

Lead by the State of Utah

Master Agreement #: MA065

Contractor: UNITED PARCEL SERVICES, INC. "Contractor" or "UPS")

Participating Entity: STATE OF WYOMING ("Participating State" or "State")

This Participating Addendum between Contractor and Participating State, effective as of January 7, 2017 ("Participating Addendum"), is issued pursuant to Master Agreement #MA065, executed between the Contractor and the State of Utah, effective November 28, 2016 ("NASPO Master Agreement").

Participating Addendum 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 in the State of Wyoming authorized by that State's statutes to utilize State contracts with the prior approval of the State's Chief Procurement Official.
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 Wyoming ("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:	Tom Dames
Address:	316 Pennsylvania Avenue SE, Ste. 500, Washington DC
Telephon	202-675-4255
Fax:	202-675-4255
Email:	tdames@ups.com

Participating Entity

Name:	State of Wyoming, General Services Division, Procurement Contact: Debi Walker
Address:	700 West 21 st Street, Cheyenne, WY 82001
Telephon	307-777-6707
Fax:	307-777-5852
Email:	debi.walker@wyo.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.

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. This Participating Addendum consisting of three (3) pages, Wyoming General Conditions, attached to this Participating Addendum as Attachment A, consisting of five (5) pages and the NASPO Master Agreement, Number MA065, consisting of twenty-one (21) pages sets 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, shall not be added to or incorporated into this Participating Addendum by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Participating Addendum shall prevail and govern in the case of any such inconsistent or additional terms.
5. Orders: Any order placed by a Participating State or Purchasing Entity for a product and/or service available from the NASPO Master Agreement 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.
 6. Rate Option: The State of Wyoming has selected the rate option of Multi MBG.

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

Participating Entity: State of Wyoming, Procurement:	Contractor: United Parcel Service, UPS:
Signature: <i>Debi Walker</i>	Signature: <i>Cindy Chace</i>
Name: Debi Walker	Name: <i>Cindy Chace</i>
Title: Senior Buyer	Title: <i>Director of Sols</i>
Date: <i>2-22-17</i>	Date: <i>1/10/2017</i>

State of Wyoming Approved as to form:	State of Wyoming, Administration & Information:
Signature: <i>Susan G. O'Brien</i> ¹⁵⁹⁹⁹⁰	Signature: <i>Dean Fausset</i>
Name: Susan G. O'Brien	Name: Dean Fausset
Title: Senior Assistant Attorney General	Title: Director
Date: <i>Dec 29, 2016</i>	Date: <i>2-22-17</i>

State of Wyoming, General Services:	
Signature: <i>Rich Merrill</i>	
Name: Rich Merrill	
Title: Division Administrator	
Date: <i>2/22/17</i>	

Attachment A

Wyoming General Conditions

This Attachment A, Wyoming General Conditions, to the Participating Addendum for the State of Utah's NASPO ValuePoint Master Agreement Number MA065 with United Parcel Service, Inc. dated October 6, 2016 (Agreement), supplements and replaces terms and conditions contained in the Agreement. In the event of any inconsistencies between the terms and conditions contained in the Agreement and this Attachment A, the terms and conditions in this Attachment A shall control and shall supersede and replace the terms contained in the Agreement.

The following provisions contained in the Agreement are modified: Attachment A, NASPO ValuePoint Master Agreement Terms and Conditions: Section 17, Payment, is modified to state: "Payment shall be made upon submission of invoice pursuant to Wyo, Stat, § 16-6-602" and Section 21 Insurance, subsection d., is modified to remove clause (1) requiring the Contractor to name the Participating Entity as an additional insured.

The following General Conditions are made part of the Agreement:

General Provisions.

- A. **Amendments.** Any changes, modifications, revisions or amendments to this Agreement which are mutually agreed upon by the parties to this Agreement shall be incorporated by written instrument, executed and signed by all parties to this Agreement.
- B. **Applicable Law/Venue.** The construction, interpretation and enforcement of this Agreement shall be governed by the laws of the State of Wyoming. The Courts of the State of Wyoming shall have jurisdiction over this Agreement and the parties, and the venue shall be the First Judicial District, Laramie County, Wyoming.
- C. **Assignment/Agreement Not Used as Collateral.** Neither party shall assign or otherwise transfer any of the rights or delegate any of the duties set forth in this Agreement without the prior written consent of the other party. The Contractor shall not use this Agreement, or any portion thereof, for collateral for any financial obligation, without the prior written permission of the Agency.
- D. **Assumption of Risk.** The Contractor shall be responsible for any loss of state or federal funding, either administrative or program dollars, due to Contractor's failure to comply with state or federal requirements. The Agency shall notify the Contractor of any state or federal determination of noncompliance.

- E. Availability of Funds.** Each payment obligation of the Agency is conditioned upon the availability of government funds which are appropriated or allocated for the payment of this obligation. If funds are not allocated and available for the continuance of the services performed by the Contractor, the Agreement may be terminated by the Agency at the end of the period for which the funds are available. The Agency 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 Agency in the event this provision is exercised, and the Agency shall not be obligated or liable for any future payments due or for any damages as a result of termination under this section. This provision shall not be construed to permit the Agency to terminate this Agreement in order to acquire similar services from another party.
- F. Award of Related Agreements.** The Agency may undertake or award supplemental or successor Agreements for work related to this Agreement. The Contractor shall cooperate fully with other contractors and the Agency in all such cases.
- G. Extensions.** Nothing in this Agreement shall be interpreted or deemed to create an expectation that this Agreement will be extended beyond the term described herein. Any extension of this Agreement shall be initiated by the Agency, and shall be effective only after it is reduced to writing and executed by all parties to the Agreement. Any agreement to extend this Agreement shall include, but not necessarily be limited to; art unambiguous identification of the Agreement being extended; the term of the extension; the amount of any payment to be made during the extension, or a statement that no payment will be made during the extension; a statement that all terms and conditions of the original Agreement shall, unless explicitly delineated in the exception, remain as they were in the original Agreement; and, if the duties of either party will be different during the extension than they were under the original Agreement, a detailed description of those duties.
- H. Force Majeure.** Neither party shall be liable for failure to perform under this Agreement if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, labor strikes, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays. This provision shall not be effective unless the failure to perform is beyond the control and without the fault or negligence of the nonperforming party.
- I. Indemnification.** The Contractor shall release, indemnify, and hold harmless the

State, the Agency, and their officers, agents, employees, successors and assignees from any and all claims, lawsuits, losses and liability arising out of Contractor's failure to perform any of contractor's duties and obligations hereunder or in connection with the negligent performance of Contractor's duties or obligations, including but not limited to any claims, lawsuits, losses or liability arising out of Contractor's malpractice or malfeasance.

- J. Independent Contractor.** The Contractor shall function as an independent contractor for the purposes of this Agreement, and shall not be considered an employee of the State of Wyoming for any purpose. The Contractor shall assume sole responsibility for any debts or liabilities that may be incurred by the Contractor in fulfilling the terms of this Agreement, and shall be solely responsible for the payment of all federal, state and local taxes which may accrue because of this Agreement. Nothing in this Agreement shall be interpreted as authorizing the Contractor or its agents and/or employees to act as an agent or representative for or on behalf of the State of Wyoming or the Agency, or to incur any obligation of any kind on the behalf of the State of Wyoming or the Agency. The Contractor agrees that no health/hospitalization benefits, workers' compensation and/or similar benefits available to State of Wyoming employees will inure to the benefit of the Contractor or the Contractor's agents and/or employees as a result of this Agreement.
- K. Kickbacks.** The Contractor certifies and warrants that no gratuities, kickbacks or contingency fees were paid in connection with this Agreement, nor were any fees, commissions, gifts, or other considerations made contingent upon the award of this Agreement. If the Contractor breaches or violates this warranty, the Agency may, at its discretion, terminate this Agreement without liability to the Agency, or deduct from the Agreement price or consideration, or otherwise recover, the full amount of any commission, percentage, brokerage, or contingency fee.
- L. Nondiscrimination.** The Contractor shall comply with Presidential Executive Order 11246 entitled, "Equal Employment Opportunity," as amended by Presidential Executive Order 11375, and as supplemented in the Department of Labor Regulations (41 CFR Part 60), the Civil Rights Act of 1964, the Wyoming Fair Employment Practices Act (Wyo. Stat, § 27-9-105 *et seq.*), and the Americans With Disabilities Act (ADA), 42 U.S.C. 12101, *et seq.* The Contractor shall assure that no person is discriminated against based on the grounds of sex, race, religion, national origin or disability in connection with the performance of this Agreement.
- M. Notices.** All notices arising out of, or from, the provisions of this Agreement shall be in writing and given to the parties at the address provided under this Agreement, either by regular mail, facsimile, e-mail, or delivery in person.
- N. Notice and Approval of Proposed Sale or Transfer of the Contractor.** The

Contractor shall provide the Agency with the earliest possible advance notice of any proposed sale or transfer or any proposed merger or consolidation of the assets of the Contractor. Such notice shall be provided in accordance with the notice provision of this Agreement.

- O. Ownership of Documents.** Unless otherwise agreed in writing, any reports, records, field notes, materials, or data delivered by Contractor to the State or provided to the Contractor by the State, as a result of the performance of obligations under this Agreement shall be the property of the State.
- P. Patent or Copyright Protection.** The Contractor recognizes that certain proprietary matters or techniques may be subject to patent, trademark, copyright, license or other similar restrictions, and warrants that no work performed by the Contractor or its subcontractors will violate any such restriction. The Contractor shall defend and indemnify the Agency for any violation or alleged violation of such patent, trademark, copyright, license or other restrictions.
- Q. Prior Approval.** This Agreement shall not be binding upon either party, no services shall be performed under the terms of this Agreement, and the Wyoming State Auditor shall not draw warrants for payment on this Agreement, until this Agreement has been reduced to writing, approved as to form by the Office of the Attorney General, filed with and approved by the Department of Administration and Information, and approved by the Governor of the State of Wyoming if required by Wyo. Stat. § 9-2-1016(b)(iv)(D).
- R. Publicity.** Any publicity given to the program or services provided herein, including, but not limited to, notices, information, pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Contractor, shall identify the Agency as the sponsoring agency and shall not be released without prior written approval from the Agency. The Agency agrees that it shall not, without prior written consent of Contractor, use in advertising, publicity or otherwise the name of Contractor or any of its affiliated companies, or any partner or employee of Contractor or its affiliated companies, nor any trade name, trademark, trade device or simulation thereof owned by Contractor or its affiliated companies.
- S. Severability.** Should any portion of this Agreement be judicially determined to be illegal or unenforceable, the remainder of the Agreement shall continue in full force and effect, and either party may renegotiate the terms affected by the severance.
- T. Sovereign Immunity.** The State of Wyoming and Agency do not waive sovereign immunity by entering into this Agreement and specifically retain all immunities and defenses available to them as sovereigns pursuant to Wyo. Stat. § 1-39-104(a)

and all other applicable law. Designations of venue, choice of law, enforcement actions, and similar provisions should not be construed as a waiver of sovereign immunity. The parties agree that any ambiguity in this Agreement shall not be strictly construed, either against or for either party, except that any ambiguity as to sovereign immunity shall be construed in favor of sovereign immunity.

- U. Taxes.** The Contractor shall pay all taxes and other such amounts required by federal, state and local law, including but not limited to federal and social security taxes, workers' compensation, unemployment insurance and sales taxes.
- V. Termination of Agreement.** This Agreement may be terminated, without cause, by the Agency upon thirty (30) days written notice. This Agreement may be terminated immediately for cause if the Contractor fails to perform in accordance with the terms of this Agreement.
- W. 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 Agreement shall not be construed so as to create such status. The rights, duties and obligations contained in this Agreement shall operate only between the parties to this Agreement, and shall inure solely to the benefit of the parties to this Agreement. The provisions of this Agreement are intended only to assist the parties in determining and performing their obligations under this Agreement.
- X. Titles Not Controlling.** Titles of paragraphs are for reference only, and shall not be used to construe the language in this Agreement.
- Y. Waiver.** The waiver of any breach of any term or condition in this Agreement shall not be deemed a waiver of any prior or subsequent breach.