

NASPO ValuePoint
PARTICIPATING ADDENDUM



SMALL PACKAGE DELIVERY SERVICES
Led by the **State of Utah**

Master Agreement #: **MA065**

Contractor: **UNITED PARCEL SERVICES INC**

Participating Entity: **STATE OF MISSISSIPPI**

Scope and Participation:

[Removable Instruction: Check one of the boxes below. If Participating Entity has no exclusions or limitations to the scope of the Master Agreement, check the first box.]

1. Scope:

- ☐ This Participating Addendum includes the entire scope of the products and services available through the Master Agreement.
- ☒ This Participating Addendum includes the entire scope of the products and services available through the Master Agreement.

Any scope exclusions specified herein apply only to this Participating Addendum and shall not amend or affect other participating addendums or the Master Agreement itself.

[Removable Instruction: Participating States should ensure that Section 2 properly defines the scope of participation, including any excluded entities.]

2. Participation: This Participating Addendum covers participation of Participating Entity in the above-referenced Master Agreement between the State of Utah and Contractor for Small Package Delivery Services. This Participating Addendum may be used by all state agencies, institutions of higher education, cities, counties, districts, and other political subdivisions of the state, and nonprofit organizations within the state if authorized herein and by law. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.

[Removable Instruction: Check one of the boxes below. If Participating Entity wishes to co-term the Participating Addendum with the Master Agreement, check the first box.]

3. Term:

- ☐ This Participating Addendum shall become effective as of the date of the last signature below and shall terminate upon the expiration or termination of the Master Agreement, as amended, unless the Participating Addendum is terminated sooner in accordance with the terms set forth herein.
- ☒ This Participating Addendum shall become effective as of the date of the last signature below and shall terminate on November 27, 2026, unless terminated sooner or otherwise amended in accordance with the terms set forth herein. Notwithstanding the previous, in no event shall the term of the Participating Addendum exceed the term of the Master Agreement, as amended.

4. Primary Contacts: The following (or their named successors) are the primary contact individuals for this Participating Addendum:

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CONTRACTOR:

Name:	Richard Wegner
Address:	5828 Rudy Lane, Millstadt, IL 62260
Telephone:	618-406-3543
Email:	rwegner@ups.com

PARTICIPATING ENTITY:

Name:	State of Mississippi
Address:	501 N. West Street Suite 701A Woolfolk Building
Telephone:	601-359-3409
Fax:	601-359-3910
Email:	Belinda.Russell@dfa.ms.gov

Participating Entity Modifications and Additions to the Master Agreement

☐ This Participating Addendum incorporates all terms and conditions of the Master Agreement as applied to the Participating Entity and Contractor.

☒ This Participating Addendum incorporates all terms and conditions of the Master Agreement as applied to the Participating Entity and Contractor, **subject to the following limitations, modifications, and additions:**

STATE OF MISSISSIPPI TERMS AND CONDITIONS: SEE ATTACHED EXHIBIT A

STATE OF MISSISSIPPI SELECTS – NASPO MULTI-CARRIER PRICING THAT DOES NOT INCLUDE MONEY BACK GUARANTEE.

Any limitations, modifications, or additions specified herein apply only to the agreement and relationship between Participating Entity and Contractor and shall not amend or affect other participating addendums or the Master Agreement itself.

5. Subcontractors: All contractors, dealers, and resellers authorized to provide sales and service support in Participating Entity's state, as shown on Contractor's NASPO ValuePoint-specific webpage, may provide sales and service support to users of this Participating Addendum. Participation of Contractor's contractors, dealers, and resellers will be in accordance with the terms and conditions set forth in the Master Agreement. For the avoidance of doubt, vendors and suppliers to the Contractor's business shall not be considered subcontractors.

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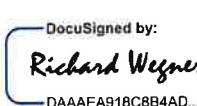
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6. Orders: Any order placed by Participating Entity or a Purchasing Entity for a product or service offered through this Participating Addendum shall be deemed to be a sale under, and subject to the pricing and other terms and conditions of, the Master Agreement unless the parties to the order agree in writing that another contract or agreement applies to the order.

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

PARTICIPATING ENTITY

CONTRACTOR

Signature: 	Signature:  DAAAE918C8B4AD...
Name: Ross Campbell	Name: Richard Wegner
Title: OPTFM Director	Title: Director Government Sales
Date: 1/19/2023	Date: 1/19/2023 1:25 PM PST

[Removable Instruction: Additional signatures may be added if required by the Participating Entity.]

For questions regarding NASPO ValuePoint Participating Addendums, please contact the Cooperative Contract Coordinator team at ccc@naspovaluepoint.org.

Fully executed NASPO ValuePoint Participating Addendums must be submitted via email in PDF format to pa@naspovaluepoint.org.

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Exhibit A
STATE OF MISSISSIPPI TERMS AND CONDITIONS

A. PRECEDENCE

In the event of any conflict between 1) the terms contained in this Exhibit A, and 2) the terms of the National Association of State Purchasing Officials ("NASPO") cooperative group contracting consortium, and the Master Agreement MA065 executed between the State of Utah (lead state), acting in cooperation with NASPO and United Parcel Service, Inc. ("UPS" or "Contractor") (the "Master Agreement"), the terms contained in this Exhibit A will take precedence.

B. E-PAYMENT

The State of Mississippi (the "State") agrees to make payment in accordance with Mississippi Code Annotated § 31-7-301 *et seq.*

C. AVAILABILITY OF FUNDS

It is expressly understood and agreed that the obligation of the State to proceed under this agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds. If the funds anticipated for the continuing fulfillment of the agreement are, at any time, not forthcoming or insufficient, either through the failure of the federal government to provide funds or of the State to appropriate funds or the discontinuance or material alteration of the program under which funds were provided or if funds are not otherwise available to the State, the State shall have the right upon ten (10) working days written notice to Contractor, to terminate this agreement without damage, penalty, cost or expenses to the State of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination. The State's actions under this clause will not affect the State's responsibility to pay Contractor for services provided under this agreement.

D. RECORD RETENTION AND ACCESS TO ACCOUNTING RECORDS

Provided Contractor is given reasonable advance written notice of no less than five (5) business days, and such inspection is made during normal business hours of Contractor, the State or its duly authorized representatives shall have prompt access to Contractor's accounting records which relate to Contractor's performance of services for the State under the agreement for the purpose of making audits, examinations, excerpts, and transcriptions. All accounting records related to this agreement shall be retained by Contractor for three (3) years after final payment is made under this agreement and all pending matters are closed; however, if any audit, litigation or other action arising out of or related in any way to this project is commenced before the end of the three (3) year period, the accounting records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the three (3) year period, whichever is later.

E. CONFIDENTIALITY

Notwithstanding any provision to the contrary contained herein, it is recognized that the Department of Finance and Administration is a public agency of the State of Mississippi and is subject to the Mississippi Public Records Act. Mississippi Code Annotated §§ 25-61-1 *et seq.* If a public records request is made for any information provided to the Department of Finance and Administration pursuant to the agreement and designated by the Contractor in writing as trade secrets or other proprietary confidential information, the Department of Finance and Administration shall follow the PPRB OPSCR Rules and Regulations Page Effective January 18, 2020 provisions of Mississippi Code Annotated §§ 25-61-9 and 79-23-1 before disclosing such information. The Department of Finance and Administration shall not be liable to the Contractor for disclosure of information required by court order or required by law.

F. DISCLOSURE OF CONFIDENTIAL INFORMATION

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In the event that either party to this agreement receives notice that a third party requests divulgence of confidential or otherwise protected information and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of confidential or otherwise protected information that party shall promptly inform the other party and thereafter respond in conformity with such subpoena to the extent mandated by law. This section shall survive the termination or completion of this agreement. The parties agree that this section is subject to and superseded by Mississippi Code Annotated §§ 25-61-1 *et seq.*

G. APPLICABLE LAW

The agreement shall be governed by and construed in accordance with the laws of the State, excluding its conflicts of laws provisions, and any litigation with respect thereto shall be brought in the courts of the State. Contractor shall comply with applicable federal, state, and local laws and regulations.

H. ANTI-ASSIGNMENT/SUBCONTRACTING

Contractor acknowledges that it was selected by the State to perform the services required hereunder based, in part, upon Contractor's special skills and expertise. Contractor shall not assign, subcontract, or otherwise transfer this agreement, in whole or in part, without the prior written consent of the State, which the State may, in its sole discretion, approve or deny without reason. Any attempted assignment or transfer of its obligations without such consent shall be null and void. No such approval by the State of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of the State in addition to the obligations contained in the agreement. Subcontracts shall be subject to the terms and conditions of this agreement and to any conditions of approval that the State may deem necessary. Subject to the foregoing, this agreement shall be binding upon the respective successors and assigns of the parties. For the avoidance of doubt, Contractor's use of vendors and suppliers in support of its operations, and services performed by Contractor's corporate affiliates and subsidiaries shall not be considered subcontracting for purposes of this section.

I. COMPLIANCE WITH LAWS

Contractor understands that the State is an equal opportunity employer and therefore, maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, genetic information, or any other consideration made unlawful by federal, state, or local laws. All such discrimination is unlawful and Contractor agrees during the term of the agreement that Contractor will strictly adhere to this policy in its employment practices and provision of services. Contractor shall comply with, and all activities under this agreement shall be subject to, all applicable federal, State, and local laws and regulations, as now existing and as may be amended or modified. Contractor's compliance with federal laws and regulations similar to State and local laws shall be considered a good faith showing of compliance with the similar State and local laws.

J. TRANSPARENCY

This agreement, including any accompanying exhibits, attachments, and appendices, is subject to the "Mississippi Public Records Act of 1983," and its exceptions. See Mississippi Code Annotated §§ 25-61-1 *et seq.*, and Mississippi Code Annotated § 79-23-1. In addition, this agreement is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008. Mississippi Code Annotated §§ 27-104-151 *et seq.* Unless exempted from disclosure due to a court-issued protective order, a copy of this executed agreement is required to be posted to the Department of Finance and Administration's independent agency contract website for public access at <http://www.transparency.mississippi.gov>. Information identified by Contractor as trade secrets, or other proprietary information, including confidential vendor information or any other information which is required confidential by state or federal law or outside the applicable freedom of information statutes, will be redacted.

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K. E-VERIFICATION

If applicable, Contractor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act of 2008, and will register and participate in the status verification system for all newly hired employees. Mississippi Code Annotated §§ 71-11-1 *et seq.* The term “employee” as used herein means any person that is hired to perform work within the State. As used herein, “status verification system” means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Contractor agrees to maintain records of such compliance. Upon request of the State and after approval of the Social Security Administration or Department of Homeland Security when required, Contractor agrees to provide a copy of each such verification. Contractor further represents and warrants that any person assigned to perform services hereafter meets the employment eligibility requirements of all immigration laws. The breach of this agreement may subject Contractor to the following:

- (1) termination of this agreement for services and ineligibility for any state or public contract in Mississippi for up to three (3) years with notice of such cancellation/termination being made public;
- (2) the loss of any license, permit, certification or other document granted to Contractor by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year or,
- (3) both. In the event of such cancellations/termination, Contractor would also be liable for any additional costs incurred by the State due to agreement cancellation or loss of license or permit to do business in the State.

L. INDEPENDENT CONTRACTOR STATUS

Contractor shall, at all times, be regarded as and shall be legally considered an independent contractor and shall at no time act as an agent for the State. Nothing contained herein shall be deemed or construed by the State, Contractor, or any third party as creating the relationship of principal and agent, master and servant, partners, joint ventures, employer and employee, or any similar such relationship between the State and Contractor. Neither the method of computation of fees or other charges, nor any other provision contained herein, nor any acts of the State or Contractor hereunder creates, or shall be deemed to create a relationship other than the independent relationship of the State and Contractor. Contractor’s personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of the State. Neither Contractor nor its employees shall, under any circumstances, be considered servants, agents, or employees of the State and the State shall be at no time legally responsible for any negligence or other wrongdoing by Contractor, its servants, agents, or employees. The State shall not withhold from the agreement payments to Contractor any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to Contractor. Further, the State shall not provide to Contractor any insurance coverage or other benefits, including Worker’s Compensation, normally provided by the State for its employees.

M. MODIFICATION OR RENEGOTIATION

This agreement may be modified only by written agreement signed by the parties hereto. The parties agree to renegotiate the agreement if federal and/or state revisions of any applicable laws or regulations make changes in this agreement necessary.

N. TERMINATION FOR CONVENIENCE

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(1) *Termination.* The Agency Head or designee may, when the interests of the State so require, terminate this agreement in whole or in part, for the convenience of the State. The Agency Head or designee shall give written notice of the termination to Contractor specifying the part of the contract terminated and when termination becomes effective. As expressly agreed in the Master Agreement, Contractor may terminate the Participating Addendum upon sixty (60) days' prior written notice.

(2) *Contractor's Obligations.* Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination Contractor will stop work to the extent specified. Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work.

O. TERMINATION FOR DEFAULT

Default. If Contractor refuses or fails to perform any of the provisions of this agreement with such diligence as will ensure its completion within the time specified in this contract or any extension thereof, or otherwise fails to timely satisfy the agreement provisions, or commits any other substantial breach of this agreement, the Agency Head or designee may notify Contractor in writing of the delay or nonperformance and if not cured in fifteen (15) days or any longer time specified in writing by the Agency Head or designee, such officer may terminate Contractor's right to proceed with the agreement or such part of the agreement as to which there has been delay or a failure to properly perform.

(2) *Contractor's Duties.* Notwithstanding termination of the agreement and subject to any directions from the Chief Procurement Officer, Contractor shall, in accordance with the terms of the Master Agreement, take timely, reasonable, and necessary action to protect and preserve property in the possession of Contractor in which the State has an interest.

(3) *Compensation.* Payment for completed services delivered and accepted by the State shall be at the agreement price.

(4) *Excuse for Nonperformance or Delayed Performance.* Except with respect to defaults of subcontractors, Contractor shall not be in default by reason of any failure in performance of this agreement in accordance with its terms (including any failure by Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, Contractor shall not be deemed to be in default, unless the services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit Contractor to meet the agreement requirements. Upon request of Contractor, the Agency Head or designee shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, Contractor's progress and performance would have met the terms of the agreement, the delivery schedule shall be revised accordingly, subject to the rights of the State under the clause entitled (in fixed-price contracts, "Termination for Convenience," in cost-reimbursement contracts, "Termination"). (As used in this Paragraph of this clause, the term "subcontractor" means subcontractor at any tier).

(5) *Erroneous Termination for Default.* If, after notice of termination of Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the contract was not in default under the provisions of this clause, or that the delay was excusable under the provisions of Paragraph (4) (Excuse for Nonperformance or Delayed Performance) of this clause, the rights and obligations of the parties shall, if the agreement contains a clause providing for termination for convenience of the State, be the same as if the notice of termination had been issued pursuant to such clause.

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(6) *Additional Rights and Remedies.* The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this agreement.

P. ORAL STATEMENTS

No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this agreement. All modifications to the agreement must be made in writing by the State and agreed to by Contractor.

Q. THIRD PARTY ACTION NOTIFICATION

Contractor shall give the customer prompt notice in writing of any suit filed against Contractor that directly relates to this agreement.

R. RECOVERY OF MONEY

Whenever, under the agreement, any sum of money shall be recoverable from or payable by Contractor to the State, provided the State gives Contractor advance written notice of at least 30 days, the same amount may be deducted from any sum due to Contractor under the agreement or under any other contract between Contractor and the State. The rights of the State are in addition and without prejudice to any other right the State may have to claim the amount of any loss or damage suffered by the State on account of the acts or omissions of Contractor.

S. FAILURE TO ENFORCE

Failure by either party at any time to enforce the provisions of the agreement shall not be construed as a waiver of any such provisions. Such failure to enforce shall not affect the validity of the agreement or any part thereof or the right of either party to enforce any provision at any time in accordance with its terms.

T. PROCUREMENT REGULATIONS

The terms contained in this agreement are consistent with, and do not conflict with the applicable provisions of the *Mississippi Procurement Manual*, a copy of which is available online at www.dfa.ms.gov

U. REPRESENTATION REGARDING CONTINGENT FEES

Contractor represents that it has not retained a person to solicit or secure this agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except as disclosed in Contractor's bid or proposal.

V. REPRESENTATION REGARDING GRATUITIES

Contractor represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 6-204 (Gratuities) of the *Mississippi Personal Service Contract Review Board Rules and Regulations*.

W. TRADE SECRETS, COMMERCIAL AND FINANCIAL INFORMATION

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It is expressly understood that Mississippi law requires that the provisions of this agreement which contain the commodities purchased or the personal or professional services provided, the price to be paid, and the term of the agreement shall not be deemed to be a trade secret or financial information and shall be available for examination, copying, or reproduction.

X. TERMINATION UPON BANKRUPTCY

This agreement may be terminated in whole or in part by the STATE OF MISSISSIPPI upon written notice to Contractor, if Contractor should become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or upon the execution by Contractor of an assignment for the benefit of its creditors. In the event of such termination, Contractor shall be entitled to recover just and equitable compensation for satisfactory work performed under this agreement, but in no case shall said compensation exceed the total agreement price.

Y. STATE ENTITY FRAUD. In the interest of reducing the risk of fraud and unauthorized re-selling of Contractor services, nothing in this agreement shall obligate Contractor to provide services to any organization or entity other than the State's entities authorized under this agreement. If Contractor believes that a State entity's shipping characteristics evidence fraudulent use of this agreement for the benefit of for-profit companies or other unauthorized users, it may in its sole discretion, refuse service to the State entity without notice.