evidencing this intention. 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 three weeks after 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.

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

CONTRACTOR:

Name:	Joseph Miller
Address:	8440 Ardwick Ardmore Rd, Landover, MD 20785
Telephone:	240-818-9251
Fax:	N/A
Email:	josephmiller@ups.com

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Name:	North Dakota State Procurement Office
Address:	14 Floor Capitol Tower, 600 E Boulevard Ave Dept 012, Bismarck, ND 58505
Telephone:	701-328-2767
Fax:	701-328-1615
Email:	ckeech@nd.gov

Participating Entity Modifications and Additions to the Master Agreement

[Removable Instruction: Check one of the boxes below. If Participating Entity has no changes or additions to the terms and conditions of the Master Agreement, check the first box.]

- ☐ 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. **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.
2. **Compliance with Public Records Laws:** Under the North Dakota public records law and subject to the Confidentiality clause of this Contract, certain records may be open to the public upon request.

Public records may include: (a) records Participating Entity receives from Contractor under this Contract, (b) records obtained by either Party under this Contract, and (c) records generated by either Party under this Contract.

Contractor agrees to contact Participating Entity upon receiving a request for information under the public records law and to comply with Participating Entity's instructions on how to respond to such request.

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3. 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.
 4. 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*.
 5. Indemnification: In addition to the indemnification requirements of the Master Contract, Contractor acknowledges that any attorney appointed to represent the State of North Dakota 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.
 6. 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.

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.
7. Non-Appropriation: If during the term of this Participating Addendum, appropriations are insufficient to support purchases under this Participating Addendum, the Participating

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Entity may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. If during the term of this Participating Addendum, appropriations are insufficient to support any Purchasing Entity's purchases under this Participating Addendum, the Purchasing Entity may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. A Purchasing Entity's actions under this clause will not affect this Participating Addendum or purchases made by other Purchasing Entities under this Participating Addendum.

If the Participating Entity or Purchasing Entity order services without funds appropriated, the Participating Entity or Purchasing Entity will make good faith efforts to pay Contractor at the agreed-upon rates for such services rendered prior to the notice of non-Appropriation of funds. To the extent that the Participating Entity or Purchasing Entity notifies Contractor that no appropriated funds are available to pay Contractor for services, Contractor shall have the right, but not the obligation, to suspend all services to the Participating Entity or Purchasing Entity providing notice without such action constituting a default of the Participating Addendum. Service to the Participating Entity and other Purchasing Entities will not be affected by funding deficiencies of a single Purchasing Entity

8. Purchase Order Terms and Conditions: This Participating Addendum and the NASPO Master Agreement, (administered by the State of Utah) together with its exhibits (including Contractor's response to the NASPO solicitation attached thereto), 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 Participating Addendum and the NASPO Master Agreement, together with its exhibits, shall not be added to or incorporated into this Participating Addendum or the NASPO 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 null and void. The terms and conditions of this Participating Addendum and the NASPO Master Agreement and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms. A Purchasing Entity or Participating Entity Purchase Order is not required to initiate services. Services shall be initiated consistent with Contractor's ordering documentation. In the event a Purchasing Entity or Participating Entity Purchase Order is used for ordering services, Contractor's ordering documentation shall also apply. Contractor shall have a right to deny any Purchasing Entity or Participating Entity Purchase Order. Services rendered to a Purchasing Entity or Participating Entity shall not affect such denial or be deemed evidence of acceptance. The parties agree that only Contractor's express agreement to a purchase order shall be binding.

The Participating Entity expressly agrees to the inclusion of Contractor's Rate and Service Guide and Tariff/Terms and Conditions of Service as set forth in the NASPO Master Agreement.

9. Purchasing Entity Fraud: In the interest of reducing the risk of fraud and unauthorized re-selling of Contractor services, nothing in this Participating Addendum shall obligate Contractor to provide services to any organization or entity other than the Participating Entity and authorized Purchasing Entities. If Contractor believes that a Purchasing Entity's

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PARTICIPATING ADDENDUM



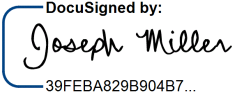
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shipping characteristics evidence fraudulent use of this Participating Addendum for the benefit of for-profit companies or other unauthorized users, it may, in its sole discretion, refuse service to the Purchasing Entity without notice.

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

PARTICIPATING ENTITY

CONTRACTOR

Signature:  39FEBA829B904B7...	Signature: 
Name: Joseph Miller	Name: Chad Keech
Title: Director	Title: Procurement Manager
Date: 3/17/2022 9:16 AM EDT	Date: 3/16/2022

[Removable Instruction: Additional signatures may be added if required by the Participating Entity.]

For questions regarding NASPO ValuePoint Participating Addendums, please contact the Cooperative Contract Coordinator team at ccc@naspovaluepoint.org.

Fully executed NASPO ValuePoint Participating Addendums must be submitted via email in PDF format to pa@naspovaluepoint.org.