

**PARTICIPATING ADDENDUM (PA)  
FOR SMALL PACKAGE DELIVERY SERVICES**

**Between**

**The State of North Dakota ("Participating State") and United Parcel Service, Inc., an Ohio Corporation  
(collectively, "UPS" or "Contractor")**

This Participating Addendum between Contractor and Participating State, effective as of November 28, 2016 ("Participating Addendum"), is issued pursuant to that certain Master Agreement #MA065, executed between the Contractor and the State of Utah, effective November 28, 2016 ("NASPO Master Agreement"), the terms and conditions of which are incorporated herein by reference.

**Contract Number:** The contract number for the Participating State is 196.

**Term of the Participating Addendum:** November 28, 2016 – November 27, 2021

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 in the Participating State (as defined by North Dakota Century Code Section 54-44.4-13), that may purchase the products and services available in the NASPO Master Agreement and that are authorized by that Participating State's statutes to utilize the Participating State's contracts with the prior approval of the Participating State's Chief Procurement Official. This Participating Addendum is not a purchase order, nor does it guarantee any purchases to be made by any customer.

The following products or services are included under this Participating Addendum:

Ground, Next Day Air, Next Day Air Saver, Second Day Air AM, Second Day Air PM, Three Day Select, Hundredweight, Worldwide Export Express, Export Saver, Export Expedited, Export Standard, Worldwide Import Express, Import Express Saver, Import Expedited and Import Standard

The following products or services are not included under this Participating Addendum:

None.

**Type of Rates:** Multi MBG Rates

2. **Participation:** This Participating Addendum may be used by all state agencies, institutions of higher institution, political subdivisions and other entities authorized to use statewide contracts in the State of North Dakota. Issues of interpretation and eligibility for participation are solely within the authority of the Participating State's Chief Procurement Official.

3. **Primary Contacts:** The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

Name:	Erik Rowley
Address:	3312 Broadway St NE Minneapolis MN 55413
Telephone:	612-655-6228
Fax:	612-379-6530
Email:	erowley@ups.com

Participating State

Name:	Chad Keech, State of North Dakota / Office of Management & Budget (OMB) – Procurement Office
Address:	14 <sup>th</sup> Floor Capitol Tower, 600 E. Boulevard Dept 012, Bismarck, ND 58505-0310
Telephone:	701.328.2767
Fax:	701.328.1615
Email:	ckeech@nd.gov

4. Participating State Modifications or Additions to the NASPO Master Agreement:

These modifications or additions apply only to actions and relationships within the Participating State under this Participating Addendum. Participating State must check one of the boxes below.

No changes to the terms and conditions of the NASPO Master Agreement are required.

The following changes are modifying or supplementing the NASPO Master Agreement terms and conditions.

**A. Reports**

The contractor will supply the State of North Dakota an annual report showing the quantities and dollar volume of purchases by each agency.

**B. Contract Period and Renewals**

The Participating Addendum will follow the same contract period and renewal options as in the NASPO Master Agreement.

**C. 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 contract must be adjudicated exclusively in the state District Court of Burleigh County, North Dakota.

**D. Insurance**

Contractor shall secure and keep in force during the term of this agreement from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages:

- 1) Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- 2) Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- 3) Workers compensation coverage meeting all statutory requirements. The policy shall provide coverage for all states of operation that apply to the performance of this contract.

The insurance coverages listed above must meet the following additional requirements:

- 1) Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor.
- 2) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A-" rating must be approved by the State. The policies shall be in form and terms approved by the State.
- 3) The duty to defend, indemnify, and hold harmless the State under this agreement shall not be limited by the insurance required in this agreement.
- 4) The state of North Dakota and its agencies, officers, and employees (State) shall be endorsed on the commercial general liability policy as additional insured. The State shall have all the benefits, rights and coverages of an additional insured under these policies. Contractor's coverage is limited to the amount of coverage required in Section E 1 above.
- 5) The insurance required in this agreement, through a policy or endorsement, shall include:
  - a) Solely with respect to Workers Compensation, UPS's Workers Compensation insurance policies shall provide for waiver of underwriter's subrogation rights against Customer, its officers, directors, employecs. parent, subsidiaries and affiliates.;
  - b) Should any of the above described policies be cancelled before the expiration date, thereof, notice will be delivered in accordance with the policy provisions.
  - c) a provision that Contractor's insurance coverage shall be primary (i.e. pay first) as respects any insurance, self-insurance or self-retention maintained by the State and that any insurance, self-insurance or self-retention maintained by the State shall be in excess of the Contractor's insurance and shall not contribute with it;
  - d) cross liability/severability of interest for all policies and endorsements;
  - e) The legal defense provided to the State under the policy and any endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary;
  - f) The insolvency or bankruptcy of the insured Contractor shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured Contractor from meeting the retention limit under the policy.
- 6) The Contractor shall furnish a certificate of insurance to the undersigned State representative prior to commencement of this agreement. All endorsements shall be provided as soon as practicable.
- 7) Failure to provide insurance as required in this agreement is a material breach of contract entitling the State to terminate this agreement immediately.

#### **E. Confidentiality and Compliance with Public Records Laws**

CONTRACTOR agrees not to use or disclose any information it receives from PARTICIPATING STATE under this contract that PARTICIPATING STATE has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this contract or as authorized in advance by PARTICIPATING STATE. PARTICIPATING STATE agrees not to disclose any information it receives from CONTRACTOR that CONTRACTOR has previously identified as confidential and that PARTICIPATING STATE determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota open records law, N.D.C.C. § 44-04-18. The duty of PARTICIPATING STATE and CONTRACTOR to


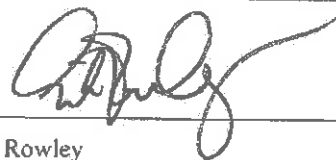
maintain confidentiality of information under this section continues beyond the term of this contract, or any extensions or renewals of it.

CONTRACTOR understands that, except for disclosures prohibited in this agreement, PARTICIPATING STATE must disclose to the public upon request any records it receives from CONTRACTOR. CONTRACTOR further understands that any records that are obtained or generated by CONTRACTOR under this contract, except for records that are confidential under this agreement, may, under certain circumstances, be open to the public upon request under the North Dakota open records law. CONTRACTOR agrees to contact PARTICIPATING STATE immediately upon receiving a request for information under the open records law and to comply with PARTICIPATING STATE'S instructions on how to respond to the request.

5. Subcontractors: All contactors, dealers, and resellers authorized in the State of North Dakota as shown on the dedicated Contractor (cooperative contract) website, are approved to provide sales and service support to participants in the NASPO Master Agreement and this Participating Addendum. The contractor's dealer participation will be in accordance with the terms and conditions set forth in the aforementioned NASPO Master Agreement and this Participating Addendum.

6. Orders: Any order placed by a Participating State or Purchasing Entity for a product and/or service available from this Participating Addendum shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the NASPO Master Agreement and this Participating Addendum unless the parties to the order agree in writing that another contract or agreement applies to such order.

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

Participating State: State of North Dakota	Contractor: United Parcel Service, Inc.
Signature: 	Signature: 
Name: Chad Keech	Name: Erik Rowley
Title: Procurement Officer II	Title: Director
Date: 11/18/16	Date: 11/17/16