

**NATIONAL JOINT POWERS ALLIANCE®
AND
UNITED PARCEL SERVICE, INC.
PARTICIPATION AGREEMENT**

THIS **PARTICIPATION AGREEMENT** (the "Participation Agreement") is made and entered into as of the Effective Date defined below amongst United Parcel Service, Inc. , an Ohio corporation (the "Contractor" or "UPS"), National Joint Powers Alliance ("NJPA") and the State of Maryland/Department of Budget and Management ("NJPA Member"), NJPA Member [REDACTED]

WHEREAS, the Contractor and NJPA have entered into a carrier agreement dated October 4, 2016, effective March 20, 2017, pursuant to which the Contractor agreed to sell to NJPA Members certain Small Package Delivery services on the terms and conditions described therein (the "Vendor Agreement");

WHEREAS, the NJPA Member is authorized under Md. State Finance and Procurement Code Ann. § 13-102(a)(6) to enter this Participation Agreement with the Contractor; and

WHEREAS, this Participation Agreement supersedes and replaces in its entirety all previously executed participation agreements, if any, between the NJPA Member and Contractor; and

NOW, THEREFORE, for and in consideration of the foregoing promises, and other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, the NJPA Member and the Contractor agree as follows:

1. **Definitions.** In the Participation Agreement, the following words have the meanings indicated:

- 1.1 "Agency" means any unit of Maryland State government procuring services through this Participation Agreement, including but not limited to the University System of Maryland and the NJPA Member.
- 1.2 "Agency Coordinator" means the respective designated Agency representative and single point of contact responsible for coordinating payment for services provided under this Participation Agreement with the Contractor.
- 1.3 "COMAR" means Code of Maryland Regulations.
- 1.4 "Contract Monitor" means the NJPA Member employee identified in Section 34 of this Participation Agreement as the Contract Monitor.
- 1.5 "Contractor" means UPS, whose principal business address is 55 Glenlake Parkway, N.E. Atlanta, GA 30328
- 1.6 "Effective Date" means the date the Participation Agreement is signed by the NJPA Member following any required approvals of the Participation Agreement, including approval by the Board of Public Works, if such approval is required.
- 1.7 "Local Entity" means a county, municipal corporation, bicounty or multicounty agency, public authority, special taxing district, or other political subdivision or unit of a political subdivision of the State and includes boards of education and library boards that receive funding from the State.
- 1.8 "Master Price Agreement" means the NJPA Request for Proposals # 091416 for Express Courier, Overnight, Delivery Logistics Services dated August 4, 2016, issued by the State of Minnesota as amended, and including all attachments thereto.

- 1.9 “Not-for-profit entity” means a corporation incorporated in the State, or otherwise qualified to do business in the State that has been determined by the Internal Revenue Service to be exempt from taxation under § 501(c)(3), (4), or (6) of the Internal Revenue Code.
- 1.10 “Participation Agreement” means this written statement of agreement with accompanying Exhibits between Contractor and NJPA Member that clarifies the operation of the Master Price Agreement for the State, adds State-specific language and other requirements, and evidences the State’s willingness to purchase and Contractor’s willingness to provide goods and services under the terms and conditions of this Participation Agreement with any and all exceptions noted and agreed upon..
- 1.11 “Procurement Officer” means the NJPA Member employee identified in Section 34 of this Participation Agreement as the Procurement Officer.
- 1.12 “Proposal” means the Contractor’s Technical and Financial Proposals dated September 12, 2016.
- 1.13 “Purchase Order” means a directive for services under this Participation Agreement entered into by NJPA Member or an Agency and the Contractor under the Participation Agreement, and includes a purchase order issued to the Contractor.
- 1.14 “State” means the State of Maryland.
- 1.15 “Vendor Agreement” means the carrier agreement between the Contractor and NJPA dated October 4, 2016, effective March 20, 2017 referenced as Exhibit C pursuant to which the Contractor agreed to sell to NJPA Members certain Small Package Delivery services.

2. Adoption of the Participation Agreement.

- 2.1 The State is eligible to receive services from UPS under this Participation Agreement as a result of the Vendor Agreement which may be modified, discontinued or terminated in whole or in part by NJPA and/or UPS, at any time. The NJPA Member agrees to the terms and conditions of this Participation Agreement and hereby consents to, agrees to be bound by, and waives notice of any extensions, deletions or other modifications of the terms and conditions of the Vendor Agreement including, without limitation, any extension of the initial term, any addition of new services or programs, or any deletions or modifications thereof.
- 2.2 The NJPA Member hereby represents and warrants that it meets, and will continue to meet throughout the term of this Participation Agreement, the definition of “NJPA Member” set forth in the Vendor Agreement.

3. Scope of Participation Agreement

- 3.1 The Contractor shall provide small package delivery services to all Agencies and Participating Local Entities and Not-for-Profit Entities in accordance with the terms of the Participation Agreement the UPS Pricing in Participation Agreement Exhibit D, and the following Exhibits, which are attached hereto and incorporated herein by reference. By signing this Participation Agreement, the NJPA Member agrees to pay the charges incurred by the NJPA Member for services provided under this Participation Agreement.
- 3.2. If there is any conflict between this Participation Agreement and the Exhibits, the terms of the Participation Agreement shall govern. If there is any conflict among the Exhibits, the following order of precedence shall determine the prevailing provision:

This Participation Agreement;

Exhibit A – Maryland Bid/Proposal Affidavit;

Exhibit B – Maryland Contract Affidavit;

Exhibit C – The NJPA Contract #091416;

Exhibit D – UPS Pricing including UPS Rate, Service Guides and Tariff in effect at the time of shipping; and

Exhibit E - Rates for additional charges.

- 3.3 The Procurement Officer may, at any time, by written order, make changes in the work within the general scope of the Participation Agreement. No other order, statement, or conduct of the Procurement Officer or any other person shall be treated as a change or entitle the Contractor to an equitable adjustment under this section. Except as otherwise provided in this Participation Agreement, if any change under this section causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work, whether or not changed by the order, an equitable adjustment in the Participation Agreement price shall be made and the Participation Agreement modified in writing accordingly. The Contractor must assert in writing its right to an adjustment under this section within thirty (30) days of receipt of written change order and shall include a written statement setting forth the nature and cost of such claim. No claim by the Contractor shall be allowed if asserted after final payment under this Participation Agreement. Failure to agree to an adjustment under this section shall be a dispute under the Disputes clause. Nothing in this section shall excuse the Contractor from proceeding with the Participation Agreement as changed.
- 3.4 While the Procurement Officer may, at any time, by written change order, make unilateral changes in the work within the general scope of the Participation Agreement as provided in Section 3.3 above, the Participation Agreement may be modified by mutual agreement of the parties, provided: (a) the modification is made in writing; (b) all parties sign the modification; and (c) all approvals by the required agencies as described in COMAR Title 21, are obtained.

4. Term.

The term of this Participation Agreement begins on the Effective Date which is defined as the date the Participation Agreement is signed by the NJPA Member following any required approvals of the Participation Agreement, including approval by the Board of Public Works, if such approval is required. The Contractor shall provide services under this Participation Agreement two weeks after the Effective Date. The Participation Agreement shall be coterminous with the Vendor Agreement. The NJPA Member acknowledges that the initial term of the Vendor Agreement, and by extension thereof, this Participation Agreement, expires on March 20, 2022.

5. Incorporation of UPS Rate, Service Guides, UPS Tariff; Consideration and Payment

- 5.1. UPS and NJPA Member agree that all of the terms and conditions of the applicable UPS Rate and Service Guides and the UPS Tariff in effect at the time of shipping are applicable to the provision of services under this Participation Agreement and are incorporated herein by this reference. The NJPA Member further acknowledges that it has reviewed and understands the terms and conditions of the UPS Rate and Service Guides and the UPS Tariff.

- 5.2 In consideration of the satisfactory performance of the work set forth in this Participation Agreement and the applicable Purchase Order, an Agency shall pay the Contractor in accordance with the terms of this Participation Agreement and at the prices quoted in Exhibit D and Exhibit E.
- 5.3 The Contractor shall separately invoice each requesting Agency Coordinator for receipt of payment. Payments from Agencies to the Contractor shall be made no later than thirty (30) days after the requesting State Agency's receipt of a proper invoice for Services provided by the Contractor, acceptance by the Agency Coordinator of Services provided by the Contractor, and pursuant to the conditions outlined in Section 5 of this Participation Agreement. Each invoice for Services rendered shall include the Contractor's Federal Tax Identification Number which is [REDACTED]. Charges for late payment of invoices other than as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, are prohibited. Electronic funds transfer shall be used by the State to pay Contractor pursuant to this Participation Agreement and any other State payments due Contractor unless the State Comptroller's Office grants Contractor an exemption. The Contractor shall also accept payment by Corporate Purchasing Card. The Contractor shall not invoice the State for sales and excise taxes. The State is generally exempt from federal excise taxes, Maryland sales and use taxes, District of Columbia sales taxes and transportation taxes. The State is not responsible for any taxes levied on the Contractor as a result of this Participation Agreement.
- 5.4 In addition to any other available remedies, if, in the opinion of the Procurement Officer, the Contractor fails to perform in a satisfactory manner, the Procurement Officer may withhold payment from Contractor until necessary services or corrections in performances are satisfactorily completed, or the Purchase Order has been terminated.
- 5.5 Payment of an invoice by an Agency is not evidence that services were rendered as required under this Participation Agreement.
- 5.6 Contractor's eMarylandMarketplace vendor ID number is [REDACTED].

6. Rights to Records. Rights to Records provisions are not applicable to this Participation Agreement.

7. Exclusive Use

Except as may otherwise be set forth in this Participation Agreement, Contractor shall not use, sell, sub-lease, assign, give, or otherwise transfer to any third party any other information or material provided to Contractor by an Agency or developed by Contractor relating to the Participation Agreement, unless required to by State and/ or Federal rules of discovery or law, except that Contractor may provide said information to any of its officers, employees and subcontractors who Contractor requires to have said information for fulfillment of Contractor's obligations hereunder. Each officer, employee and/or subcontractor to whom any of the Agency's confidential information is to be disclosed shall be advised by Contractor of and bound by confidentiality and intellectual property terms substantively equivalent to those of this Participation Agreement.

8. Patents, Copyrights, and Intellectual Property

- 8.1 If the Contractor furnishes any design, device, material, process, or other item, which is covered by a patent, trademark or service mark, or copyright or which is proprietary to, or a trade secret of, another, the Contractor shall obtain the necessary permission or license to permit the State to use such item or items.
- 8.2 The Contractor will defend or settle, at its own expense, any claim or suit against the State alleging that any such item furnished by the Contractor infringes any patent, trademark, service mark,

copyright, or trade secret. If a third party claims that a product infringes that party's patent, trademark, service mark, trade secret, or copyright, the Contractor will defend the State against that claim at Contractor's expense and will pay all damages, costs, and attorneys' fees that a court finally awards, provided the State: (a) promptly notifies the Contractor in writing of the claim; and (b) allows Contractor to control and cooperates with Contractor in, the defense and any related settlement negotiations. The obligations of this paragraph are in addition to those stated in Section 8.3 below.

- 8.3 If any products furnished by the Contractor become, or in the Contractor's opinion are likely to become, the subject of a claim of infringement, the Contractor will, at its option and expense: (a) procure for the State the right to continue using the applicable item; (b) replace the product with a non-infringing product substantially complying with the item's specifications; or (c) modify the item so that it becomes non-infringing and performs in a substantially similar manner to the original item.
- 8.4 Service Marks. It is expressly understood by each party that trade names, service marks, and trademarks of the other are proprietary and nothing in this Participation Agreement constitutes the grant of a general license to use said trade names, service marks and trademarks. Use of UPS trade names, service marks, and trademarks by NJPA or the State must be approved by UPS.

9. Confidential or Proprietary Information and Documentation

- 9.1 Subject to the Maryland Public Information Act and any other applicable laws including, without limitation, HIPAA, the HI-TECH ACT, and the Maryland Medical Records Act and the implementation of regulations promulgated pursuant thereto, all confidential or proprietary information and documentation relating to either party (including without limitation, any information or data stored within the Contractor's computer systems) shall be held in absolute confidence by the other party. Each party shall, however, be permitted to disclose relevant confidential information to its officers, agents, and employees to the extent that such disclosure is necessary for the performance of their duties under this Participation Agreement, provided that the data may be collected, used, disclosed, stored, and disseminated only as provided by and consistent with the law. The provisions of this section shall not apply to information that: (a) is lawfully in the public domain; (b) has been independently developed by the other party without violation of this Participation Agreement; (c) was already in the possession of such party; (d) was supplied to such party by a third party lawfully in possession thereof and legally permitted to further disclose the information; or (e) which such party is required to disclose by law.
- 9.2 The NJPA Member consents to the Contractor's disclosure to NJPA of any information regarding the services under this Participation Agreement, including without limitation, the amount of revenue received by the Contractor as a result of this Participation Agreement and similar information related to the aggregate performance of NJPA and its NJPA Members under the Vendor Agreement and this Participation Agreement.
- 9.3 This Section 9 shall survive expiration or termination of this Participation Agreement.

10. Loss of Data. Loss of Data provisions are not applicable to this Participation Agreement.

11. Indemnification

- 11.1 Subject to the UPS Rate and Service Guides and the UPS Tariff, the Contractor shall hold harmless and indemnify the State from and against any and all losses, damages, claims, suits, actions, liabilities, and/or expenses, including, without limitation, attorneys' fees and disbursements of any character that arise from, are in connection with or are attributable to the performance or

nonperformance of the Contractor or its subcontractors under this Participation Agreement. Notwithstanding the foregoing, the Contractor shall not be liable under this Section to the extent that such claim is caused or results from the negligent acts or willful misconduct of the State. For claims arising from or relating to the loss, damage, delay, misdelivery or non-delivery of packages for which the services under this Participation Agreement are provided, which such claims shall be governed by the terms of the Subject to the UPS Rate and Service Guides and the UPS Tariff in effect at the time of shipping.

- 11.2 This indemnification clause shall not be construed to mean that the Contractor shall indemnify the State against liability for any losses, damages, claims, suits, actions, liabilities, and/or expenses that are attributable to the sole negligence of the State or the State's employees.
- 11.3 The State has no obligation to provide legal counsel or defense to the Contractor or its subcontractors in the event that a suit, claim, or action of any character is brought by any person not party to this Participation Agreement against the Contractor or its subcontractors as a result of or relating to the Contractor's performance under this Participation Agreement.
- 11.4 The State has no obligation for the payment of any judgments or the settlement of any claims against the Contractor or its subcontractors as a result of or relating to the Contractor's performance under this Participation Agreement.
- 11.5 The Contractor shall immediately notify the Procurement Officer of any claim or suit made or filed against the Contractor or its subcontractors regarding any matter resulting from, or relating to, the Contractor's obligations under the Participation Agreement, and will cooperate, assist, and consult with the State in the defense or investigation of any claim, suit, or action made or filed against the State as a result of, or relating to, the Contractor's performance under this Participation Agreement.
- 11.6 This Section 11 shall survive termination of this Participation Agreement.

12. Non-Hiring of Employees

No official or employee of the State, as defined under Md. Code Ann., General Provisions Article, § 5101, whose duties as such official or employee include matters relating to or affecting the subject matter of this Participation Agreement, shall, during the pendency and term of this Participation Agreement and while serving as an official or employee of the State, become or be an employee of the Contractor or any entity that is a subcontractor on this Participation Agreement.

13. Disputes

This Participation Agreement shall be subject to the provisions of Md. Code Ann., State Finance and Procurement Article, Title 15, Subtitle 2, and COMAR 21.10 (Administrative and Civil Remedies). Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the Participation Agreement in accordance with the Procurement Officer's decision.

14. Maryland Law

- 14.1 This Participation Agreement shall be construed, interpreted, and enforced according to the laws of the State of Maryland.
- 14.2 The Maryland Uniform Computer Information Transactions Act (Commercial Law Article, Title 22 of the Annotated Code of Maryland), does not apply to this Participation Agreement or to any

purchase order or Notice to Proceed issued under this Participation Agreement, or any software, or any software license required hereunder.

- 14.3 Any and all references to the Maryland Code, Annotated contained in this Participation Agreement shall be construed to refer to such Code sections as are from time to time amended.

15. Nondiscrimination in Employment

The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, sexual orientation, gender identification, marital status, national origin, ancestry genetic information or any otherwise unlawful use of characteristics, or disability of a qualified individual with a disability unrelated in nature and extent so as to reasonably preclude the performance of the employment, or the individual's refusal to submit to a genetic test or make available the results of a genetic test; (b) to include a provision similar to that contained in subsection (a), above, in any underlying subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

16. Contingent Fee Prohibition

The Contractor warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for the Contractor, to solicit or secure the Participation Agreement, and that the Contractor has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee or agent, any fee or any other consideration contingent on the making of this Participation Agreement.

17. Non-availability of Funding

If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Participation Agreement succeeding the first fiscal period, this Participation Agreement shall be canceled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the NJPA Member's rights or the Contractor's rights under any termination clause in this Participation Agreement. The effect of termination of the Participation Agreement hereunder will be to discharge both the Contractor and the State from future performance of the Participation Agreement, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the Participation Agreement. NJPA Member shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Participation Agreement for each succeeding fiscal period beyond the first.

18. Termination for Cause

- 18.1 If the Contractor fails to fulfill its obligations under this Participation Agreement properly and on time, or otherwise violates any provision of the Participation Agreement, NJPA Member may terminate the Participation Agreement by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Contractor shall, at the Department's option, become the State's property. The Department shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by the Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and the Department can affirmatively collect damages. Termination

hereunder, including the termination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B.

- 18.2 If the Contractor fails to fulfill its obligations under a Purchase Order pursuant to this Participation Agreement properly and on time, or otherwise violates any provision of the Participation Agreement or Purchase Order, an Agency may terminate the Purchase Order by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Contractor shall, at the Agency's option, become the Agency's property. The Agency shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination of the Purchase Order, less the amount of damages caused by the Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination of the Purchase Order and the Agency can affirmatively collect damages. Termination hereunder, including the termination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B.

19. Termination for Convenience

The performance of work under this Participation Agreement may be terminated by the NJPA Member in accordance with this clause in whole, or from time to time in part, whenever the NJPA Member shall determine that such termination is in the best interest of the State. The NJPA Member will pay all reasonable costs associated with this Participation Agreement that the Contractor has incurred up to the date of termination, and all reasonable costs associated with termination of the Participation Agreement; provided, however, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.12A(2).

20. Termination under Vendor Agreement

- 20.1 If NJPA notifies UPS that the NJPA Member is no longer eligible to participate under this Participation Agreement, UPS shall immediately terminate this Participation Agreement.
- 20.2 The NJPA Member acknowledges and agrees that if the Vendor Agreement expires or is terminated for any reason whatsoever, such expiration or termination will operate as an automatic and immediate termination of this Participation Agreement without notice to the NJPA Member.

21. Delays and Extensions of Time

The Contractor agrees to prosecute the work continuously and diligently and no charges or claims for damages shall be made by it for any delays, interruptions, interferences, or hindrances from any cause whatsoever during the progress of any portion of the work specified in this Participation Agreement.

Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another Contractor in the performance of a contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers.

22. Suspension of Work

NJPA Member unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of its performance for such period of time as the Procurement Officer may determine to be appropriate for the convenience of the State.

23. Pre-Existing Regulations

In accordance with the provisions of Md. Code Ann., State Finance and Procurement Article, § 11-206, the regulations set forth in Title 21 of the Code of Maryland Regulations (COMAR 21) in effect on the date of execution of this Participation Agreement are applicable to this Participation Agreement.

24. Financial Disclosure

The Contractor shall comply with the provisions of Md. Code Ann., State Finance and Procurement Article, § 13-221, which requires that every person that enters into contracts, leases, or other agreements with the State or its agencies during a calendar year under which the business is to receive in the aggregate, \$100,000 or more, shall within thirty (30) days of the time when the aggregate value of these contracts, leases or other agreements reaches \$100,000, file with the Secretary of the State certain specified information to include disclosure of beneficial ownership of the business.

25. Political Contribution Disclosure

The Contractor shall comply with Election Law Article, Title 14, Annotated Code of Maryland, which requires that every person that enters into a procurement contract with the State, a county, or a municipal corporation, or other political subdivision of the State, during a calendar year in which the person receives a contract with a governmental entity in the amount of \$200,000 or more, shall file with the State Board of Elections statements disclosing: (a) any contributions made during the reporting period to a candidate for elective office in any primary or general election; and (b) the name of each candidate to whom one or more contribution in a cumulative amount of \$500 or more were made during the reporting period. The statement

shall be filed with the State Board of Elections: (a) before execution of a contract by the State, a county, a municipal corporation, or other political subdivision of the State, and shall cover the 24 months prior to when a contract was awarded; and (b) if the contribution is made after the execution of a contract, then twice a year, throughout the contract term, on or before: (i) May 31, to cover the six (6) month period ending April 30; and (ii) November 30, to cover the six (6) month period ending October 31. Additional information is available on the State Board of Election website: http://www.elections.state.md.us/campaign_finance/index.html.

26. Documents Retention and Inspection Clause

The Contractor and subcontractors shall retain and maintain all records and documents relating to this Participation Agreement for a period of five (5) years after final payment by the State hereunder or any applicable statute of limitations or federal retention requirements (such as HIPAA), whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including the Procurement Officer or designee, at all reasonable times. All records related in any way to the Participation Agreement are to be retained for the entire time provided under this section. In the event of any audit, the Contractor shall provide assistance to the State, without additional compensation, to identify, investigate, and reconcile any audit discrepancies and/or variances. This Section 26 shall survive expiration or termination of the Participation Agreement.

27. Right to Audit

27.1 The NJPA Member reserves the right, at its sole discretion and at any time, to perform an audit of the Contractor's and/or subcontractor's performance under this Participation Agreement. An audit is defined as a planned and documented independent activity performed by qualified personnel including but not limited to State and federal auditors, to determine by investigation, examination, or evaluation of objective evidence from data, statements, records, operations and performance practices (financial or otherwise) the Contractor's compliance with the Participation Agreement, including but not limited to adequacy and compliance with established procedures and internal controls over the Participation Agreement services being performed for the State.

27.2 Upon three (3) Business Days' notice (which is defined herein to mean the official working days of the week to include Monday through Friday, excluding State Holidays, which can be found at: www.dbm.maryland.gov – keyword: State Holidays.), the Contractor and/or any subcontractors shall provide the State reasonable access to their respective records to verify conformance to the terms of the Participation Agreement. NJPA Member may conduct these audits with any or all of its own internal resources or by securing the services of a third party accounting or audit firm, solely at the NJPA Member's election. The NJPA Member may copy, at its own expense, any record related to the services performed and provided under this Participation Agreement.

27.3 The right to audit shall include any of the Contractor's subcontractors including but not limited to any lower tier subcontractor(s) that provide essential support to the Participation Agreement services. The Contractor and/or subcontractor(s) shall ensure the NJPA Member has the right to audit such subcontractor(s).

27.4 The Contractor and/or subcontractors shall cooperate with NJPA Member and NJPA Member's designated accountant or auditor and shall provide the necessary assistance for the NJPA Member or NJPA Member's designated accountant or auditor to conduct the audit.

27.5 This Section shall survive expiration or termination of the Participation Agreement.

28. Compliance with Laws

The Contractor hereby represents and warrants that:

- 28.1 It is qualified to do business in the State and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;
- 28.2 It is not in arrears with respect to the payment of any monies due and owing the State, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Participation Agreement
- 28.3 It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Participation Agreement; and
- 28.4 It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Participation Agreement.

29. Cost and Price Certification

By submitting cost or price information, the Contractor certifies to the best of its knowledge that the information submitted is accurate, complete, and current as of the date of its Proposal.

The price under this Participation Agreement and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information which, as of the date of its Proposal was inaccurate, incomplete, or not current.

30. No Assignment

This Contract is not transferrable, or otherwise assignable, without the written consent of the Procurement Officer provided, however, that the Contractor may assign monies receivable under the Contract after due notice to the NJPA Member.

31. Liability

Subject to the terms of the UPS Rate and Service Guides and the UPS Tariff, for breach of this Participation Agreement, negligence, misrepresentation, or any other contract or tort claim, Contractor shall be liable as follows:

- 31.1 For infringement of patents, copyrights, trademarks, service marks, and/or trade secrets, as provided in Section 8 of this Participation Agreement;
- 31.2 For damages for bodily injury (including death) and damage to real property and tangible personal property; and
- 31.3 For all other claims, damages, losses, costs, expenses, suits, or actions directly related to this Participation Agreement, regardless of the form Contractor's liability for third party claims arising under Section 11 of this Participation Agreement up to the value of the Participation Agreement if the State is not immune from liability for claims arising under Section 11.

32. Commercial Nondiscrimination

- 32.1 As a condition of entering into this Participation Agreement, Contractor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland. As part of

such compliance, Contractor may not discriminate on the basis of race, color, religion, ancestry, national origin, sex, age, marital status, sexual orientation, sexual identity, genetic information or an individual's refusal to submit to a genetic test or make available the results of a genetic test or on the basis of disability, or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Contractor retaliate against any person for reporting instances of such discrimination. Contractor shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Contractor understands that a material violation of this clause shall be considered a material breach of this Participation Agreement and may result in termination of this Participation Agreement, disqualification of Contractor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

32.2 The Contractor shall include the above Commercial Nondiscrimination clause, or similar clause approved by the NJPA Member, in all subcontracts.

33. Contract Monitor and Procurement Officer

The work to be accomplished under this Participation Agreement shall be performed under the direction of the Contract Monitor. All matters relating to the interpretation of this Participation Agreement shall be referred to the Procurement Officer for determination.

34. Notices

All notices, requests, demands and other communications required or permitted under this Participation Agreement shall be provided in writing and either delivered personally or sent by certified or registered mail, postage prepaid, as follows:

If to the NJPA Member: Rachel Hershey
Procurement Officer
45 Calvert Street, Room 137
Annapolis, MD 21401
Phone: 410.260.7681
Fax: 410.974.3274

With a copy to: Rachel Cruse
Contract Monitor
45 Calvert Street, Room 134
Annapolis, MD 21401
Phone: 410.260.7430
Fax: 410.974.3274

If to the Contractor: United Parcel Service, Inc.
55 Glenlake Parkway, N.E.
Atlanta, GA 30328
Attention: Office of the General Counsel

With a copy to: Cindy Chace, Director of Sales
316 Pennsylvania Ave, SE Suite 500
Washington, DC 20003
Cell: 954 465 3513
Fax: 717-560-3794

If to NJPA: National Joint Powers Alliance®
202 12th Street NE Staples, MN 56479
Attention: Todd Lyscio
Phone: 218-894-5463

The NJPA Member acknowledges and agrees that it is not entitled to receive any notices intended for NJPA under the Vendor Agreement.

35. Use by Maryland Not-For-Profit and Local Government Entities

- 35.1 A Local Entity or Not-For-Profit Entity may purchase from the Contractor goods or services covered by this Participation Agreement at the same prices chargeable to the NJPA Member so long as such Local Entity or Not-For-Project Entity is also a member of NJPA. All such purchases by a Local Entity or Not-For-Profit Entity:
- a. shall constitute a contract between the Contractor and that Local Entity or Not-For-Profit Entity;
 - b. shall not constitute purchases by the State or a State Agency under this Participation Agreement
 - c. shall not be binding or enforceable against the State; and
 - d. may be subject to other terms and conditions agreed to by the Contractor and the purchaser. The Contractor bears the risk of determining whether or not a government, agency or organization with which the Contractor is dealing is a Local Entity or Not-For-Profit Entity.
- 35.2 All Participation Agreement prices, terms, and conditions shall be provided to any Local Entity or Not-For-Profit Entity requesting services under this Participation Agreement.

36. Reporting

- 36.1 The Contractor shall provide shipping reports for all activity conducted under the Participation Agreement on a quarterly basis to the NJPA Member's Contract Monitor. The reports at a minimum shall contain following: Account number, Agency/ Local Entity or Not-For-Profit Entity name and address, shipping volume by type of service, i.e. ground, express air, etc., pieces, weight and net charges, individual account and total dollar expenditure.
- 36.2 The Contractor shall also provide access to reports that provides the information detailed in Section 36 for each Agency and Local Entity or Not-For-Profit Entity under the Participation Agreement.

37. Ordering

The Contractor shall pick up packages from receptacles in locations convenient to State Agencies and Local Entities and Not-For-Profit Entities. For the purposes of Contractor pick up, "locations convenient to Agencies and Local Participating Entities" shall mean the Contractor shall pick up packages from at least one receptacle for each building in which pick up is desired by a using Agency.

38. Training

The Contractor shall provide training at no additional cost to each State Agency and Local Entity or Not-For-Profit Entity upon request. The training shall detail the services provided under the Participation Agreement and use of the Contractor's website for, including but not limited to, submitting orders for service, tracking deliveries, and generating reports.

39. Miscellaneous

- 39.1 Any provision of this Participation Agreement which contemplates performance or observance subsequent to any termination or expiration of Participation Agreement, including but not limited to audit, confidentiality, document retention and inspection, and indemnification obligations, shall survive termination or expiration of this Participation Agreement and continue in full force and effect.
- 39.2 If any term contained in this Participation Agreement is held or finally determined to be invalid, illegal, or unenforceable in any respect, in whole or in part, such term shall be severed from this Participation Agreement, and the remaining terms contained herein shall continue in full force and effect, and shall in no way be affected, prejudiced, or disturbed thereby.
- 39.3 This Participation Agreement, together with its Exhibits, set 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.

IN WITNESS THEREOF, the NJPA Member and the Contractor have, through their duly authorized representatives, executed this Participation Agreement. The parties, having read and understood the foregoing Participation Agreement terms, do by their respective signatures as of the Effective Date, agree to the terms thereof.

CONTRACTOR: United Parcel Service, Inc.	STATE OF MARYLAND DEPARTMENT OF BUDGET & MANAGEMENT
<Signature>	
By: <enter name>	By: Marc Nicole, Deputy Secretary, Designee
Date: 8.21.2017	Date: 9/6/17

Approved for form and legal sufficiency this 14th day of September 2017.

By: A

APPROVED BY BPW:

9/6/17 (Date)

12-5 (BPW Item #)

