

**SMALL PACKAGE DELIVERY
SERVICES 2016-2021**

Lead by the State of Utah

Contractor: **United Parcel Service, Inc.** ("UPS" or "Contractor")

Participating State: **State of Nebraska** ("Participating State")

Master Agreement Number: 065

Participating State Contract Number: 74642 O4

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

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.

Master Agreement Terms and Conditions:

1. Scope: This 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 authorized by that Participating State's statutes to utilize Participating State contracts with the prior approval of the Participating State's Chief Procurement Official.

The following services are included in this contract portfolio:

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 Rate: Exclusive Money Back Guarantee

2. Participation: This NASPO Master Agreement 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 Nebraska ("Purchasing Entity(ies)"). 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):



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Contractor

Name:	Erik Rowley, Director of Enterprise Account Sales
Address:	3312 Broadway Street NE, Minneapolis, MN 55413
Telephone:	800-877-1497
Fax:	612-379-6530
Email:	erowley@ups.com

Participating State Contact

Name:	State of Nebraska – Teresa Fleming
Address:	1526 K Street, Suite 130, Lincoln NE 68508
Telephone:	402-471-6500
Fax:	402-471-2089
Email:	teresa.fleming@nebraska.gov

**4. PARTICIPATING ENTITY MODIFICATIONS OR ADDITIONS TO THE NASPO
MASTER AGREEMENT**

These modifications or additions apply only to actions and relationships within the Participating State.

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

a. **COMPLIANCE WITH CIVIL RIGHTS LAWS AND EQUAL OPPORTUNITY
EMPLOYMENT / NONDISCRIMINATION**

The contractor shall comply with all applicable local, State and Federal statutes and regulations regarding civil rights laws and equal opportunity employment. The Nebraska Fair Employment Practice Act prohibits contractors of the State of Nebraska, and their subcontractors, from discriminating against any employee or applicant for employment, with respect to hire, tenure, terms, conditions or privileges of employment because of race, color, religion, sex, disability, or national origin (Neb. Rev. Stat. §48-1101 to 48-1125). The contractor guarantees compliance with the Nebraska Fair Employment Practice Act, and breach of this provision shall be regarded as a material breach of contract. The contractor shall insert a similar provision in all subcontracts for services to be covered by any contract resulting from this contract.

b. **PERMITS, REGULATIONS, LAWS**

The contractor shall procure and pay for all permits, licenses and approvals necessary for the execution of the contract. The contractor shall comply with all applicable local, state, and federal laws, ordinances, rules, orders and regulations.



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c. **INSURANCE REQUIREMENTS**

The contractor shall not commence work under this contract until he or she has obtained all the insurance required hereunder and such insurance has been approved by the State. If contractor will be utilizing any subcontractors, the contractor is responsible for obtaining the certificate(s) of insurance required herein under from any and all subcontractor(s). Contractor is also responsible for ensuring subcontractor(s) maintain the insurance required until completion of the contract requirements. The contractor shall not allow any subcontractor to commence work on his or her subcontract until all similar insurance required of the subcontractor has been obtained and approved by the contractor. Approval of the insurance by the State shall not limit, relieve or decrease the liability of the contractor hereunder. Contractor shall have the right to provide the total limits required by any combination of primary and Umbrella/Excess coverage.

If by the terms of any insurance a mandatory deductible is required, or if the contractor elects to increase the mandatory deductible amount, the contractor shall be responsible for payment of the amount of the deductible in the event of a paid claim.

1) **WORKERS' COMPENSATION INSURANCE**

The contractor shall take out and maintain during the life of this contract the statutory Workers' Compensation and Employer's Liability Insurance for all of the contractors' employees to be engaged in work on the project under this contract and, in case any such work is sublet, the contractor shall require the subcontractor similarly to provide Worker's Compensation and Employer's Liability Insurance for all of the subcontractor's employees to be engaged in such work. This policy shall be written to meet the statutory requirements for the state in which the work is to be performed, including Occupational Disease. This policy shall include a waiver of subrogation in favor of the State. The amounts of such insurance shall not be less than the limits stated hereinafter.

2) **COMMERCIAL GENERAL LIABILITY INSURANCE AND COMMERCIAL AUTOMOBILE LIABILITY INSURANCE**

The contractor shall take out and maintain during the life of this contract such Commercial General Liability Insurance and Commercial Automobile Liability Insurance as shall protect contractor and any subcontractor performing work covered by this contract from claims for damages for bodily injury, including death, as well as from claims for property damage, which may arise from operations under this contract, whether such operation be by the contractor or by any subcontractor or by anyone directly or indirectly employed by either of them, and the amounts of such insurance shall not be less than limits stated hereinafter.

The Commercial General Liability Insurance shall be written on an occurrence basis, and provide Premises/Operations, Products/Completed Operations, Independent Contractors, Personal Injury and Contractual Liability coverage. The policy shall include the State, and others as required by the contract documents

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as an Additional Insured. This policy shall be primary, and any insurance or self-insurance carried by the State shall be considered excess and non-contributory. The Commercial Automobile Liability Insurance shall be written to cover all Owned, Non-owned and Hired vehicles.

3) **INSURANCE COVERAGE AMOUNTS REQUIRED**

COMMERCIAL GENERAL LIABILITY	
General Aggregate	\$2,000,000
Products/Completed Operations Aggregate	\$2,000,000
Personal/Advertising Injury	\$1,000,000 per occurrence
Bodily Injury/Property Damage	\$1,000,000 per occurrence
Damage to Rented Premises	\$100,000 each occurrence
Contractual	Included
XCU Liability (Explosion, Collapse, and Underground Damage)	Included
Independent Contractors	Included
Abuse & Molestation	Included
WORKER'S COMPENSATION	
Employers Liability Limits	\$500K/\$500K/\$500K
Statutory Limits- All States	Statutory - State of Nebraska
USL&H Endorsement	Statutory
Voluntary Compensation	Statutory
COMMERCIAL AUTOMOBILE LIABILITY	
Bodily Injury/Property Damage	\$1,000,000 combined single limit
Include All Owned, Hired & Non-Owned Automobile liability	Included
Motor Carrier Act Endorsement	Where Applicable
UMBRELLA/EXCESS LIABILITY	
Over Primary Insurance	\$3,000,000
SUBROGATION WAIVER	
"Workers' Compensation policy shall include a waiver of subrogation in favor of the State of Nebraska."	
LIABILITY WAIVER	
"Commercial General Liability & Commercial Automobile Liability policies shall be primary and any insurance or self-insurance carried by the State shall be considered excess and non-contributory."	

4) **EVIDENCE OF COVERAGE**

The contractor should furnish the State a certificate of insurance coverage complying with the above requirements to the attention of the Participating State's Contact, Administrative Services, State Purchasing Bureau, 1526 K Street, Suite 130, Lincoln, Nebraska 68508 (facsimile 402-471-2089). These certificates or the

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cover sheet shall reference the parties and this contract, and the certificates shall include the name of the company, policy numbers, effective dates, dates of expiration and amounts and types of coverage afforded. If the State is damaged by the failure of the contractor to maintain such insurance, then the contractor shall be responsible for all reasonable costs properly attributable thereto.

Notice of cancellation of any required insurance policy must be submitted to Administrative Services State Purchasing Bureau when issued and a new coverage binder shall be submitted immediately to ensure no break in coverage.

d. **INDEPENDENT CONTRACTOR**

It is agreed that nothing contained herein is intended or should be construed in any manner as creating or establishing the relationship of partners between the parties hereto. The Contractor represents that it has, or will secure at its own expense, all personnel required to perform the services under the Participating Addendum. The Contractor's employees and other persons engaged in work or services required by the contractor under the Participating Addendum shall have no contractual relationship with the Participating State; they shall not be considered employees of the Participating State.

All claims on behalf of any person arising out of employment or alleged employment (including without limit claims of discrimination against the contractor, its officers or its agents) shall in no way be the responsibility of the Participating State. The Contractor will hold the Participating State harmless from any and all such claims. Such personnel or other persons shall not require nor be entitled to any compensation, rights or benefits from the Participating State including without limit, tenure rights, medical and hospital care, sick and vacation leave, severance pay or retirement benefits.

e. **CONTRACTOR RESPONSIBILITY**

The Contractor is solely responsible for fulfilling the Participating Addendum, with responsibility for all services offered and products to be delivered as stated in the Participating Addendum. The Contractor shall be the sole point of contact regarding all contractual matters.

If the Contractor intends to utilize any subcontractors' services, the subcontractors' level of effort, tasks and time allocation must be clearly defined in the Participating Addendum. The Contractor shall agree that it will not utilize any subcontractors not specifically included in this Participating Addendum, in the performance of the Participating Addendum, without the prior written authorization of the Participating State. Following execution of the Participating Addendum, the Contractor shall proceed diligently with all services and shall perform such services with qualified personnel in accordance with the Participating Addendum.

f. **CONTRACTOR PERSONNEL**

The Contractor warrants that all persons assigned to the project shall be employees of the Contractor or subcontractors, and shall be fully qualified to perform the work required

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herein. Personnel employed by the Contractor to fulfill the terms of the contract shall remain under the sole direction and control of the contractor. The Contractor shall include a similar provision in any contract with any subcontractor selected to perform work on the project.

The Participating State reserves the right to require the Contractor to reassign or remove from the project any Contractor or subcontractor employee.

In respect to its employees, the Contractor agrees to be responsible for the following:

- 1) any and all employment taxes and/or other payroll withholding;
- 2) any and all vehicles used by the Contractor's employees, including all insurance required by law;
- 3) damages incurred by Contractor's employees within the scope of their duties under the Participating Addendum;
- 4) maintaining workers' compensation and health insurance and submitting any reports on such insurance to the extent required by governing law; and
- 5) determining the hours to be worked and the duties to be performed by the Contractor's employees.

Notice of cancellation of any required insurance policy must be submitted to the Participating State when issued and a new coverage binder shall be submitted immediately to ensure no break in coverage.

g. **STATE OF NEBRASKA PERSONNEL RECRUITMENT PROHIBITION**
The Contractor shall not, at any time, recruit or employ any Participating State employee or agent who is working with the Participating Addendum or in relation to this Participating Addendum.

h. **CONFLICT OF INTEREST**
The Contractor certifies that there does not now exist any relationship between the Contractor and any person or entity which is or gives the appearance of a conflict of interest related to this Participating Addendum or project.

The Contractor certifies that it shall not take any action or acquire any interest, either directly or indirectly, which will conflict in any manner or degree with the performance of its services hereunder or which creates an actual or appearance of conflict of interest.

The Contractor certifies that it will not employ any individual known by Contractor to have a conflict of interest.

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i. **ASSIGNMENT BY THE STATE**

The Participating State shall have the right to assign or transfer the Participating Addendum or any of its interests herein to any agency, board, commission, or political subdivision of the State of Nebraska. There shall be no charge to the other party for any assignment hereunder.

j. **ATTORNEY'S FEES**

In the event of any litigation, appeal or other legal action to enforce any provision of the Participating Addendum, each party agrees to pay all expenses of such action, as permitted by law, including attorney's fees and costs, if the Participating State is the prevailing party.

k. **ADVERTISING**

The Contractor agrees not to refer to the Participating Addendum in advertising in such a manner as to state or imply that the company or its services are endorsed or preferred by the Participating State. News releases pertaining to the project shall not be issued without prior written approval from the Participating State.

l. **SITE RULES AND REGULATIONS**

The Contractor shall use its best efforts to ensure that its employees, agents and subcontractors comply with site rules and regulations while on Participating State premises. If the Contractor must perform on-site work outside of the daily operational hours set forth by the Participating State, it must make arrangements with the Participating State to ensure access to the facility and the equipment has been arranged. No additional payment will be made by the Participating State on the basis of lack of access, unless the Participating State fails to provide access as agreed to between the Participating State and the Contractor.

m. **PROHIBITION AGAINST ADVANCE PAYMENT**

Payments shall not be made until contractual deliverable(s) are received and accepted by the Participating State.

n. **PAYMENT**

Participating State will render payment to Contractor when the terms and conditions of the Participating Addendum and specifications have been satisfactorily completed on the part of the Contractor as solely determined by the Participating State. Payment will be made by the responsible agency in compliance with the State of Nebraska Prompt Payment Act (See Neb. Rev. Stat. §81-2401 through 81-2408). The Participating State may require the Contractor to accept payment by electronic means such as ACH deposit. In no event shall the Participating State be responsible or liable to pay for any services/goods provided by the Contractor prior to receipt, and the Contractor hereby waives any claim or cause of action for any such services/goods.

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o. **INVOICES**

Invoices for payments must be submitted by the Contractor to the agency requesting the services/goods with sufficient detail to support payment. The terms and conditions included in the Contractor's invoice shall be deemed to be solely for the convenience of the parties. No terms or conditions of any such invoice shall be binding upon the Participating State, and no action by the Participating State, including without limitation the payment of any such invoice in whole or in part, shall be construed as binding or estopping the Participating State with respect to any such term or condition, unless the invoice term or condition has been previously agreed to by the Participating State as an amendment to the Participating Addendum.

p. **TAXES**

Purchases of goods or services made by the State of Nebraska are exempt from the payment of Federal Excise Taxes, and exemption certificates will be furnished on request. Participating State and local taxes are exempt by State Statute Section 77-2704 (l) (m). Exemption by statute precludes the furnishing of State exemption certificates.

q. **CHANGES IN SCOPE/CHANGE ORDERS**

The Participating State may, at any time with written notice to the Contractor, make changes within the general scope of the Participating Addendum. Changes in scope shall only be conducted with the written approval of the Participating State's designee as so defined by the Participating State from time to time.

The State may, at any time work is in progress, by written order, make alterations in the terms of work as shown in the specifications, require the performance of extra work, decrease the quantity of work, or make such other changes as the State may find necessary or desirable. The Contractor shall not claim forfeiture of contract by reasons of such changes by the Participating State. Changes in work and the amount of compensation to be paid to the contractor for any extra work so ordered shall be determined in accordance with the applicable unit prices of the contract.

Corrections of any deliverable services/goods or performance of work required pursuant to the Participating Addendum shall not be deemed a modification requiring a change order.

r. **SEVERABILITY**

If any term or condition of the Participating Addendum is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and conditions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Participating Addendum did not contain the particular provision held to be invalid.

s. **DISASTER RECOVERY/BACK UP PLAN**

The Contractor shall have a disaster recovery and back-up plan and upon request provide evidence thereof which includes, but is not limited to equipment, personnel, facilities, and



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transportation, in order to continue services as specified under these specifications in the event of a disaster.

t. **DRUG POLICY**

Contractor certifies it maintains a drug free work place environment to ensure worker safety and workplace integrity. Contractor agrees to provide a copy of its drug free workplace policy at any time upon request by the Participating State.

u. **EMPLOYEE WORK ELIGIBILITY STATUS**

The Contractor is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee.

If the Contractor is an individual or sole proprietorship, the following applies:

- 1) The Contractor must complete the United States Citizenship Attestation Form, available on the Department of Administrative Services website at www.das.state.ne.us.
- 2) If the Contractor indicates on such attestation form that he or she is a qualified alien, the Contractor agrees to provide the US Citizenship and Immigration Services documentation required to verify the Contractor's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.
- 3) The Contractor understands and agrees that lawful presence in the United States is required and the Contractor may be disqualified or the contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. §4-108.

v. **POLITICAL SUB-DIVISIONS**

Contractor may extend the Participating Addendum to political subdivisions conditioned upon the honoring of the prices charged to the Participating State. Terms and conditions of the Participating Addendum must be met by political subdivisions. Under no circumstances shall the Participating State be contractually obligated or liable for any purchases by political subdivisions or other public entities not authorized by Neb. Rev. Stat. § 81-145, listed as "all officers of the state, departments, bureaus, boards, commissions, councils, and institutions receiving legislative appropriations." A listing of Nebraska political subdivisions may be found at the website of the Nebraska Auditor of Public Accounts.

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w. **REPORTS**

The Contractor shall also provide to the State of Nebraska primary contact person quarterly utilization reports containing at a minimum the following information pertaining to State of Nebraska Utilization:

- 1) Purchase order number;
- 2) Description;
- 3) Quantity; and
- 4) Price.

These reports will be provided in Excel format and sent via email on a quarterly basis as follows:

Period End	Report Due
December 31	January 31
March 31	April 30
June 30	July 31
September 30	October 31

Reports shall be sent to: as.materielpurchasing@nebraska.gov; to the attention of the Participating State's primary contact. Please include the contract number, 74642 O4, in the subject line of the email.

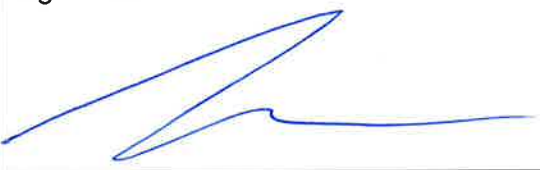
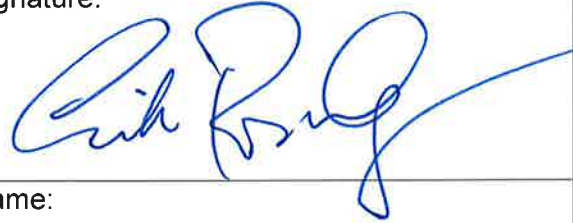
- 5. Subcontractors: All contactors, dealers, and resellers authorized in the State of Nebraska, as shown on the dedicated Contractor (cooperative contract) website, are approved to provide sales and service support to participants in the NASPO Master Agreement and this Participating Addendum. The contractor's 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.



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

Participating Entity: State of Nebraska	Contractor: United Parcel Service, Inc.
Signature: 	Signature: 
Name: Bo Botelho	Name: Erik Rowley
Title: Materiel Administrator	Title: Director, Enterprise Accounts
Date: 11/23/16	Date: 11/18/16