



**SMALL PACKAGE DELIVERY SERVICES**

Lead by the State of Utah

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Master Agreement #: MA454

Contractor: **FEDEX CORPORATE SERVICES, INC.**

Participating Entity: **STATE OF NORTH DAKOTA**

**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 State's statutes to utilize State contracts with the prior approval of the State's Chief Procurement Official. The State Of North Dakota, various state agencies and political subdivisions, and cooperative purchasing entities (as defined by North Dakota Century Code Section 54-44.4-13), may purchase the products and services available in NASPO ValuePoint Small Package Delivery Services Master Price Agreement (Contract No. MA 454, Non MBG Rates) with "FedEx". This agreement is not a purchase order, nor does it guarantee any purchases to be made by the customer.
2. **Participation:** This NASPO ValuePoint 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 *North Dakota*. 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:	Charles Wagner, FedEx Worldwide Account Manager
Address:	3650 Hacks Cross Rd., Bldg. E 3 <sup>rd</sup> Floor Memphis, TN 38125
Telephone:	503-347-4638
Fax:	901-224-2960
Email:	Charles.Wagner@FedEx.com



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Participating Entity

Name:	Chad Keech
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 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.

**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. Contact Period and Renewals**

The contract resulting from this participating addendum will follow the same contract period and renewal options as in the master WSCA contract.

**C. Governing Law and Venue**

This contract 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.

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**D. Indemnification & Insurance**

Contractor agrees to defend, indemnify, and hold harmless the state of North Dakota, its agencies, officers and employees (State), from and against claims based on the vicarious liability of the State or its agents, but not against claims based on the State's contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. This obligation to defend, indemnify, and hold harmless does not extend to professional liability claims arising from professional errors and omissions. The legal defense provided by Contractor to the State under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary. Contractor also agrees to defend, indemnify, and hold the State harmless for all costs, expenses and attorneys' fees incurred if the State prevails in an action against Contractor in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.

Contractor shall secure and keep in force during the term of this agreement and Contractor shall require all subcontractors, prior to commencement of an agreement between Contractor and the subcontractor, to 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.
- 4) Cargo Insurance, with a minimum amount of coverage of \$100,000

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.

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- 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 an additional insured on the commercial general liability policy, including any excess policies (to the extent applicable), as additional insured. The State shall have all the benefits, rights and coverages of an additional insured under these policies.
- 5) The insurance required in this agreement, through a policy or endorsement, shall include:
  - a) "Waiver of Subrogation" waiving any right to recovery the insurance company may have against the State;
  - b) a provision that the policy and endorsements may not be canceled or modified without thirty days' prior written notice to the undersigned State representative;
  - c) a provision that any attorney who represents the State under this policy 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;
  - d) 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;
  - e) cross liability/severability of interest for all policies and endorsements;
  - f) 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;
  - g) 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 STATE under this contract that 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 STATE. STATE agrees not to disclose any information it receives from CONTRACTOR that CONTRACTOR has previously identified as confidential and that 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 STATE and

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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, 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 STATE immediately upon receiving a request for information under the open records law and to comply with STATE'S instructions on how to respond to the request.

5. Subcontractors: All contactors, dealers, and resellers authorized in the State of *[xxxxxx]*, as shown on the dedicated Contractor (cooperative contract) website, are approved to provide sales and service support to participants in the NASPO ValuePoint Master Agreement. The contractor's dealer participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement.
6. Orders: Any order placed by a Participating Entity or Purchasing Entity for a product and/or 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.


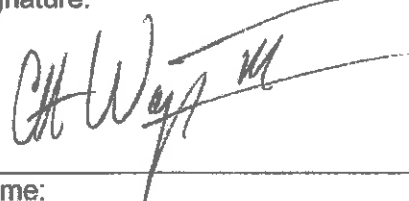
NASPO ValuePoint  
**PARTICIPATING ADDENDUM**



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

Participating Entity: <i>North Dakota State Procurement Office</i>	Contractor: FedEx
Signature: 	Signature: 
Name: <i>Charles Keckler</i>	Name: Charles Wagner
Title: <i>Procurement Officer II</i>	Title: Worldwide Account Manager
Date: <i>1/6/17</i>	Date: 1/6/2017

*[Additional signatures may be added if required by the Participating Entity]*

For questions on executing a participating addendum, please contact:

NASPO ValuePoint

Cooperative Development Coordinator:	Shannon Berry
Telephone:	(775) 720-3404
Email:	<a href="mailto:sberry@naspovaluepoint.org">sberry@naspovaluepoint.org</a>

***[Please email fully executed PDF copy of this document to***  
***PA@naspovaluepoint.org***  
***to support documentation of participation and posting in appropriate data bases.]***