

NASPO ValuePoint

PARTICIPATING ADDENDUM
**SMALL PACKAGE DELIVERY
SERVICES 2021-2026**

Lead by the State of Utah

Master Agreement #: MA065

The Parties:

Contractor: **UNITED PARCEL SERVICE, INC. (UPS)**Participating Entity: **STATE OF WYOMING (STATE)**

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

- Small Package Delivery Services, as described in UPS's response to Solicitation CH12-36.

Master Agreement Terms and Conditions:

1. Scope: This Participating Addendum covers the **Small Package Delivery Services** led by the State of Utah for use by state agencies and other entities located within the Participating 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 education, political subdivisions and other entities authorized to use statewide contracts in the State of Wyoming (each, a "Purchasing Entity"). 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:	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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Participating Entity

Name:	Debi Walker
Address:	2323 Carey Avenue, Cheyenne, WY 82002
Telephone:	307-777-6707
Email:	debi.walker@wyo.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. Orders: Any order placed by the Participating Entity or any Purchasing Entity for a 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, to the extent a Purchasing Entity opens an account and requests its purchases are aligned to the Master Agreement pricing. Purchasing Entities with a pre-existing account will be migrated to NASPO pricing upon confirmation from the Participating Entity's primary contact or the primary contact for this Participating Addendum.
6. Non-Appropriation: If, during the term of this Participating Addendum, appropriations are insufficient to support purchases under this Participating Addendum, the Participating 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.

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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. In no event shall non-appropriation relieve a pre-existing payment obligation incurred before notice to Contractor of non-appropriation or cancellation pursuant to this section.

The State shall notify the Contractor at the earliest possible time of the services which will or may be affected by a shortage of funds. No penalty shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments due.

7. Purchase Order Terms and Conditions: This Participating Addendum and the NASPO Master Agreement #MA065 (administered by the State of Utah), together with its exhibits (including Contractor's response to the NASPO solicitation attached thereto) (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 Participating Addendum and the Master Agreement, shall not be added to or incorporated into this Participating Addendum or the Master Agreement, 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 Master Agreement 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 Master Agreement.

8. Late Payment Fee: Purchasing Entities will pay late payment fees as in the amount and timeframe described in the Contractor's Rate and Service Guide and Tariff/Terms and Conditions of Service, in effect at the time of shipping. Purchasing Entities are responsible for selecting appropriate payment terms, method of invoicing, and method of payment.

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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 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.
10. Subcontractors: The Contractor is permitted to make subcontract(s) with any other party for furnishing any of the work or services herein. The Contractor shall be solely responsible for performance of the entire Contract whether or not subcontractors are used. The Participating Entity shall not be involved in the relationship between the prime contractor and the subcontractor. Any issues that arise as a result of this relationship shall be resolved by the Contractor. For the avoidance of doubt, vendors and suppliers to the Contractor's business shall not be considered subcontractors.
11. Third-Party Beneficiary Rights: The parties do not intend to create in any other individual or entity the status of third-party beneficiary, and this Participating Addendum shall not be construed so as to create such status. The rights, duties, and obligations contained in this Participating Addendum shall operate only between the parties to this Participating Addendum and shall inure solely to the benefit of the parties to this Participating Addendum. The provisions of this Participating Addendum are intended only to assist the parties in determining and performing their obligations under this Participating Addendum.
12. Nondiscrimination: Contractor agrees to manage its business in compliance with all applicable laws and regulations of the countries in which it operates. Contractor acknowledges that compliance with non-discrimination, whistleblower protection and similar laws is an integral part of its undertakings on behalf of Participating Entity and that any violation of such laws in connection with providing services, as determined by the applicable government agency with responsibility for enforcing those laws, may be a material breach of its obligations to Participating Entity and will subject Contractor to termination of the Participating Addendum.
13. Sovereign Immunity and Limitations: Pursuant to Wyo. Stat. § 1-39-104(a), the State of Wyoming and each Purchasing Entity that is an instrumentality of the State of Wyoming expressly reserve sovereign immunity by entering into this Participating Addendum and any purchase order, and each Purchasing Entity constituting a governmental entity expressly reserves governmental immunity. All of them specifically retain all immunities and defenses available to them as sovereigns or governmental entities pursuant to Wyo. Stat. § 1-39-101, *et seq.*, and all other applicable law. The parties acknowledge that the State of Wyoming has sovereign immunity and only the Wyoming Legislature has the power to waive sovereign

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immunity. The parties agree that any ambiguity in this Participating Addendum shall not be strictly construed, either against or for either party, except that any ambiguity as to immunity shall be construed in favor of immunity.

14. Effective Date: Notwithstanding any other effective date contained in this agreement, the rates established under this agreement will be effective no sooner than three (3) weeks after the date Contractor receives a fully executed contract with all required approvals from the State or as of the Effective Date of this Participating Addendum, whichever is later.
15. Term: In no event shall the term of the Participating Addendum exceed the term of the Master Agreement, as amended.
16. Applicable Law & Venue: The construction, interpretation, and enforcement of this Participating Addendum shall be governed by the laws of the State of Wyoming, without regard to conflicts of law principles. The Courts of the State of Wyoming shall have jurisdiction over this Participating Addendum and the parties. Pursuant to Wyo. Stat. § 1-39-117, the venue shall be the First Judicial District, Laramie County, Wyoming.

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For questions on executing a participating addendum, please contact:

NASPO ValuePoint

Cooperative Development Coordinator:	Shannon Berry
Telephone:	(775) 720-3404
Email:	sberry@naspovaluepoint.org