

**STATE OF NEW JERSEY
PARTICIPATING ADDENDUM
Pursuant to
NASPO ValuePoint Contract for Small Package Delivery
Utah Contract Ref. No. MA454, Solicitation# BC16018**

This Participating Addendum is made by and between, Fedex Corporate Services, Inc., whose address is 900 7th Street NW, Suite 500, Washington, DC 20001 ("Contractor"), and the State of New Jersey, Department of the Treasury, Division of Purchase and Property ("State") whose address is 33 West State Street, 8th Floor, P.O. Box 039, Trenton, New Jersey 08625, on behalf of the State of New Jersey and all "Authorized Purchasers", as defined below. For clarification of references throughout this document, the term "State," in any form, refers to the State and any Authorized Purchaser, unless otherwise indicated. Capitalized terms used but not defined shall have the meaning ascribed to them in the Master Agreement.

WHEREAS, pursuant to N.J.S.A. 52:34-6.2, the Director of the Division of Purchase and Property ("Director"), within the New Jersey Department of the Treasury ("Division") "may enter into cooperative purchasing agreements with one or more states for the purchase of goods and services;" and

WHEREAS, the State of Utah ("Lead State") and Contractor have entered into Master Agreement # MA454 in accordance with the State of Utah Solicitation for Small Package Delivery #BC16018; and

WHEREAS, the Director has determined that entering into a Participating Addendum with Contractor is the most cost effective method of procuring these products and services, and that it is in the best interest of the State to enter into a Participating Addendum with Contractor; and

WHEREAS, the parties seek to enter into this Participating Addendum to memorialize the terms of their contractual relationship;

NOW THEREFORE, for good and valuable consideration, receipt of which hereby acknowledged, the parties to this Participating Addendum hereby agree as follows:

1.0 Term and Extension Option; Order of Precedence; Entire Agreement:

- A. The term of this Participating Addendum shall be from the Effective Date, which is the last date signed below, and shall continue for a period ending on the Termination Date of the Master Agreement or when this Participating Addendum is terminated in accordance with the Master Agreement or this Participating Addendum, whichever shall occur first.
- B. The entire agreement, and all rights and obligations between the parties, shall consist of the following documents (which shall be collectively referred to as the "Participating Addendum"):
 - 1. This cover packet;
 - 2. The State of New Jersey Standard Terms and Conditions, attached hereto as Exhibit A;
 - 3. The Master Agreement, including its attachments and exhibits, attached hereto as Exhibit B;
 - 4. The Solicitation, incorporated herein by reference as Exhibit C;
 - 5. The Contractor's response to the Solicitation, as revised, if permitted, and accepted by the Lead State, incorporated herein by reference as Exhibit D. and
 - 6. FedEx Terms of Use dated 4/19/2023, attached hereto as Exhibit E. The terms and conditions contained in Exhibit E are those in effect at the time of the Participating Addendum's execution and are subject to revision by FedEx, except in no event shall such revisions replace the terms negotiated in the Participating Addendum regarding indemnification, limitation of liability, choice of law and termination.

The documents comprising the Participating Addendum shall be read to be consistent and complimentary. In the event of any conflict between the terms of the documents comprising the Participating Addendum, the conflict shall be resolved by giving priority to the documents in the order listed above.

- C. The Participating Addendum sets forth the entire agreement between the parties and supersedes all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof.
- D. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Participating Addendum and the Master Agreement, shall not be added to or incorporated into this Participating Addendum or the Master Agreement by any subsequent purchase order, scope of work document or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected.
- E. Amendments – This Participating Addendum may not be amended except in a writing signed by both parties.
- F. If either party uses a web based ordering system, an electronic purchase order system, an electronic order acknowledgement, a form of an electronic acceptance, or any software based ordering system with respect to the Contract (each an "Electronic Ordering System"), the parties acknowledge and agree that an Electronic

Ordering System is for ease of administration only, and Contractor is hereby given notice that the persons using Electronic Ordering Systems on behalf of State do not have any actual or apparent authority to create legally binding obligations that vary from the terms and conditions of the Contract. In the event that State's individual users are required to accept any "shrink wrap" or "click to accept" online terms and conditions at the time of using the FedEx online shipping solutions or otherwise, the individual accessing the solution and agreeing to the terms and conditions will not be held personally liable for violations of the terms and conditions of the "shrink wrap" or "click to accept", and the State assumes all liability for the individual user's compliance with the terms and conditions of the "shrink wrap" or "click to accept".

However it is agreed by the parties that an Authorized Purchaser must execute Contractor's standard software license agreement(s) prior to use of any of Contractor's proprietary software applications.

2.0 Scope of Services:

- A. The scope of products and services that may be purchased by Authorized Purchasers shall be those products and service offerings awarded under the Master Agreement.
- B. Any restrictions or limitations regarding the Executive Branch use of this Participating Addendum will be set forth in the Method of Operation, as may be amended from time to time and posted on the State's website.
- C. The State reserves the right to contract with and utilize multiple vendors for the services set forth and contemplated under this Participating Addendum. As such, the State understands that the Vendor's Multi Carrier National Rates will apply to the Vendor's services under this Participating Addendum.

3.0 Definitions

"Authorized Purchasers" under this Participating Addendum shall mean:

1. Any government agency, department, office, instrumentality, division, unit or other entity of the State;
2. Any county, borough, city, municipality, town, township, special purpose district, or other political subdivision of the State;
3. Quasi-state agencies as defined in N.J.S.A. 52:27B-56.1 as any agency, commission, board, authority or other such governmental entity which is established and is allocated to a State department or any bi-state governmental entity of which the State of New Jersey is a member;
4. School districts per N.J.S.A. 52:25-16.1;
5. Volunteer fire departments, volunteer first aid squads and rescue squads per N.J.S.A. 52:25-16.2; and
6. Independent institutions of higher education per N.J.S.A. 52:25-16.5;
7. County colleges per N.J.S.A. 18A:64A-25.9;
8. State colleges per N.J.S.A. 18A:64-60; or
9. Any legal successor in interest to any entity above.

Each Authorized Purchaser is responsible for the full cost of purchases made under this Participating Addendum.

"Intrastate Cooperative Purchasing Participants" shall mean political subdivisions, including any county, borough, city, municipality, town, township, special purpose district, volunteer fire departments and first aid squads, and independent institutions of higher education and school districts pursuant to N.J.S.A. 52:25-16.1 et seq., State and county colleges pursuant to N.J.S.A. 18A:64-60 and 18A:64A-25.9, quasi-State agencies and independent authorities pursuant to N.J.S.A. 52:27B-56.1, and other New Jersey public entities having statutory authority to utilize select State contracts issued by the Division.

4.0 Modifications to the Terms of the Master Agreement

None.

5.0 Miscellaneous

- A. No Waiver - No term or provision of this Participating Addendum shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by an individual authorized to so waive or consent. Any consent by either party to, or waiver of, a breach by the other whether expressed or implied, shall not constitute a consent to, waiver of, or excuse for, any other breach or any subsequent breach, except as may be expressly provided in the waiver or consent.
- B. Dispute Resolution - The State and Contractor will attempt to resolve any dispute through face-to-face negotiation with persons fully authorized to resolve the dispute or through non-binding mediation utilizing a mediator agreed to by the parties, rather than through litigation. No formal proceedings for the judicial resolution of such dispute, except for the seeking of equitable relief or those required to avoid non-compliance with the New Jersey

Contractual Liability Act, N.J.S.A. 59:13-1 et seq., may begin until either such persons conclude, after a good faith effort to resolve the dispute, that resolution through continued discussion is unlikely.

- C. Arbitration or Mediation - Any provision regarding arbitration or binding mediation within the Master Agreement is deleted in its entirety.
- D. Pursuant to N.J.A.C. 17:12-1B.2, notwithstanding anything to the contrary in the Master Agreement, under no circumstances will the State indemnify Contractor and any such provision in the Master Agreement shall be of no force and effect.
- E. Notwithstanding anything to the contrary in the Master Agreement, the State shall not be responsible for the Contractor's attorney fees and/or expenses.
- F. Notwithstanding anything to the contrary in the Master Agreement, the State does not agree to auto-renewal of maintenance, technical support, service fees, subscription fees or any other product or service requiring periodic renewal.

G. QUARTERLY SALES REPORTING AND SUPPLIER CONVENIENCE FEE

1. Quarterly Sales Reporting - The Contractor shall submit a Sales Report documenting all sales made under the Contract. The Sales Report shall be submitted directly to Periscope no later than thirty (30) calendar days after the end of each calendar quarter. The calendar quarters will end March 31, June 30, September 30, and December 31. The Sales Report must contain the following information:
 - Quarterly Report based on net sales ;
 - Purchasing entity;
 - Total of Supplier Convenience Fee amount due for the reporting quarter;
 - Such other information as the State may reasonably request and mutually agreed upon by the parties; and
 - If no sales were made to State during the reporting quarter, then a report shall be submitted showing zero sales and zero Supplier Convenience Fee due.

Quarterly Sales Reporting and remittance of the Supplier Convenience Fee shall begin on the first calendar quarter starting after the effective date of the Contract.

2. Supplier Convenience Fee - For all purchases made under the Contract, the Contractor shall remit the Supplier Convenience Fee in the amount of one percent (1%) of all Net Sales to Periscope Holdings, Inc. (Periscope). Any change in the Convenience Fee amount shall only be made upon prior written notice to Contractor and execution of an Amendment incorporating such change ninety (90) days prior to implementation of such change.
3. Remittance of the Supplier Convenience Fee - On a quarterly basis, the Contractor shall remit the Supplier Convenience Fee via Automated Clearing House (ACH) transactions directly to Periscope pursuant to the Sales Report and Supplier Convenience Fee Schedule listed below. The calendar quarters will end March 31, June 30, September 30, and December 31. Failure to remit the Supplier Convenience Fee timely and accurately may result in Contractor's goods and/or services being made ineligible for purchase through the **NJSTART** Marketplace. (The State or Periscope shall complete and remit to Contractor any Contractor required forms to establish the ACH transfers) Prior to remittance, the parties shall mutually agree upon and execute all necessary documents to enable ACH transactions, including a Non-Disclosure Agreement between Contractor and Periscope. Failure to execute all necessary documents shall require payment from Authorized Users by check and waiver of the Supplier Convenience Fee.
4. Retention and Inspection of Records and Audit - The Contractor shall keep records of all sales made to Using Agencies and Intrastate Cooperative Purchasing Participants in sufficient detail to enable the State to determine the Supplier Convenience Fee payable by the Contractor. The State and/or Periscope may examine and audit, at its own expense, Contractor's sales records and Sales Reports for completeness and accuracy. If such examination reveals underpayment of the Supplier Convenience Fee, Periscope shall be required to submit an Invoice Adjustment claim in conformity with the provisions of the FedEx Service Guide.
5. Sales Report and Supplier Convenience Fee Schedule:

Usage Report Processing Month	Usage Reports Due	Administrative Fee Payment Due
January 1 – March 31	April 30	May 31
April 1 – June 30	July 31	August 31
July 1 – September 30	October 31	November 30
October 1 – December 31	January 31	February 28

6.0 The State of New Jersey Mandatory Certification Requirements

The following are the State of New Jersey standard procurement forms and requirements that Contractor agrees to fulfill prior to the Effective Date. Some Authorized Purchasers may have additional requirements when placing an order and Contractor shall comply with same as necessary.

1. New Jersey Business Registration (N.J.S.A. 52:32-44);
2. Ownership Disclosure (N.J.S.A. 52:25-24.2);
3. Disclosure of Investment Activities in Iran (N.J.S.A. 52:32-55 et seq.)
4. MacBride Principles Form (N.J.S.A. 52:34-12.2);
5. Disclosure of Investigations and Actions Involving Bidder
6. Source Disclosure Certification (N.J.S.A. 52:34-13.2);
7. Proof of insurance as specified herein;
8. Completed Contractor Certification and Disclosure of Political Contributions (N.J.S.A. 19:44A-20:13 et seq.);
9. Vendor Certification (P.L. 2005, c.271);
10. Proof of compliance with New Jersey Affirmative Action requirements (N.J.A.C. 17:27-1.1 et seq.):
 - a. New Jersey Form AA-302;
 - b. Affirmative Action Employee Information Report; or New Jersey Affirmative Action Certificate; or
 - c. Federal Affirmative Action Approval Letter.
11. Disclosure of Prohibited Activities in Russia / Belarus Form

7.0 Primary Contacts

Any notice between the parties provided for in this Participating Addendum, or elsewhere in the Master Agreement shall be in writing, and shall be sent both via regular certified mail return receipt requested and via email to the addresses provided. The Parties should give prompt notice to each other if the appropriate person or address changes. The primary contacts for this Participating Addendum are as follows:

State of New Jersey – Department of the Treasury – Division of Purchase and Property	
Name	Jennifer Loughran
Title	Procurement Specialist
Address	33 West State Street, 8 th Floor, PO Box 230 Trenton, New Jersey 08625-0230
Telephone	609-943-4634
Fax	
Email	Jennifer.loughran@treas.nj.gov

FedEx Corporate Services, Inc.	
Name	William Linkin
Title	
Address	900 7 th Street NW Suite 550 Washington, DC 20001
Telephone	(732) 673-6130
Fax	
Email	whlinkin@fedex.com

IN WITNESS WHEREOF, The Contractor and the State have caused this Participating Addendum to be executed by their authorized representatives and agree that this Participating Addendum may be executed in counterparts, each original signed page to become part of the original document.

FEDEX CORPORATE SERVICES, INC

William Lmk
Signature

9/19/2023
Date

William Lmk - Worldwide Account Manager
Print Name and Title

**The State of New Jersey
Department of the Treasury - Division of Purchase and Property**

DocuSigned by:
Amy Davis
Amy F. Davis, Acting Director

September 27, 2023
Date

**Approved as to Form
Matthew J. Platkin, Attorney General
State of New Jersey – Department of Law and Public Safety**

Roza Dabaghyan, DAG
Signature

9/26/2023
Date

Roza Dabaghyan, Deputy Attorney General
Print Name and Title

EXHIBIT LIST

EXHIBIT A - The State of New Jersey Standard Terms and Conditions

EXHIBIT B - The Master Agreement, including its attachments and exhibits available at:
[Master Agreement #MA454 FedEx](#)

EXHIBIT C - The Solicitation - See Attachment E to the Master Agreement

EXHIBIT D - The Contractor's response to the Solicitation – See Attachment F to the Master Agreement

EXHIBIT E - FedEx Terms of Use dated 4/19/2023 (*The terms and conditions contained in this Exhibit are those in effect at the time of the Agreement's execution and are subject to revision by FedEx. The online software terms and conditions in effect at the time of shipment shall govern such shipments.*)

EXHIBIT A - The State of New Jersey Standard Terms and Conditions

State of New Jersey Standard Terms and Conditions

1. RESERVED

2. STATE LAW REQUIRING MANDATORY COMPLIANCE BY ALL CONTRACTORS

The statutes, laws or codes cited herein are available for review at the New Jersey State Library, 185 West State Street, Trenton, New Jersey 08625.

2.1 BUSINESS REGISTRATION

Pursuant to N.J.S.A. 52:32-44, the State is prohibited from entering into a contract with an entity unless the bidder and each subcontractor named in the proposal have a valid Business Registration Certificate on file with the Division of Revenue and Enterprise Services. A subcontractor named in a bid or other proposal shall provide a copy of its business registration to the bidder who shall provide it to the State.

The Contractor and any subcontractor providing goods or performing services under the contract, and each of their affiliates, shall, during the term of the contract, collect and remit to the Director of the Division of Taxation in the Department of the Treasury, the Use Tax due pursuant to the "Sales and Use Tax Act, P.L. 1966, c. 30 (N.J.S.A. 54:32B-1 et seq.) on all sales of tangible personal property delivered into the State. Any questions in this regard can be directed to the Division of Revenue at (609) 292-1730. Form NJ-REG can be filed online at <http://www.state.nj.us/treasury/revenue/busregcert.shtml>.

2.2 ANTI-DISCRIMINATION

All parties to any contract with the State agree not to discriminate in employment and agree to abide by all anti-discrimination laws including those contained within N.J.S.A. 10:2-1 through N.J.S.A. 10:2-4, N.J.S.A. 10:5-1 et seq. and N.J.S.A. 10:5-31 through 10:5-38, and all rules and regulations issued thereunder are hereby incorporated by reference. The agreement to abide by the provisions of N.J.S.A. 10:5-31 through 10:5-38 include those provisions indicated for Goods, Professional Service and General Service Contracts (Exhibit A, attached) and Constructions Contracts (Exhibit B and Executive Order 151, August 28, 2009, attached) as appropriate.

The Contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time.

2.3 PREVAILING WAGE ACT

The New Jersey Prevailing Wage Act, N.J.S.A. 34: 11-56.25 et seq. is hereby made part of every contract entered into on behalf of the State of New Jersey through the Division of Purchase and Property, except those contracts which are not within the contemplation of the Act. The Contractor's signature on this Participating Addendum is his/her guarantee that neither he/she nor any subcontractors he/she might employ to perform the work covered by this Participating Addendum has been suspended or debarred by the Commissioner, Department of Labor and Workforce Development for violation of the provisions of the Prevailing Wage Act and/or the Public Works Contractor Registration Acts; the Contractor's signature on this Participating Addendum is also his/her guarantee that he/she and any subcontractors he/she might employ to perform the work covered by this Participating Addendum shall comply with the provisions of the Prevailing Wage and Public Works Contractor Registration Acts, where required.

2.4 AMERICANS WITH DISABILITIES ACT

The Contractor must comply with all provisions of the Americans with Disabilities Act (ADA), P.L. 101-336, in accordance with 42 U.S.C. 12101, et seq.

2.5 MACBRIDE PRINCIPLES

Contractor must certify pursuant to N.J.S.A. 52:34-12.2 that it either has no ongoing business activities in Northern Ireland and does not maintain a physical presence therein or that it will take lawful steps in good faith to conduct any business operations it has in Northern Ireland in accordance with the MacBride principles of nondiscrimination in employment as set forth in N.J.S.A. 52:18A-89.5 and in conformance with the United Kingdom's Fair Employment (Northern Ireland) Act of 1989, and permit independent monitoring of their compliance with those principles.

2.6 PAY TO PLAY PROHIBITIONS

Pursuant to N.J.S.A. 19:44A-20.13 et seq. (P.L. 2005, c. 51), and specifically, N.J.S.A. 19:44A-20.21, it shall be a breach of the terms of the contract for Contractor to:

- A. Make or solicit a contribution in violation of the statute;
- B. Knowingly conceal or misrepresent a contribution given or received;
- C. Make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution;
- D. Make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate of holder of the public office of Governor or Lieutenant Governor, or to any State or county party committee;
- E. Engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any contribution, which if made or solicited by the business entity itself, would subject that entity to the restrictions of the Legislation;

- F. Fund contributions made by third parties, including consultants, attorneys, family members, and employees;
- G. Engage in any exchange of contributions to circumvent the intent of the Legislation; or
- H. Directly or indirectly through or by any other person or means, do any act which would subject that entity to the restrictions of the Legislation.

2.7 POLITICAL CONTRIBUTION DISCLOSURE

Contractor is advised of its responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission (ELEC), pursuant to N.J.S.A. 19:44A-20.27 (P.L. 2005, c. 271, §3 as amended) if in a calendar year the Contractor receives one (1) or more contracts valued at \$50,000.00 or more. It is the Contractor's responsibility to determine if filing is necessary. Failure to file can result in the imposition of penalties by ELEC. Additional information about this requirement is available from ELEC by calling 1(888)313-3532 or on the internet at <http://www.elec.state.nj.us/>.

2.8 STANDARDS PROHIBITING CONFLICTS OF INTEREST

The following prohibitions on Contractor activities shall apply to all contracts or purchase agreements made with the State of New Jersey, pursuant to Executive Order No. 189 (1988).

As used below, "vendor" means any person, firm, corporation, or other entity which provides or offers or proposes to provide goods or services to or perform any contract for any State agency. As used below, "State agency" means any of the principal departments in the Executive Branch of the State Government, and any division, board, bureau, office, commission or other instrumentality within or created by such department, the Legislature of the State and any office, board, bureau or commission within or created by the Legislative Branch, and, to the extent consistent with law, any interstate agency to which New Jersey is a party and any independent State authority, commission, instrumentality or agency. A county or municipality shall not be deemed an agency or instrumentality of the State.

No vendor shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b. and e., in the Department of the Treasury or any other agency with which such vendor transacts or offers or proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i., of any such officer or employee, or partnership, firm or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52: 13D-13g;

The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee from any State vendor shall be reported in writing forthwith by the vendor to the New Jersey Office of the Attorney General and the Executive Commission on Ethical Standards, now known as the State Ethics Commission;

No vendor may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such vendor to, any State officer or employee or special State officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he/she is employed or associated or in which he/she has an interest within the meaning of N.J.S.A. 52:13D-13g. Any relationships subject to this provision shall be reported in writing forthwith to the Executive Commission on Ethical Standards, now known as the State Ethics Commission, which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest;

No vendor shall influence, or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his/her official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee;

No vendor shall cause or influence, or attempt to cause or influence, any State officer or employee or special State officer or employee to use, or attempt to use, his/her official position to secure unwarranted privileges or advantages for the vendor or any other person; and

The provisions cited above shall not be construed to prohibit a State officer or employee or Special State officer or employee from receiving gifts from or contracting with vendors under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines the Executive Commission on Ethical Standards, now known as the State Ethics Commission may promulgate under paragraph 3c of Executive Order No. 189.

2.9 NOTICE TO ALL CONTRACTORS SET-OFF FOR STATE TAX NOTICE

Pursuant to N.J.S.A. 54:49-19, effective January 1, 1996, and notwithstanding any provision of the law to the contrary, whenever any taxpayer, partnership or S corporation under contract to provide goods or services or construction projects to the State of New Jersey or its agencies or instrumentalities, including the legislative and judicial branches of State government, is entitled to payment for those goods or services at the same time a taxpayer, partner or shareholder of that entity is indebted for any State tax, the Director of the Division of Taxation shall seek to set off that taxpayer's or shareholder's share of the payment due the taxpayer, partnership, or S corporation. The amount set off shall not allow

for the deduction of any expenses or other deductions which might be attributable to the taxpayer, partner or shareholder subject to set-off under this act.

The Director of the Division of Taxation shall give notice to the set-off to the taxpayer and provide an opportunity for a hearing within 30 days of such notice under the procedures for protests established under R.S. 54:49-18. No requests for conference, protest, or subsequent appeal to the Tax Court from any protest under this section shall stay the collection of the indebtedness. Interest that may be payable by the State, pursuant to P.L. 1987, c.184 (c.52:32-32 et seq.), to the taxpayer shall be stayed.

2.10 COMPLIANCE - LAWS

The Contractor must comply with all local, State and Federal laws, rules and regulations applicable to this contract and to the goods delivered and/or services performed hereunder.

2.11 COMPLIANCE - STATE LAWS

It is agreed and understood that any contracts and/or orders placed as a result of [this proposal] shall be governed and construed and the rights and obligations of the parties hereto and of the Authorized Purchasers shall be determined in accordance with the laws of the State of New Jersey, including without limitation, by the New Jersey Tort Claims Act, N.J.S.A. 59:1-1, et seq., the New Jersey Contractual Liability Act, N.J.S.A., 59:13-1, et seq., without reference to conflict of laws principles, and any and all litigation arising therefrom or related thereto shall be filed in the appropriate Division of the New Jersey Superior Court.

2.12 WARRANTY OF NO SOLICITATION ON COMMISSION OR CONTINGENT FEE BASIS

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. If a breach or violation of this section occurs, the State shall have the right to terminate the contract without liability or in its discretion to deduct from the contract price or consideration the full amount of such commission, percentage, brokerage or contingent fee.

2.13 OWNERSHIP DISCLOSURE

Pursuant to N.J.S.A. 52:25-24.2, in the event the bidder is a corporation, partnership or limited liability company, the bidder must complete an Ownership Disclosure Form.

A current completed Ownership Disclosure Form must be received prior to execution of the Participating Addendum. In the alternative, to comply with this section, a bidder with any direct or indirect parent entity which is publicly traded may submit the name and address of each publicly traded entity and the name and address of each person that holds a 10 percent or greater beneficial interest in the publicly traded entity as of the last annual filing with the federal Securities and Exchange Commission or the foreign equivalent, and, if there is any person that holds a 10 percent or greater beneficial interest, also shall submit links to the websites containing the last annual filings with the federal Securities and Exchange Commission or the foreign equivalent and the relevant page numbers of the filings that contain the information on each person that holds a 10 percent or greater beneficial interest. N.J.S.A. 52:25-24.2.

2.14 PROHIBITED INVESTMENT IN IRAN

Pursuant to N.J.S.A. 52:32-55, the Contractor must utilize the Disclosure of Investment Activities in Iran form to certify that neither the Contractor, nor one of its parents, subsidiaries, and/or affiliates (as defined in N.J.S.A. 52:32-56(e)(3)), is listed on the Department of the Treasury's List of Persons or Entities Engaging in Prohibited Investment Activities in Iran and that neither the Contractor, nor one of its parents, subsidiaries, and/or affiliates, is involved in any of the investment activities set forth in N.J.S.A. 52:32-56(f). If the Contractor is unable to so certify, the Contractor shall provide a detailed and precise description of such activities as directed on the form.

2.15 CONTRACTOR FACILITIES INSPECTION

The State reserves the right to inspect the Contractor's establishment before making an award for the purposes of ascertaining whether the Contractor has the necessary facilities for performing the contract.

The State may also consult with clients of the Contractor to assist the State in making a contract award that is most advantageous to the State.

2.16 STATE'S RIGHT TO REQUEST FURTHER INFORMATION

The Director reserves the right to request relevant information from the Contractor which may assist him or her in making a contract award, including factors necessary to evaluate the Contractor's financial capabilities to perform the contract. Further, the Director reserves the right to request a Contractor to explain to the Director's reasonable satisfaction, how the bid price was determined.

2.17 DELIVERY TIME AND COSTS

Unless otherwise noted in the Participating Addendum, all delivery times are 30 calendar days after receipt of order (AR) and prices for items in proposals shall be submitted Freight On Board (F.O.B.) Destination (30 calendar days AFO/F.O.B.). The Contractor shall assume all costs, liability and responsibility for the delivery of merchandise in good condition to the State's Authorized Purchaser. Thirty calendar days ARO/F.O.B. does not cover "spotting" but does include delivery on

the receiving platform of the Authorized Purchaser at any destination in the State of New Jersey unless otherwise specified.

No additional charges will be allowed for any additional transportation costs resulting from partial shipments made at the Contractor's convenience when a single shipment is ordered.

The weights and measures of the Authorized Purchaser receiving the shipment shall govern.

2.18 COLLECT ON DELIVERY (C.O.D.) TERMS

C.O.D. terms will not be accepted.

2.19 CASH DISCOUNTS

The Contractor is encouraged to offer cash discounts based on expedited payment by the State or Authorized Purchaser. The State or Authorized Purchaser will make efforts to take advantage of cash discounts.

Should the Contractor choose to offer cash discounts the following shall apply:

- A. Discount period shall be calculated starting from the next business day after the State or Authorized Purchaser has accepted the goods or services, received a properly signed and executed invoice and, when required, a properly executed performance security, whichever is latest; and
- B. The date on the check issued by the State or Authorized Purchaser in payment of that invoice shall be deemed the date of the State or Authorized Purchaser's response to that invoice.

2.20 CLAIMS AND REMEDIES

- A. All claims asserted against the State by the Contractor shall be subject to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1, et seq., and/or the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, et seq.
- B. Nothing in this Participating Addendum shall be construed to be a waiver by the State of any warranty, expressed or implied, of any remedy at law or equity, except as specifically and expressly stated in a writing executed by the Director.
- C. Pursuant to N.J.A.C. 17:12-4.8, in the event that the contractor fails to comply with any material contract requirements, the Director may take steps to terminate this Participating Addendum in accordance with the provisions of this Participating Addendum, or take any other action or seek any other remedies available at law or in equity.

2.21 NEWS RELEASES & ADVERTISING

- A. Contractor is not permitted to issue news releases pertaining to any aspect of the products and services being provided under this Participating Addendum without the prior written consent of the Director.
- B. Contractor shall not use the State's name, logos, images, or any data or results arising from this contract as a part of any commercial advertising without first obtaining the prior written consent of the Director.

2.22 ORGAN DONATION

As required by N.J.S.A. 52:32-33.1, the State encourages Contractor to disseminate and notify its employees, through information and materials or through an organ and tissue awareness program, of organ donation options. The information provided to employees should be prepared in collaboration with the organ procurement organizations designated pursuant to 42 U.S.C. 1320b-8 to serve in this State.

2.23 OPEN PUBLIC RECORDS ACT

All documents and information submitted by Contractor to the State under this contract are considered public information, notwithstanding any disclaimers to the contrary submitted by the Contractor, except as may be exempted from public disclosure by the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1 et seq., and the common law.

2.24 DISCLOSURE OF PROHIBITED ACTIVITIES WITH RUSSIA OR BELARUS

Pursuant to P.L. 2022, c. 3, a person or entity seeking to enter into or renew a contract for the provision of goods or services shall certify that it is not identified on the Department of the Treasury's List of Persons or Entities Engaging in Prohibited Activities in Russia or Belarus. If the Contractor is unable to so certify, the Contractor shall provide a detailed and precise description of such activities. A Contractor's failure to submit a certification will preclude the award or renewal of a Contract to said Contractor.

3. STATE LAW REQUIRING MANDATORY COMPLIANCE BY CONTRACTORS UNDER CIRCUMSTANCES SET FORTH IN LAW OR BASED ON THE TYPE OF CONTRACT

3.1 COMPLIANCE - CODES

The Contractor must comply with NJUCC and the latest NEC70, B.O.C.A. Basic Building code, OSHA and all applicable codes for this requirement. The Contractor shall be responsible for securing and paying all necessary permits, where applicable.

3.2 PUBLIC WORKS CONTRACTOR REGISTRATION ACT

The New Jersey Public Works Contractor Registration Act requires all contractors, subcontractors and lower tier subcontractor(s) who engage in any contract for public work as defined in N.J.S.A. 34:11-56.26 be first registered with

the New Jersey Department of Labor and Workforce Development pursuant to N.J.S.A. 34:11-56.51. Any questions regarding the registration process should be directed to the Division of Wage and Hour Compliance at (609) 292-9464.

3.3 PUBLIC WORKS CONTRACT - ADDITIONAL AFFIRMATIVE ACTION REQUIREMENTS

N.J.S.A. 10:2-1 requires that during the performance of this contract, the contractor must agree as follows:

- A. In the hiring of persons for the performance of work under this contract or any subcontract hereunder, or for the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under this contract, no contractor, nor any person acting on behalf of such contractor or subcontractor, shall, by reason of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex, discriminate against any person who is qualified and available to perform the work to which the employment relates;
- B. No contractor, subcontractor, nor any person on his/her behalf shall, in any manner, discriminate against or intimidate any employee engaged in the performance of work under this contract or any subcontract hereunder, or engaged in the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under such contract, on account of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex;
- C. There may be deducted from the amount payable to the contractor by the contracting public agency, under this contract, a penalty of \$50.00 for each person for each calendar day during which such person is discriminated against or intimidated in violation of the provisions of the contract; and
- D. This contract may be canceled or terminated by the contracting public agency, and all money due or to become due hereunder may be forfeited, for any violation of this section of the contract occurring after notice to the contractor from the contracting public agency of any prior violation of this section of the contract.

N.J.S.A. 10:5-33 and N.J.A.C. 17:27-3.5 require that during the performance of this contract, the contractor must agree as follows:

- A. The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause;
- B. The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex;
- C. The contractor or subcontractor where applicable, will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment, N.J.A.C. 17:27-3.7 requires all contractors and subcontractors, if any, to further agree as follows:
 - 1. The contractor or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2;
 - 2. The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices;
 - 3. The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions; and
 - 4. In conforming with the targeted employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken

without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

3.4 BUILDING SERVICE

Pursuant to N.J.S.A. 34:11-56.58 et seq., in any contract for building services, as defined in N.J.S.A. 34:11-56.59, the employees of the Contractor or subcontractors shall be paid prevailing wage for building services rates, as defined in N.J.S.A. 34:11.56.59. The prevailing wage shall be adjusted annually during the term of the contract.

3.5 THE WORKER AND COMMUNITY RIGHT TO KNOW ACT

The provisions of N.J.S.A. 34:5A-1 et seq. which require the labeling of all containers of hazardous substances are applicable to this contract. Therefore, all goods offered for purchase to the State must be labeled by the Contractor in compliance with the provisions of the statute.

3.6 SERVICE PERFORMANCE WITHIN U.S.

Under N.J.S.A. 52:34-13.2, all contracts primarily for services awarded by the Director shall be performed within the United States, except when the Director certifies in writing a finding that a required service cannot be provided by a contractor or subcontractor within the United States and the certification is approved by the State Treasurer.

A shift to performance of services outside the United States during the term of the contract shall be deemed a breach of contract. If, during the term of the contract, the Contractor or subcontractor, proceeds to shift the performance of any of the services outside the United States, the Contractor shall be deemed to be in breach of its contract, which contract shall be subject to termination for cause pursuant to Section 5.7(b) (1) of the Standard Terms and Conditions, unless previously approved by the Director and the Treasurer.

3.7 BUY AMERICAN

Pursuant to N.J.S.A. 52:32-1, if manufactured items or farm products will be provided under this contract to be used in a public work, they shall be manufactured or produced in the United States and the Contractor shall be required to so certify.

3.8 DOMESTIC MATERIALS

Pursuant to N.J.S.A. 52:33-2 et seq., if the contract is for the construction, alteration or repair of any public work, the contractor and all subcontractors shall use only domestic materials in the performance of the work unless otherwise noted in the specifications.

3.9 DIANE B. ALLEN EQUAL PAY ACT

Pursuant to N.J.S.A. 34:11-56.14 and N.J.A.C. 12:10-1.1 et seq., a contractor performing "qualifying services" or "public work" to the State or any agency or instrumentality of the State shall provide the Commissioner of Labor and Workforce Development a report regarding the compensation and hours worked by employees categorized by gender, race, ethnicity, and job category. For more information and report templates see <https://nj.gov/labor/equalpay/equalpay.html>.

3.10 EMPLOYEE MISCLASSIFICATION

In accordance with [Governor Murphy's Executive Order #25](#) and the [Task Force's July 2019 Report](#), employers are required to properly classify their employees. Workers are presumed to be employees and not independent contractors, unless the employer can demonstrate all three factors of the "ABC Test" below:

- A. Such individual has been and will continue to be free from control or direction of the performance of such service, but under his or her contract of service and in fact; and
- B. Such service is either outside the usual course of business for which such service is performed, or that such service is performed outside of all places of business of the enterprise for which such service is performed; and
- C. Such individual is customarily engaged in an independently established trade, occupation, profession or business.

This test has been adopted by New Jersey under its Wage & Hour, Wage Payment and Unemployment Insurance Laws to determine whether a worker is properly classified. Under N.J.S.A. 34:1A-1.17-1.19, the Department of Labor and Workforce Development has the authority to investigate potential violations of these laws and issue penalties and stop work order to employers found to be in violation of the laws.

4. INDEMNIFICATION AND INSURANCE

4.1 INDEMNIFICATION

The Contractor's liability to the State and its employees in third party suits shall be as follows:

- A. Indemnification for Third Party Claims - The Contractor shall assume all risk of and responsibility for, and agrees to indemnify, defend, and save harmless the State of New Jersey and its employees from and against any and all claims, demands, suits, actions, recoveries, judgments and costs and expenses in connection therewith which shall arise from or result directly or indirectly from the work and/or materials supplied under this Agreement, including liability of any nature or kind for or on account of the use of any copyrighted or uncopied

composition, secret process, patented or unpatented invention, article or appliance furnished or used in the performance of this Agreement;

- B. The Contractor's indemnification and liability under subsection (a) is not limited by, but is in addition to the insurance obligations contained in Section 4.2 of these Terms and Conditions; and
- C. In the event of a patent and copyright claim or suit, the Contractor, at its option, may: (1) procure for the State of New Jersey the legal right to continue the use of the product; (2) replace or modify the product to provide a non-infringing product that is the functional equivalent; or (3) refund the purchase price less a reasonable allowance for use that is agreed to by both parties.
- D. Notwithstanding anything to the contrary in the Agreement or any contract document, under no circumstances will the State indemnify Contractor and any such provision in the Agreement or any contract document shall be of no force and effect. The State of New Jersey's obligations under the Agreement are subject to the New Jersey Tort Claims Act (N.J.S.A. 59:1-1 et seq.), the New Jersey Contractual Liability Act (N.J.S.A. 59:13-1 et seq.) and the availability of funds.
- E. Notwithstanding anything to the contrary in the Agreement or any contract document, the State shall not be responsible for the Contractor's attorney fees and/or expenses.

4.2 INSURANCE

The Contractor shall secure and maintain in force for the term of this Participating Addendum insurance as provided herein. All required insurance shall be provided by insurance companies with an A- VIII or better rating by A.M. Best & Company. All policies must be endorsed to provide 30 days' written notice of cancellation or material change to the State of New Jersey at the address shown below. If the Contractor's insurer cannot provide 30 days written notice, then it will become the obligation of the Contractor to provide the same. The Contractor shall provide the State with current certificates of insurance for all coverages and renewals thereof. Renewal certificates shall be provided within 30 days of the expiration of the insurance. The Contractor shall not begin to provide services or goods to the State until evidence of the required insurance is provided. The certificates of insurance shall indicate the contract number or purchase order number and title of the contract in the Description of Operations box and shall list the State of New Jersey, Department of the Treasury, Division of Purchase & Property, Contract Compliance & Audit Unit, P.O. Box 236, Trenton, New Jersey 08625 in the Certificate Holder box. The certificates and any notice of cancellation shall be emailed to the State at:

cca.certificate@treas.nj.gov

The insurance to be provided by the Contractor shall be as follows:

- A. Occurrence Form Commercial General Liability Insurance or its equivalent: The minimum limit of liability shall be \$1,000,000 per occurrence as a combined single limit for bodily injury and property damage. The above required Commercial General Liability Insurance policy or its equivalent shall name the State, its officers, and employees and Authorized Purchasers as "Additional Insureds" and include the blanket additional insured endorsement or its equivalent. The coverage to be provided under these policies shall be at least as broad as that provided by the standard basic Commercial General Liability Insurance occurrence coverage forms or its equivalent currently in use in the State of New Jersey, which shall not be circumscribed by any endorsement limiting the breadth of coverage;
- B. Automobile Liability Insurance which shall be written to cover any automobile used by the insured. Limits of liability for bodily injury and property damage shall not be less than \$1,000,000 per occurrence as a combined single limit. The State and Authorized Purchasers must be named as an "Additional Insured" and a blanket additional insured endorsement or its equivalent must be provided when the services being procured involve vehicle use on the State's behalf or on State controlled property, or other Authorized Purchaser's behalf or on property controlled by such other Authorized Purchaser, as applicable;
- C. Worker's Compensation Insurance applicable to the laws of the State of New Jersey and Employers Liability Insurance with limits not less than:
 - 1. \$1,000,000 BODILY INJURY, EACH OCCURRENCE;
 - 2. \$1,000,000 DISEASE EACH EMPLOYEE; and
 - 3. \$1,000,000 DISEASE AGGREGATE LIMIT.

5. TERMS GOVERNING ALL CONTRACTS

5.1 CONTRACTOR IS INDEPENDENT CONTRACTOR

The Contractor's status shall be that of any independent contractor and not as an employee of the State.

5.2 RESERVED

5.3 RESERVED

5.4 STATE'S OPTION TO REDUCE SCOPE OF WORK

The State has the option, in its sole discretion, to reduce the scope of work for any deliverable, task or subtask called for under the Agreement. In such an event, the Director shall provide to the Contractor advance written notice of the change in scope of work and what the Director believes should be the corresponding adjusted contract price. Within five (5) business days of receipt of such written notice, if either is applicable:

- A. If the Contractor does not agree with the Director's proposed adjusted contract price, the Contractor shall submit to the Director any additional information that the Contractor believes impacts the adjusted contract price with a request that the Director reconsider the proposed adjusted contract price. The parties shall negotiate the adjusted contract price. If the parties are unable to agree on an adjusted contract price, the Director shall make a prompt decision taking all such information into account, and shall notify the Contractor of the final adjusted contract price; and
- B. If the Contractor has undertaken any work effort toward a deliverable, task or subtask that is being changed or eliminated such that it would not be compensated under the adjusted contract, the Contractor shall be compensated for such work effort according to the applicable portions of its price schedule and the Contractor shall submit to the Director an itemization of the work effort already completed by deliverable, task or subtask within the scope of work, and any additional information the Director may request. The Director shall make a prompt decision taking all such information into account, and shall notify the Contractor of the compensation to be paid for such work effort.

5.5 CHANGE IN LAW

If, after award, a change in applicable law or regulation occurs which affects the Agreement, the parties may amend the Agreement, including pricing, in order to provide equitable relief for the party disadvantaged by the change in law. The parties shall negotiate in good faith, however if agreement is not possible after reasonable efforts, the Director shall make a prompt decision as to an equitable adjustment, taking all relevant information into account, and shall notify the Contractor of the final adjusted contract price.

5.6 SUSPENSION OF WORK

The State may, for valid reason, issue a stop order directing the Contractor to suspend work under the Agreement for a specific time. The Contractor shall be paid for goods ordered, goods delivered, or services requested and performed until the effective date of the stop order. The Contractor shall resume work upon the date specified in the stop order, or upon such other date as the State Contract Manager may thereafter direct in writing. The period of suspension shall be deemed added to the Contractor's approved schedule of performance. The Director shall make an equitable adjustment, if any is required, to the contract price. The contractor shall provide whatever information that Director may require related to the equitable adjustment.

5.7 TERMINATION OF CONTRACT

- A. For Convenience:
 1. Notwithstanding any provision or language in the Agreement to the contrary, the Director may terminate this Participating Addendum at any time, in whole or in part, for the convenience of the State, upon no less than forth-five (45) days written notice to the Contractor;
 2. The Contractors Rights to Termination shall be as set forth in the NASPO Master Agreement dated October 6, 2021 (Contract #MA454).
- B. For Cause:
 1. Where the Contractor fails to perform or comply with the Agreement or a portion thereof, and/or fails to comply with the complaints procedure in N.J.A.C. 17:12-4.2 et seq., the Director may terminate this Participating Addendum, in whole or in part, upon thirty (30) days' notice to the Contractor with an opportunity to respond and cure within the thirty (30) day period.
 2. Where in the reasonable opinion of the Director, the Contractor continues to perform the Agreement poorly as demonstrated by e.g., formal complaints, late delivery, poor performance of service, short-shipping, so that the Director is required to use the complaints procedure in N.J.A.C. 17:12-4.2 et seq., and there has been a failure on the part of the Contractor to make progress towards ameliorating the issue(s) or problem(s) set forth in the complaint, the Director may terminate this Participating Addendum, in whole or in part, upon thirty (30) days' notice to the Contractor with an opportunity to respond prior to termination.
- C. In cases of emergency the Director may shorten the time periods of notification and may dispense with an opportunity to respond; and
- D. In the event of termination under this section, the contractor shall be compensated for work performed or goods supplied in accordance with the Agreement, up to the date of termination. Such compensation may be subject to adjustments.

5.8 SUBCONTRACTING OR ASSIGNMENT

- A. Subcontracting: If the Contractor uses a subcontractor to fulfill any of its obligations, the Contractor shall be responsible for the subcontractor's: (a) performance; (b) compliance with all of the terms and conditions of the contract; and (c) compliance with the requirements of all applicable laws; and

- B. Assignment: Neither party may assign its responsibilities under the contract, in whole or in part, without the prior written consent of the other party .

5.9 NO CONTRACTUAL RELATIONSHIP BETWEEN SUBCONTRACTORS AND STATE

Nothing contained in any of the contract documents, including the RFP and vendor's bid or proposal shall be construed as creating any contractual relationship between any subcontractor and the State.

5.10 MERGERS, ACQUISITIONS

If, during the term of this Participating Addendum, the Contractor shall merge with or be acquired by another firm, the Contractor shall give notice to the Director as soon as practicable and in no event longer than 30 days after said merger or acquisition. The Contractor shall provide such documents as may be requested by the Director, which may include but need not be limited to the following: corporate resolutions prepared by the Contractor and new entity ratifying acceptance of the original contract, terms, conditions and prices; updated information including ownership disclosure and Federal Employer Identification Number. The documents must be submitted within 30 days of the request. Failure to do so may result in termination of this Participating Addendum for cause.

If, at any time during the term of this Participating Addendum, the Contractor's partnership, limited liability company, limited liability partnership, professional corporation, or corporation shall dissolve, the Director must be so notified. All responsible parties of the dissolved business entity must submit to the Director in writing, the names of the parties proposed to perform under this Participating Addendum, and the names of the parties to whom payment should be made. No payment shall be made until all parties to the dissolved business entity submit the required documents to the Director.

5.11 RESERVED

5.12 DELIVERY REQUIREMENTS

- A. Deliveries shall be made at such time and in such quantities as ordered in strict accordance with conditions contained in the Agreement;
- B. The Contractor shall be responsible for the delivery of material in first class condition to the State or Authorized Purchaser under the Agreement and in accordance with good commercial practice;
- C. Items delivered must be strictly in accordance with the Agreement; and
- D. In the event delivery of goods or services is not made within the number of days stipulated or under the schedule defined in the Agreement, the State or Authorized Purchaser shall be authorized to obtain the material or service from any available source, the difference in price, if any, to be paid by the Contractor.

5.13 APPLICABLE LAW AND JURISDICTION

Any claims under this Participating Addendum and any and all litigation arising there from or related thereto shall be brought in State court in the State of New Jersey and governed by the applicable laws, regulations and rules of evidence of the State of New Jersey without reference to conflict of laws principles. The State of New Jersey's obligations under this Participating Addendum are subject to the New Jersey Tort Claims Act (N.J.S.A. 59:1-1 et seq.), the New Jersey Contractual Liability Act (N.J.S.A. 59:13-1 et seq.) and the availability of funds.

5.14 CONTRACT AMENDMENT

Except as provided herein, the contract may only be amended by written agreement of the State and the Contractor.

5.15 MAINTENANCE OF RECORDS

In accordance with N.J.A.C. 17:44-2.2, the Contractor shall maintain all documentation related to products, transactions or services under this contract for a period of five years from the date of final payment. Such records shall be made available to the New Jersey Office of the State Comptroller upon request.

5.16 ASSIGNMENT OF ANTITRUST CLAIM(S)

The Contractor recognizes that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the ultimate purchaser. Therefore, and as consideration for executing this Participating Addendum, the Contractor, acting herein by and through its duly authorized agent, hereby conveys, sells, assigns, and transfers to the State of New Jersey, for itself and on behalf of its political subdivisions and public agencies, all right, title and interest to all claims and causes of action it may now or hereafter acquire under the antitrust laws of the United States or the State of New Jersey, relating to the particular goods and services purchased or acquired by the State of New Jersey or any of its political subdivisions or public agencies pursuant to this Participating Addendum.

In connection with this assignment, the following are the express obligations of the Contractor:

- A. It will take no action that will in any way diminish the value of the rights conveyed or assigned hereunder;
- B. It will advise the Attorney General of New Jersey:
 - 1. In advance of its intention to commence any action on its own behalf regarding any such claim or cause(s) of action; and

2. Immediately upon becoming aware of the fact that an action has been commenced on its behalf by some other person(s) of the pendency of such action.
- C. It shall notify the defendants in any antitrust suit of the within assignment at the earliest practicable opportunity after the Contractor has initiated an action on its own behalf or becomes aware that such an action has been filed on its behalf by another person. A copy of such notice shall be sent to the Attorney General of New Jersey; and
- D. It is understood and agreed that in the event any payment under any such claim or cause of action is made to the Contractor, it shall promptly pay over to the State of New Jersey the allotted share thereof, if any, assigned to the State hereunder.

5.17 CONFIDENTIALITY

- A. The State's obligation to maintain the confidentiality of Contractor's confidential information provided to the State under the Agreement is conditioned upon and subject to the State's obligations under the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1 et seq., ("OPRA"), the New Jersey common law right to know, and any other lawful document request or subpoena. As used in this Section 5.17, the State shall mean the State and any Authorized Purchaser.
- B. By virtue of the Agreement, the parties may have access to information that is confidential to one another. The parties agree to disclose only information that is required for the performance of their obligations under the Agreement. Contractor's confidential information, to the extent not expressly prohibited by law, shall consist of all information clearly identified as confidential at the time of disclosure ("Contractor Confidential Information"). Notwithstanding the previous sentence, the Contractor acknowledges the terms and pricing of the contract are subject to disclosure under OPRA, the New Jersey common law right to know, and any other lawful document request or subpoena.
- C. The State's Confidential Information shall consist of all information or data contained in documents supplied by the State, any information or data gathered by the Contractor in fulfillment of the contract and any analysis thereof (whether in fulfillment of the contract or not).
- D. A party's Confidential Information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party, except that if the information is personally identifying to a person or entity regardless of whether it has become part of the public domain through other means, the other party must maintain full efforts under the Contract to keep it confidential; (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on the disclosure; or (d) is independently developed by the other party.
- E. The parties agree to hold each other's Confidential Information in confidence, using at least the same degree of care used to protect their own confidential information.
- F. In the event that the State receives a request for Contractor Confidential Information related to the contract pursuant to a court order, subpoena, lawful document request or other operation of law, the State agrees, if permitted by law, to provide Contractor with as much notice, in writing, as is reasonably practicable and the State's intended response to such request. Contractor shall take any action it deems appropriate to protect its documents and/or information.
- G. In addition, in the event Contractor receives a request for State Confidential Information pursuant to a court order, subpoena, or other operation of law, Contractor shall, if permitted by law, provide the State with as much notice, in writing, as is reasonably practicable and Contractor's intended response to such request. The State shall take any action it deems appropriate to protect its documents and/or information.
- H. Notwithstanding the requirements of nondisclosure described in this Section 5.17, either party may release the other party's Confidential Information (i) if directed to do so by a court or arbitrator of competent jurisdiction, (ii) pursuant to a lawfully issued subpoena or other lawful document request, (iii) in the case of the State, if the State determines the documents or information are subject to disclosure and Contractor does not exercise its rights as described in subsection 5.17(F), or if Contractor is unsuccessful in defending its rights as described in subsection 5.17(F), or (iv) in the case of Contractor, if Contractor determines the documents or information are subject to disclosure and the State does not exercise its rights as described in subsection 5.17 (G), or if the State is unsuccessful in defending its rights as described in subsection 5.17 (G).
- I. Except as permitted above, neither party will use or disclose the other's Confidential Information for seven (7) years after the termination of the Agreement or such longer time period as required by applicable law.

Contractor shall be liable for damages arising from its breach of the confidentiality obligations of this Participating Addendum.

6. TERMS RELATING TO PRICE AND PAYMENT

6.1 PRICE FLUCTUATION DURING CONTRACT

Unless otherwise agreed to in writing by the State, all prices quoted shall be firm through issuance of contract or purchase order and shall not be subject to increase during the period of the contract.

In the event of a manufacturer's or contractor's price decrease during the contract period, the State shall receive the full benefit of such price reduction on any undelivered purchase order and on any subsequent order placed during the contract period. The Director must be notified, in writing, of any price reduction within five (5) days of the effective date.

Failure to report price reductions may result in cancellation of contract for cause.

In an exceptional situation the State may consider a price adjustment. Requests for price adjustments must include justification and documentation.

6.2 TAX CHARGES

The State of New Jersey is exempt from State sales or use taxes and Federal excise taxes. Therefore, price quotations must not include such taxes. The State's Federal Excise Tax Exemption number is 22-75-0050K.

6.3 PAYMENT TO VENDORS

- a. The Authorized Purchasers are authorized to order and the Contractor is authorized to ship only those items covered by the Agreement. If a review of orders placed by the Authorized Purchasers reveals that goods and/or services other than that covered by the Agreement have been ordered and delivered, such delivery shall be a violation of the terms of the Agreement and may be considered by the Director as a basis to terminate the Agreement and/or not award the Contractor a subsequent contract. The Director may take such steps as are necessary to have the items returned by the agency, regardless of the time between the date of delivery and discovery of the violation. In such event, the Contractor shall reimburse the State the full purchase price;
- b. The Contractor must submit invoices to the Authorized Purchaser with supporting documentation evidencing that work or goods for which payment is sought has been satisfactorily completed or delivered. For commodity contracts, the invoice, together with the Bill of Lading, and/or other documentation to confirm shipment and receipt of contracted goods must be received by the using agency prior to payment. For contracts featuring services, invoices must reference the tasks or subtasks detailed in the scope of work and must be in strict accordance with the prices submitted for each task or subtask on the approved scope of work. Invoices must reference the appropriate Master Contract number and State Contract number. All invoices must be approved by the State Contract Manager or Authorized Purchaser before payment will be authorized;
- c. In all time and materials contracts, the State Contract Manager or designee shall monitor and approve the hours of work and the work accomplished by Contractor and shall document both the work and the approval. Payment shall not be made without such documentation. A form of timekeeping record that should be adapted as appropriate for the scope of work being performed can be found at www.nj.gov/treasury/purchase/forms/Vendor_Timesheet.xls; and
- d. The Contractor shall provide, on a monthly and cumulative basis, a breakdown in accordance with the budget submitted, of all monies paid to any small business, minority or woman-owned subcontractor(s). This breakdown shall be sent to the Chief of Operations, Division of Revenue, P.O. Box 628, Trenton, NJ 08646.

6.4 OPTIONAL PAYMENT METHOD: P-CARD

The State offers contractors the opportunity to be paid through the MasterCard procurement card (p-card). A contractor's acceptance and a State agency's use of the p-card are optional. P-card transactions do not require the submission of a contractor invoice; purchasing transactions using the p-card will usually result in payment to a contractor in three (3) days. A contractor should take note that there will be a transaction-processing fee for each p-card transaction. To participate, a contractor must be capable of accepting the MasterCard. Additional information can be obtained from banks or merchant service companies.

6.5 NEW JERSEY PROMPT PAYMENT ACT

New Jersey Prompt Payment Act, N.J.S.A. 52:32-32 et. seq., governs the obligations of state agencies to pay for goods and services. The Master Agreement requires that payments be made within thirty (30) days after a properly executed invoice is received. All payments to Contractor will be remitted by mail, electronic funds transfer, or by a Purchasing Card (major credit card). If payment has not been made after sixty (60) days from the date a properly executed invoice is received by the using agency, then interest will be paid on the delinquent account at a rate established by the State Treasurer and in accordance with the New Jersey Prompt Payment Act. Interest shall not be paid until it exceeds \$5.00 per properly executed invoice.

6.6 AVAILABILITY OF FUNDS

The State's obligation to make payment under the Agreement is contingent upon the availability of appropriated funds and receipt of revenues from which payment for contract purposes can be made. No legal liability on the part of the State for payment of any money shall arise unless and until funds are appropriated each fiscal year to the using agency which is an Authorized Purchaser by the New Jersey State Legislature and made available through receipt of revenue. Notwithstanding the foregoing, the parties agree that performance under this Agreement is contingent upon the appropriation of funds.

7. TERMS RELATING TO ALL CONTRACTS FUNDED, IN WHOLE OR IN PART, BY FEDERAL FUNDS

The provisions set forth in this Section of the Standard Terms and Conditions apply to all contracts funded, in whole or in part, by Federal funds as required by 2 CFR 200.317.

7.1 CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS

Pursuant to 2 CFR 200.321, the State must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Accordingly, if subawards are to be made the Contractor shall:

- (1) Include qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and,
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

7.2 DOMESTIC PREFERENCE FOR PROCUREMENTS

Pursuant to 2 CFR 200.322, where appropriate, the State has a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). If subawards are to be made the Contractor shall include a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). For purposes of this section:

- (1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- (2) "Manufactured products" means items and construction materials composed in whole or in part of nonferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

7.3 PROCUREMENT OF RECOVERED MATERIALS

Where applicable, in the performance of contract, pursuant to 2 CFR 200.323, the contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$ 10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$ 10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

To the extent that the scope of work or specifications in the contract requires the contractor to provide recovered materials the scope of work or specifications are modified to require that as follows.

- i. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—
 1. Competitively within a timeframe providing for compliance with the contract performance schedule;
 2. Meeting contract performance requirements; or
 3. At a reasonable price.
- ii. Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- iii. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act."

7.4 EQUAL EMPLOYMENT OPPORTUNITY

Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor." See, 2 CFR Part 200, Appendix II, para. C.

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to

ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

- Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
 - (3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
 - (4) The contractor will send to each labor union or representative of workers with which he/she has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
 - (5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
 - (6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his/her books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
 - (7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
 - (8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

7.5 DAVIS-BACON ACT, 40 U.S.C. 3141-3148, AS AMENDED

When required by Federal program legislation, all prime construction contracts in excess of \$ 2,000 shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable. Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. Additionally, contractors are required to pay wages not less than once a week.

7.6 COPELAND ANTI KICK-BACK ACT

Where applicable, the Contractor must comply with Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States").

- a. Contractor. The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into the OGS centralized contract.
- b. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- c. Breach. A breach of the clauses above may be grounds for termination of the OGS centralized contract, and for debarment as a Contractor and subcontractor as provided in 29 C.F.R. § 5.12.

7.7 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT, 40 U.S.C. 3701-3708

Where applicable, all contracts awarded by the non-Federal entity in excess of \$ 100,000 that involve the employment of mechanics or laborers must comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).

- (1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.
- (3) Withholding for unpaid wages and liquidated damages. The unauthorized user shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.
- (4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

7.8 RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT

If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

7.9 CLEAN AIR ACT, 42 U.S.C. 7401-7671Q, AND THE FEDERAL WATER POLLUTION CONTROL ACT, 33 U.S.C. 1251-1387, AS AMENDED

Where applicable, Contract and subgrants of amounts in excess of \$150,000, must comply with the following:

Clean Air Act

1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

2. The contractor agrees to report each violation to the Division of Purchase and Property and understands and agrees that the Division of Purchase and Property will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Federal Water Pollution Control Act

1. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
2. The contractor agrees to report each violation to the Division of Purchase and Property and understands and agrees that the Division of Purchase and Property will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

7.10 DEBARMENT AND SUSPENSION (EXECUTIVE ORDERS 12549 AND 12689)

Suspension and Debarment

- (1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (3) This certification is a material representation of fact relied upon by the State or authorized user. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State or authorized user, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

7.11 BYRD ANTI-LOBBYING AMENDMENT, 31 U.S.C. 1352

Contractors that apply or bid for an award exceeding \$ 100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency

EXHIBIT A

MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE
N.J.S.A. 10:5-31 et seq. (P.L. 1975, c. 127)
N.J.A.C. 17:27 et seq.
GOODS, GENERAL SERVICE AND PROFESSIONAL SERVICES CONTRACTS

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

The contractor or subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union of the contractor's commitments under this chapter and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

The contractor or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2.

The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

In conforming with the targeted employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

The contractor shall submit to the public agency, after notification of award but prior to execution of a goods and services contract, one of the following three documents:

Letter of Federal Affirmative Action Plan Approval;

Certificate of Employee Information Report; or

Employee Information Report Form AA302 (electronically provided by the Division and distributed to the public agency through the Division's website at http://www.state.nj.us/treasury/contract_compliance).

The contractor and its subcontractors shall furnish such reports or other documents to the Division of Purchase and Property, CCAU, EEO Monitoring Program as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Purchase and Property, CCAU, EEO Monitoring Program for conducting a compliance investigation pursuant to N.J.A.C. 17:27-1 et seq.

EXHIBIT B**MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE**

N.J.S.A. 10:5-31 et seq. (P.L. 1975, c. 127)

N.J.S.A. 10:5-39 et seq. (P.L. 1983, c. 197)

N.J.A.C. 17:27-1.1 et seq.

CONSTRUCTION CONTRACTS

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to the following: employment, up grading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

N.J.S.A. 10:5-39 et seq. requires contractors, subcontractors, and permitted assignees performing construction, alteration, or repair of any building or public work in excess of \$250,000 to guarantee equal employment opportunity to veterans.

The contractor or subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer, pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

When hiring or scheduling workers in each construction trade, the contractor or subcontractor agrees to make good faith efforts to employ minority and women workers in each construction trade consistent with the targeted employment goal prescribed by N.J.A.C. 17:27-7.2; provided, however, that the Dept. of LWD, Construction EEO Monitoring Program may, in its discretion, exempt a contractor or subcontractor from compliance with the good faith procedures prescribed by the following provisions, A, B and C, as long as the Dept. of LWD, Construction EEO Monitoring Program is satisfied that the contractor or subcontractor is employing workers provided by a union which provides evidence, in accordance with standards prescribed by the Dept. of LWD, Construction EEO Monitoring Program, that its percentage of active "card carrying" members who are minority and women workers is equal to or greater than the targeted employment goal established in accordance with N.J.A.C. 17:27-7.2. The contractor or subcontractor agrees that a good faith effort shall include compliance with the following procedures:

- (A) If the contractor or subcontractor has a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor shall, within three business days of the contract award, seek assurances from the union that it will cooperate with the contractor or subcontractor as it fulfills its affirmative action obligations under this contract and in accordance with the rules promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as supplemented and amended from time to time and the Americans with Disabilities Act. If the contractor or subcontractor is unable to obtain said assurances from the construction trade union at least five business days prior to the commencement of construction work, the contractor or subcontractor agrees to afford equal employment opportunities minority and women workers directly, consistent with this chapter. If the contractor's or subcontractor's prior experience with a construction trade union, regardless of whether the union has provided said assurances, indicates a significant possibility that the trade union will not refer sufficient minority and women workers consistent with affording equal employment opportunities as specified in this chapter, the contractor or subcontractor agrees to be prepared to provide such opportunities to minority and women workers directly, consistent with this chapter, by complying with the hiring or scheduling procedures prescribed under (B) below; and the contractor or subcontractor further agrees to take said action immediately if it determines that the union is not referring minority and women workers consistent with the equal employment opportunity goals set forth in this chapter.

- (B) If good faith efforts to meet targeted employment goals have not or cannot be met for each construction trade by adhering to the procedures of (A) above, or if the contractor does not have a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor agrees to take the following actions:
- (1) To notify the public agency compliance officer, the Dept. of LWD, Construction EEO Monitoring Program, and minority and women referral organizations listed by the Division pursuant to N.J.A.C. 17:27-5.3, of its workforce needs, and request referral of minority and women workers;
 - (2) To notify any minority and women workers who have been listed with it as awaiting available vacancies;
 - (3) Prior to commencement of work, to request that the local construction trade union refer minority and women workers to fill job openings, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade;
 - (4) To leave standing requests for additional referral to minority and women workers with the local construction trade union, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade, the State Training and Employment Service and other approved referral sources in the area;
 - (5) If it is necessary to lay off some of the workers in a given trade on the construction site, layoffs shall be conducted in compliance with the equal employment opportunity and non-discrimination standards set forth in this regulation, as well as with applicable Federal and State court decisions;
 - (6) To adhere to the following procedure when minority and women workers apply or are referred to the contractor or subcontractor:
 - (i) The contractor or subcontractor shall interview the referred minority or women worker.
 - (ii) If said individuals have never previously received any document or certification signifying a level of qualification lower than that required in order to perform the work of the construction trade, the contractor or subcontractor shall in good faith determine the qualifications of such individuals. The contractor or subcontractor shall hire or schedule those individuals who satisfy appropriate qualification standards in conformity with the equal employment opportunity and non-discrimination principles set forth in this chapter. However, a contractor or subcontractor shall determine that the individual at least possesses the requisite skills, and experience recognized by a union, apprentice program or a referral agency, provided the referral agency is acceptable to the Dept. of LWD, Construction EEO Monitoring Program. If necessary, the contractor or subcontractor shall hire or schedule minority and women workers who qualify as trainees pursuant to these rules. All of the requirements, however, are limited by the provisions of (C) below.
 - (iii) The name of any interested women or minority individual shall be maintained on a waiting list, and shall be considered for employment as described in (i) above, whenever vacancies occur. At the request of the Dept. of LWD, Construction EEO Monitoring Program, the contractor or subcontractor shall provide evidence of its good faith efforts to employ women and minorities from the list to fill vacancies.
 - (iv) If, for any reason, said contractor or subcontractor determines that a minority individual or a woman is not qualified or if the individual qualifies as an advanced trainee or apprentice, the contractor or subcontractor shall inform the individual in writing of the reasons for the determination, maintain a copy of the determination in its files, and send a copy to the public agency compliance officer and to the Dept. of LWD, Construction EEO Monitoring Program.
 - (7) To keep a complete and accurate record of all requests made for the referral of workers in any trade covered by the contract, on forms made available by the Dept. of LWD, Construction EEO Monitoring Program and submitted promptly to the Dept. of LWD, Construction EEO Monitoring Program upon request.
- (C) The contractor or subcontractor agrees that nothing contained in (B) above shall preclude the contractor or subcontractor from complying with the union hiring hall or apprenticeship policies in any applicable collective bargaining agreement or union hiring hall arrangement, and, where required by custom or agreement, it shall send journeymen and trainees to the union for referral, or to the apprenticeship program for admission, pursuant to such agreement or arrangement. However, where the practices of a union or apprenticeship program will result in the exclusion of minorities and women or the failure to refer minorities and women consistent with the targeted county employment goal, the contractor or subcontractor shall consider for employment persons referred pursuant to (B) above without regard to such agreement or arrangement; provided further, however, that the contractor or subcontractor shall not be required to employ women and minority advanced trainees and trainees in numbers which result in the employment of advanced trainees and trainees as a percentage of the total workforce for the construction trade, which percentage significantly exceeds the apprentice to journey worker ratio specified in the applicable collective bargaining agreement, or in the absence of a collective bargaining agreement, exceeds the ratio established by practice in the area for said construction trade. Also, the contractor or subcontractor agrees that, in implementing the procedures of (B) above, it shall, where applicable, employ minority and women workers residing within the geographical jurisdiction of the union.

After notification of award, but prior to signing a construction contract, the contractor shall submit to the public agency compliance officer and the Dept. of LWD, Construction EEO Monitoring Program an initial project workforce report (Form AA-201) electronically provided to the public agency by the Dept. of LWD, Construction EEO Monitoring Program, through its website, for distribution to and completion by the contractor, in accordance with N.J.A.C. 17:27-7.

The contractor also agrees to submit a copy of the Monthly Project Workforce Report once a month thereafter for the duration of this contract to the Dept. of LWD, Construction EEO Monitoring Program and to the public agency compliance officer.

The contractor agrees to cooperate with the public agency in the payment of budgeted funds, as is necessary, for on the job and/or off the job programs for outreach and training of minorities and women.

- (D) The contractor and its subcontractors shall furnish such reports or other documents to the Dept. of LWD, Construction EEO Monitoring Program as may be requested by the Dept. of LWD, Construction EEO Monitoring Program from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Dept. of LWD, Construction EEO Monitoring Program for conducting a compliance investigation pursuant to N.J.A.C. 17:27-1.1 et seq.

EXECUTIVE ORDER NO. 151 REQUIREMENTS

It is the policy of the Division of Purchase and Property that its contracts should create a workforce that reflects the diversity of the State of New Jersey. Therefore, contractors engaged by the Division of Purchase and Property to perform under a construction contract shall put forth a good faith effort to engage in recruitment and employment practices that further the goal of fostering equal opportunities to minorities and women.

The contractor must demonstrate to the Division of Purchase and Property's satisfaction that a good faith effort was made to ensure that minorities and women have been afforded equal opportunity to gain employment under the Division of Purchase and Property's contract with the contractor. Payment may be withheld from a contractor's contract for failure to comply with these provisions.

Evidence of a "good faith effort" includes, but is not limited to:

1. The Contractor shall recruit prospective employees through the State Job bank website, managed by the Department of Labor and Workforce Development, available online at <https://newjersey.usnlx.com/>;
2. The Contractor shall keep specific records of its efforts, including records of all individuals interviewed and hired, including the specific numbers of minorities and women;
3. The Contractor shall actively solicit and shall provide the Division of Purchase and Property with proof of solicitations for employment, including but not limited to advertisements in general circulation media, professional service publications and electronic media; and
4. The Contractor shall provide evidence of efforts described at 2 above to the Division of Purchase and Property no less frequently than once every 12 months.
5. The Contractor shall comply with the requirements set forth at N.J.A.C. 17:27.

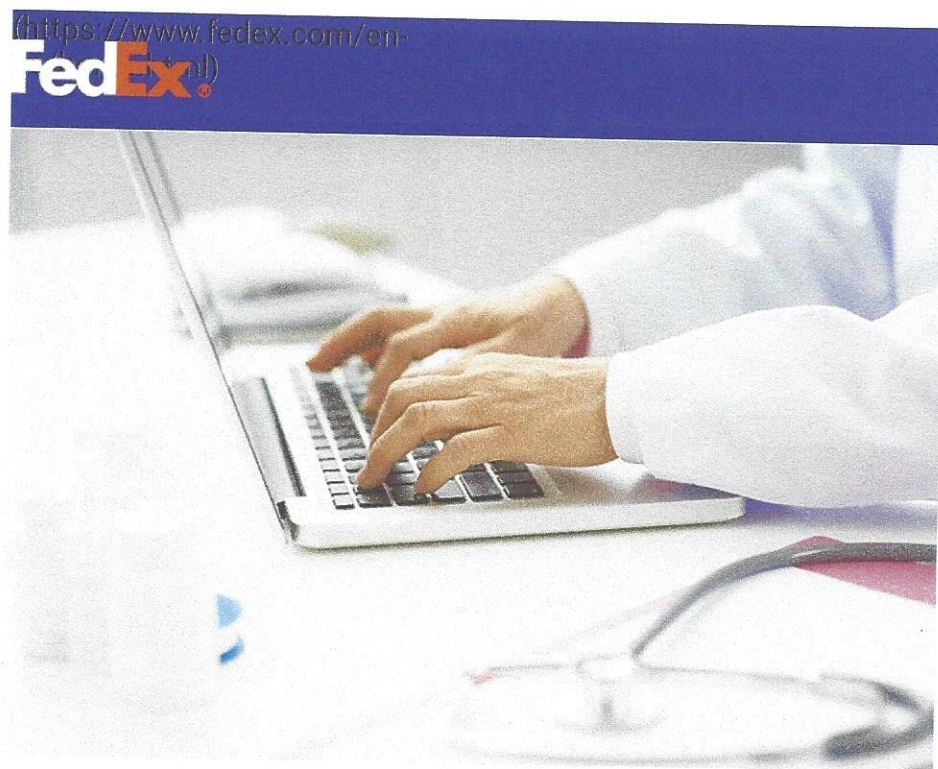
This language is in addition to and does not replace good faith efforts requirements for construction contracts required by N.J.A.C. 17:27-3.6, 3.7 and 3.8, also known as Exhibit B.

EXHIBIT B - The Master Agreement, including its attachments and exhibits available at: [Master Agreement #MA454 FedEx](#)

EXHIBIT C - The Solicitation - See Attachment E to the Master Agreement available at: [Master Agreement #MA454 FedEx](#)

**EXHIBIT D - The Contractor's response to the Solicitation – See
Attachment F to the Master Agreement
available at: [Master Agreement #MA454 FedEx](#)**

EXHIBIT E - FedEx Terms of Use dated 4/19/2023 (The terms and conditions contained in this Exhibit are those in effect at the time of the Agreement's execution and are subject to revision by FedEx. The online software terms and conditions in effect at the time of shipment shall govern such shipments.)



Terms of use

Terms of use

Terms of use

fedex.com

fedex.com fedex.com

Note: The English version of fedex.com terms of use govern in the U.S. The Spanish translation (<https://www.fedex.com/es-us/terms-of-use.html>) is provided as a courtesy. FedEx makes no representation or warranties with regard to the accuracy of the translation.

- [1. Definitions](#)
- [2. Use of fedex.com](#)
- [3. fedex.com Login Registration](#)
- [4. Changes to fedex.com](#)
- [5. Termination of use](#)
- [6. Ownership](#)
- [7. Disclaimer of warranty](#)
- [8. Limitation of Liability](#)
- [9. Indemnity](#)
- [10. FedEx Service Guide](#)
- [11. Links to other web sites](#)
- [12. Privacy Policy](#)
- [13. Export](#)
- [14. Controlling Law and Severability](#)
- [15. Terms of Carriage](#)
- [16. Assignment and Non-Waiver](#)
- [17. Announcements and Email Communications](#)
- [18. Complete Agreement](#)
- [19. FedEx ShipAlert[®]](#)
- [20. Address Book](#)
- [21. Courtesy Rate Quote](#)
- [22. FedEx Tracking Signature Proof of Delivery](#)
- [23. FedEx Tracking Updates](#)
- [24. FedEx Delivery Manager[®]](#)
- [25. FedEx InSight[®] / FedEx Advanced Tracking](#)
- [26. FedEx[®] Electronic Trade Documents](#)
- [27. FedEx[®] Reporting](#)

THE FOLLOWING TERMS AND CONDITIONS GOVERN YOUR USE OF FEDEX.COM, INCLUDING YOUR USE OF THE SERVICES AND CONTENT. YOUR VIEWING OR USE OF THIS SITE WILL CONSTITUTE YOUR AGREEMENT, ON BEHALF OF YOURSELF AND THE ENTITY YOU REPRESENT (HEREINAFTER COLLECTIVELY "YOU" OR "YOUR"), TO ALL OF THE TERMS AND CONDITIONS PROVIDED BELOW.

FEDEX MAY MAKE FUTURE CHANGES OR MODIFICATIONS TO SUCH TERMS AND CONDITIONS AT ANY TIME WITHOUT NOTICE, AND YOUR SUBSEQUENT VIEWING OR USE OF FEDEX.COM WILL CONSTITUTE YOUR AGREEMENT TO THE CHANGES AND MODIFICATIONS. THERE MAY BE ADDITIONAL TERMS AND CONDITIONS PROVIDED THROUGHOUT FEDEX.COM GOVERNING YOUR USE OF PARTICULAR FUNCTIONS, FEATURES, INFORMATION AND APPLICATIONS AVAILABLE THROUGH FEDEX.COM.

Section 1. Definitions

Content: information, graphics, products, features, functionality, services, and links on fedex.com.

FedEx: FedEx Corporate Services, Inc., its parent and its parent's affiliate and subsidiary companies, any of which may exercise the rights and privileges afforded FedEx under this agreement, but FedEx Corporate Services, Inc. is the sole obligor under these Terms of Use.

Services: any and all services accessible at fedex.com or via mobile app, including, but not limited to, FedEx Ship Manager[®] ("Ship Manager"), FedEx Delivery Manager[®], FedEx[®] Global Trade Manager ("GTM"), FedEx InSight ("InSight"), FedEx Advanced Tracking, FedEx Mobile and FedEx[®] Billing Online, FedEx Tracking Signature Proof of Delivery and FedEx Tracking Updates and FedEx Reporting.

You: Yourself and the entity that you represent.

[BACK TO TOP](#)

Section 2. Use of fedex.com

fedex.com is provided solely for the use of current and potential FedEx customers to interact with FedEx and may not be used by any other person or entity, or for any other purpose. Specifically, all shipping, tracking, rating, receiving FedEx invoices and remitting payment using electronic funds transfer ("EFT"), drop-off location,

identifying and preparing international documents, estimating duties and taxes, and other information and services may only be used by current and potential FedEx customers for their own shipments. Use of fedex.com to provide information to or prepare shipments by or for the benefit of third-party shippers is expressly prohibited.

The use of non-authorized scripting technologies to obtain information from fedex.com or submit information through fedex.com is strictly prohibited.

FedEx does not accept ideas, concepts, or techniques for new services or products through fedex.com. If such information is received, it will not be considered confidential and FedEx will be deemed free to use, communicate and exploit such information in any manner it chooses.

[BACK TO TOP](#)

Section 3. fedex.com Login Registration

You may choose to register on fedex.com to access interactive features on fedex.com. Your fedex.com Login provides you with access to the Services, if you have been authorized to access such Services. The availability of these Services varies by country. In the future, FedEx may add other features that may be accessed through fedex.com Login. In such event, previously registered users will not be required to re-register.

Certain Services may require additional enrollments or agreements and may be subject to additional terms and conditions.

By registering on fedex.com, You agree to provide accurate and current information about Yourself as prompted by the fedex.com Login Registration pages and maintain and promptly update Your online profile information to keep it accurate and current.

Some Services are being made available to customers based in some countries and not others. You agree to register only for fedex.com Services offered on the

fedex.com website for the country in which your FedEx account is based. For example, if your FedEx account is based in Canada, you will register for Services offered on fedex.com/ca and not for Services offered on fedex.com/us.

When you register using fedex.com Login Registration, you will select a user ID and password. You are responsible for maintaining the confidentiality of the password and user ID, and you are responsible for all activities that occur under Your password and user ID. You agree to (a) immediately notify FedEx of any unauthorized use of Your user ID and password, and (b) ensure that You exit from Your fedex.com session at the end of each visit.

You acknowledge and agree that it may be necessary from time to time for FedEx to confirm the validity of the credit card information you provided to open your FedEx account. When this occurs, FedEx may request a temporary authorization hold for a nominal amount on your card. This authorization hold does not result in actual charges to your card. These authorizations will automatically expire based on guidelines established by your card issuer.

[BACK TO TOP](#)

Section 4. Changes to fedex.com

fedex.com and its Content, may be changed, deleted or updated at any time without notice.

[BACK TO TOP](#)

Section 5. Termination of Use

FedEx may discontinue, suspend or modify fedex.com at any time without notice, and FedEx may block, terminate or suspend Your and any user's access to fedex.com at any time without notice for any reason in its sole discretion, even if access continues to be allowed to others. The provisions of Section 7, 8, 9, 10, 13, 14 and 15 shall survive any termination of this Agreement.

[BACK TO TOP](#)

Section 6. Ownership

fedex.com and its Content are protected by United States and international copyright, trademark and other laws. © 1995-2020 FedEx. All rights reserved.

Specifically, FedEx does not convey to anyone, through allowing access to fedex.com, any ownership rights in fedex.com or in any Content appearing on or made available through fedex.com. Customer may not copy, modify, translate, transmit, distribute, adapt, reproduce, decompile, reverse engineer or disassemble any part of fedex.com or its Content.

[BACK TO TOP](#)

Section 7. Disclaimer of Warranty

FEDEX.COM AND ITS CONTENT AND SERVICES ARE PROVIDED "AS IS". FEDEX AND ITS LICENSORS DISCLAIM ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, REGARDING ANY SUCH CONTENT AND YOUR ABILITY OR INABILITY TO USE FEDEX.COM AND ITS CONTENT OR ANY OF FEDEX'S SERVICES.

FEDEX EXPRESSLY DISCLAIMS AND EXCLUDES ALL WARRANTIES REGARDING FEDEX.COM AND ITS CONTENT, FEDEX'S SERVICES AND THE FUNCTIONING OF THE INTERNET WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. FEDEX DOES NOT WARRANT THAT FEDEX.COM OR ANY OF ITS CONTENT OR ANY FEDEX SERVICES WILL MEET ALL OF YOUR OR YOUR CUSTOMERS' REQUIREMENTS OR THAT ITS OPERATIONS WILL BE UNINTERRUPTED OR ERROR FREE, OR THAT ANY DEFECT WITHIN FEDEX.COM OR ANY OF ITS CONTENT OR ANY FEDEX SERVICES WILL

BE CORRECTED. FURTHERMORE, FEDEX DOES NOT WARRANT NOR MAKE ANY REPRESENTATION REGARDING THE RESULTS OF YOUR OR YOUR CUSTOMERS' USE OF FEDEX.COM OR ANY OF ITS CONTENT OR ANY FEDEX SERVICES IN TERMS OF CAPABILITY, CORRECTNESS, ACCURACY, RELIABILITY OR OTHERWISE. NO ORAL OR WRITTEN INFORMATION, REPRESENTATION OR ADVICE GIVEN BY FEDEX OR AN AUTHORIZED REPRESENTATIVE OF FEDEX SHALL CREATE A WARRANTY.

BACK TO TOP

Section 8. Limitation of Liability

YOUR USE OF FEDEX.COM AND ITS CONTENT AND FEDEX'S SERVICES IS AT YOUR SOLE RISK. UNDER NO CIRCUMSTANCES, INCLUDING BUT NOT LIMITED TO NEGLIGENCE, SHALL FEDEX BE LIABLE TO YOU OR TO ANY PARTY CLAIMING THROUGH YOU FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR OTHER DAMAGES IN TORT, CONTRACT, PRODUCT LIABILITY OR UNDER ANY OTHER THEORY OF LAW RESULTING FROM THE ACCESS TO OR USE OF INSIGHT INFORMATION OR THE INTERNET, OR YOUR ACCESS TO OR USE OF, OR INABILITY TO ACCESS OR USE; INSIGHT INFORMATION OR THE INTERNET, INCLUDING, WITHOUT LIMITATION, DAMAGES RESULTING FROM LOSS OF USE, PROFITS, DATA, OR BUSINESS, AND DAMAGE TO YOUR INTERNAL COMPUTER SYSTEMS EVEN IF FEDEX, OR AN AUTHORIZED REPRESENTATIVE OF FEDEX, HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

FedEx, will not be liable for Your acts or omissions, including but not limited to, incorrect completion or updating of any enrollment or profile form, failure to implement adequate internal security measures to safeguard Your login id or password code, or Services or Content provided to or accessed by You (or portions thereof) and its confidentiality or for the acts or omissions of the recipient or anyone else with an interest in FedEx.com or its Content or any of FedEx's Services.

Also, FedEx, will not be liable if You violate any of the terms of this Agreement. FedEx, will not be liable for loss, damages or delay caused by events FedEx, cannot control, including but not limited to, acts of God, perils of the air, weather conditions, mechanical delays, acts of public enemies, war, strikes, civil commotions, or acts or omissions of public authorities (including customs and health officials) with actual or apparent authority. You agree to immediately notify FedEx, of any known or suspected unauthorized use of your logon id, password code or any other confidential information relating to FedEx or any known or suspected breach of security, including loss, theft, or damage to your shipments.

BACK TO TOP

Section 9. Indemnity

You shall bear the risk of loss or damage resulting from Your use of FedEx.com or its Content or any of the Services. You agree to defend, indemnify and hold harmless FedEx and its respective officers, directors, employees, agents and representatives from any and all claims, demands, damages (including incidental and consequential damages), liabilities, costs, expenses, suits and judgments, including the payment of legal fees arising out of or relating to any of the following:

- Your breach of any of these terms and conditions,
- Your activities conducted in connection with fedex.com, its Content or any of the Services
- Your failure to abide by any applicable laws or regulations regarding fedex.com, its Content or any of the Services
- FedEx's provision of data and information to You (including, without limitation, any errors in the information or any unavailable or incomplete information)
- Authorized or unauthorized uses of fedex.com, its Content or any of the Services any manner by You or on Your behalf, directly or indirectly, including,

without limitation, claims relating to reroutes or thefts of shipments, claims of breach of privacy, or

Your failure to implement adequate internal security measures to safeguard Your login id, password code or any other data or information provided by FedEx (or any portion thereof) and its confidentiality.

[BACK TO TOP](#)

Section 10. FedEx Service Guide

The terms and conditions for using FedEx's delivery and related services are contained in the most current version of the FedEx Service Guide, which is available at [fedex.com](https://www.fedex.com). The most current version of the FedEx Service Guide will control in the event of any conflict between any FedEx delivery or related service information on [fedex.com](https://www.fedex.com) and the delivery or related service information contained in the most current version of the FedEx Service Guide.

BA For each shipment you make or request using FedEx products or delivery services, You agree that the terms, conditions and limitations set forth in the "Terms and Conditions" of the FedEx Service Guide applicable to the shipment, are applicable to such shipment, except as otherwise provided for in a written agreement between You and FedEx. All shipments and claims are subject to the terms, conditions and limitations of the contract of carriage, including the "Terms and Conditions" in the FedEx Service Guide applicable to the shipment, which may be amended from time to time by FedEx without notice.

[BACK TO TOP](#)

Section 11. Links to other web sites

There are links on the [fedex.com](https://www.fedex.com) site that allow You to visit the sites of third parties. Neither these sites nor the companies to whom they belong are controlled by FedEx. FedEx makes no representations concerning the information provided or made available on such sites nor

the quality or acceptability of the products or services offered by any persons or entities referenced in any such sites.

FedEx has not tested and makes no representations regarding the correctness, performance or quality of any software found at any such sites. You should research and assess the risks which may be involved in accessing and using any software on the Internet before using it.

[BACK TO TOP](#)

Section 12. Privacy Policy

The [FedEx Privacy Notice \(https://www.fedex.com/en-us/trust-center/privacy.html\)](https://www.fedex.com/en-us/trust-center/privacy.html) governs the use of information acquired from You through fedex.com.

[\(https://www.fedex.com/en-us/trust-center/privacy.html\)](https://www.fedex.com/en-us/trust-center/privacy.html).

[BACK TO TOP](#)

Section 13. Export

You assume all responsibility for compliance with all laws and regulations of the United States, including but not limited to the U.S. Export Administration Regulations ("EAR"), International Traffic in Arms Regulations, and economic sanctions programs maintained by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC"), and those of any other country from which You may access fedex.com regarding access, use, export, re-export and import of any Content appearing on or available through fedex.com.

You represent and warrant that (i) you will not export or import any Content or use any Content for transactions involving any country to which export or import is restricted under United States law or any jurisdiction subject to Embargoed Country (which, for the purposes of these terms, means a country or territory in respect to which the U.S. has issued an embargo from time to time, at present Cuba, Iran, North Korea, Syria, or the Crimea region); (ii) you are not a person identified on U.S. or

other applicable government restricted party lists with whom transactions are prohibited, including but not limited to OFAC's Specially Designated Nationals ("SDN") List or the EAR's Entity List or Denied Persons List (collectively, "Restricted Parties"), or any person acting on behalf of such party.

[BACK TO TOP](#)

Section 14. Controlling Law and Severability

These Terms of Use and Your use of fedex.com or its Content or any of the Services is governed by and construed in accordance with the laws of the United States and the State of Tennessee, excluding its conflict of laws provisions. If for any reason a court of competent jurisdiction finds any provision of these Terms of Use, or a portion thereof, to be unenforceable, that provision shall be enforced to the maximum extent permissible.

Any cause of action with respect to fedex.com or its Content or these Terms of Use must be instituted within one year after the claim or cause of action has arisen or be barred and must be brought in a court of competent jurisdiction within Shelby County, Tennessee.

[BACK TO TOP](#)

Section 15. Terms of Carriage

(i) Customer agrees that domestic and international carriage by FedEx of any shipments tendered to FedEx using SHIP MANAGER shall be in accordance with the terms, conditions and limitations of liability set out on the NONNEGOTIABLE Air Waybill, Label, Manifest, or Ground Manifest (collectively "Shipping Documentation"), any applicable transportation agreement between Customer and FedEx covering such shipment, and in any applicable FedEx tariff, Service Guide or Standard Conditions of Carriage, copies of which are available upon request, and which are incorporated into these Terms of Use by reference. If there is a conflict between the Shipping Documentation and any such document

then in effect or these Terms of Use, then the transportation agreement, tariff, Service Guide, Standard Conditions of Carriage, or these Terms of Use will control, in that order of priority. If a shipment originates outside the United States, the contract of carriage is with the FedEx subsidiary, affiliate, branch, or independent contractor who originally accepts the shipment. Your use of Global Trade Manager shall not alter Your responsibility for the preparation and accuracy of shipping documentation including import/export forms.

(ii) In the event Customer uses SHIP MANAGER to process shipments tendered to FedEx for delivery to locations outside the United States or country of shipment origin, Customer will, at Customer's sole expense, assure that the terms and conditions of international carriage supplied by FedEx from time to time (and which may be amended or modified from time to time at FedEx's sole discretion) are placed on the Shipping Documentation as may be instructed by FedEx, for all such international shipments. Customer will defend, indemnify and hold harmless FedEx, its officers, directors, employees and agents from and against any and all losses, damages, claims and other items of cost and expense arising out of Customer's failure to apply the international carriage terms to the Shipping Documentation for such international shipments, including without limitation claims from the recipient of any shipment, and Customer's failure to follow FedEx's instructions in regard to the placement of the terms on the Shipping Documentation for such international shipments.

(iii) Printed Signature. Customer acknowledges that if SHIP MANAGER is used to process shipments to locations outside the United States or country of shipment origin, Customer must enter the name of the person completing the Shipping Documentation to print in lieu of its manual signature on the Shipping Documentation, as applicable, for all shipments tendered by Customer to FedEx using SHIP MANAGER. Customer further acknowledges that such printed name shall be

sufficient to constitute the Customer's signature, and Customer's acceptance of FedEx's terms and conditions of carriage contained in the applicable transportation agreement, tariff, Service Guide, Standard Conditions, or Shipping Documentation, under which the shipment is accepted by FedEx, or its independent contractor.

(iv) Unless otherwise indicated, the shipper's address indicated on the face of any Shipping Documentation is the place of execution and the place of departure and the recipient's address listed on the face of the Shipping Documentation is the place of destination. Unless otherwise indicated on the face of the Shipping Documentation the first carrier of all shipments is FedEx Express, 3610 Hacks Cross Road, Bldg A, Memphis, TN 38125. The address for FedEx Ground is 1000 FedEx Drive, Moon Township, PA 15108.

[BACK TO TOP](#)

Section 16. Assignment and Non-Waiver

You may not assign Your rights or delegate Your duties under these Terms of Use. Failure or delay by FedEx to exercise any right, remedy, power or privilege hereunder, shall not constitute a waiver thereof. A waiver, to be effective, must be in writing and must be signed by the party making the waiver. A written waiver of a default shall not operate as a waiver of any other default or of the same type of default on a future occasion.

[BACK TO TOP](#)

Section 17. Announcements and Email Communications

Neither FedEx nor You shall make any press release or announcement containing the other's name without the prior written approval of the other party and then only after the other party has reviewed and approved the specific text of the press release or announcement. You agree that FedEx may use the email address(es) that you

provide when enrolling on fedex.com, as updated, to communicate with you regarding FedEx.com, its Content and the Services.

[BACK TO TOP](#)

Section 18. Complete Agreement and Modification

These Terms of Use shall constitute the complete agreement of the parties with respect to the subject matter and supersedes any and all prior or contemporaneous discussions, statements, understandings, representations or agreements, written or oral, regarding the subject matter. No amendment to or modification of this Agreement will be binding on FedEx without FedEx's written consent.

[BACK TO TOP](#)

Section 19. FedEx ShipAlert®

FedEx provides You with the opportunity, via SHIP MANAGER, to use FedEx ShipAlert to send a shipment notification message to the recipient informing him/her of Your shipment. This feature is provided free of charge. FedEx may modify or terminate the use of FedEx ShipAlert at any time.

FedEx does not commit to keeping Your message private or confidential. By using FedEx ShipAlert You acknowledge that FedEx is providing the technical functionality only, and that You are solely responsible for the content of Your messages. FedEx undertakes no duty to monitor any messages sent by You. However, FedEx, in its sole discretion, may elect, but is not obligated, to look at Your messages to protect itself.

Do not use FedEx ShipAlert for anything other than to communicate information about Your shipment. You may not use FedEx ShipAlert to disseminate inflammatory, infringing, obscene, or other unlawful information, or to threaten, harass, abuse or otherwise violate the legal rights of others or perform any act

contrary to law. If FedEx sees or hears about messages sent via FedEx ShipAlert that violate these provisions, or that may damage FedEx, it may take all actions necessary to protect itself, including disclosing any messages to the authorities.

It is not necessary to use FedEx ShipAlert to ship a package via SHIP MANAGER. FedEx will not be liable for any failure or delay, for any reason, in the transmission, receipt, or acknowledgment of any messages sent by or to You.

[BACK TO TOP](#)

Section 20. Address Book

Subject to the terms listed here, addresses will remain in Your Address Book as long as You use SHIP MANAGER. If You do not use SHIP MANAGER for a period of 6 months, FedEx will delete Your addresses.

However, FedEx will not delete Your SHIP MANAGER account. If You have any concerns, please email FedEx at webmaster@fedex.com (<mailto:webmaster@fedex.com>). The Address Book is a feature provided free of charge by FedEx. You should maintain a back-up copy of Your addresses as FedEx will not be responsible for the loss of addresses contained in the Address Book. FedEx may modify or terminate this feature at any time for any reason.

[BACK TO TOP](#)

Section 21. Courtesy Rate Quote

The courtesy rate reflected by the Courtesy Rate Quote on SHIP MANAGER, if shown, may be different than the actual charges for Your shipment. Differences may occur based on actual weight, dimensions, and other factors. Consult the applicable FedEx Service Guide or the FedEx Rate Sheets for details on how shipping charges are calculated.

[BACK TO TOP](#)

Section 22. FedEx Tracking Signature Proof of Delivery

In addition to the fedex.com Terms of Use, the following terms and conditions govern your access and use of Signature Proof of Delivery. By accessing and using Signature Proof of Delivery, you acknowledge and agree that you are the shipper, the recipient, or third party payor, or are authorized to act on behalf of the shipper, recipient, or third party payor to retrieve the signature image for the shipment you are attempting to track. You warrant and agree, on behalf of yourself and all persons on whose behalf you are acting in accessing and using Signature Proof of Delivery, that you will not use the signature image for any purpose other than to confirm the delivery of such shipment. You further acknowledge and agree, on behalf of yourself and all persons on whose behalf you are acting in accessing and using Signature Proof of Delivery, (i) to defend (at FedEx option), indemnify, and hold harmless FedEx, its parent and its parent company's subsidiary companies (collectively "FedEx" for purposes of this paragraph) from and against any and all claims of whatever nature arising from your access and use of Signature Proof of Delivery, and the receipt, use and emailing of any signature retrieved; (ii) that Signature Proof of Delivery is provided "AS IS" and you assume all risk of accessing and using Signature Proof of Delivery; (iii) that FedEx DISCLAIMS ANY AND ALL WARRANTIES OR CONDITIONS OF WHATEVER NATURE, INCLUDING THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE IN RESPECT TO SIGNATURE PROOF OF DELIVERY; (iv) you will only email Signature Proof of Delivery to the shipper, recipient or third party payor of the shipment you are attempting to retrieve; (v) that under no circumstances shall FedEx be liable for any money or other damages resulting from the access and use of Signature Proof of Delivery and that FedEx hereby disclaims liability for any such damage; and, (vi) that your actions and shipments

are further governed by, and you will comply with, the terms and conditions in the applicable FedEx Service Guide or transportation agreement.

BACK TO TOP

Section 23. FedEx Tracking Updates

In addition to the fedex.com Terms of Use, the following additional terms and conditions govern the access and use of this tracking update subscription application to request tracking information updates ("Tracking Updates"). FedEx authorizes You to request Tracking Updates for a shipment for which You are the shipper, recipient or third-party payor and You agree to only request Tracking Updates for a shipment for which You are the shipper, recipient, or third-party payor subject to these Terms and Conditions. You acknowledge and agree that Tracking Updates are the private property of FedEx, are provided to You free of charge and that any use of Tracking Updates information is at Your sole risk. Tracking Updates are provided "AS IS" and FedEx disclaims all Warranties or conditions, Express or Implied.

BACK TO TOP

Section 24. FedEx Delivery Manager®

If you are a FedEx Delivery Manager member, you are subject to the [FedEx Delivery Manager Privacy Notice \(https://www.fedex.com/en-us/delivery-manager/privacy.html\)](https://www.fedex.com/en-us/delivery-manager/privacy.html). In the event of a conflict between the FedEx Delivery Manager Privacy Notice and FedEx Privacy Notice, the FedEx Delivery Manager Privacy Notice governs how we collect and use personal data of FedEx Delivery Manager members.

In order to facilitate delivery or release of a shipment, FedEx may, at its sole discretion, offer certain delivery options and functionality to residential Recipients

through FedEx Delivery Manager. As a condition for approval to register for and use FedEx Delivery Manager, Recipient agrees to these terms:

- I. Recipient represents and warrants that Recipient: resides at the address provided for enrollment; is authorized to enroll and receive shipments at the address; will only register for himself/herself; will only register nicknames that are associated with Recipient's name and identity; is 13 years of age or older.
- II. For each shipment, Recipient represents and warrants that Recipient is authorized by the Shipper to use or request the FedEx Delivery Manager options and functionality.
- III. Recipient agrees to pay any fees associated with FedEx Delivery Manager options that are offered by FedEx for a fee. See Rates in the FedEx Service Guide for details.
- IV. The contract of carriage governed by the FedEx Express Terms and Conditions or the FedEx Ground Tariff in the FedEx Service Guide shall at all times remain with the Shipper, as that term is defined in the FedEx Service Guide, and nothing in these FedEx Delivery Manager Terms shall be construed to create a contract of carriage with the Recipient. FedEx Delivery Manager options and functionality, including those offered for a fee to the Recipient, are governed solely by the terms in this FedEx Delivery Manager section of the fedex.com Terms of Use.
- V. In no event shall FedEx, including, without limitation, agents, contractors, employees and affiliates, be liable for any damages, including but not limited to special, incidental or consequential damages, including, without limitation, loss of profits or income, whether or not FedEx had knowledge that such damages might be incurred, from honoring, or our failure to honor, any request for delivery instructions, preferences, delivery suspension, routing instruction or other delivery request from the Recipient. Notwithstanding, a refund of the FedEx

Delivery Manager fee as outlined below is the exclusive remedy in the event of FedEx's failure to honor the Recipient's request for FedEx Delivery Manager options.

VI. Money-Back Guarantee. We offer a money-back guarantee for FedEx Delivery Manager delivery options that are offered for a fee. This guarantee can be suspended, modified or revoked at our sole discretion without prior notice to you. At our option, we will, upon request, refund your FedEx Delivery Manager charges in the event of a delivery failure as described below. If the money-back guarantee is suspended, there is no remedy or recovery of charges for a delivery option failure. There are no delivery option commitments for shipments on which the money-back guarantee is suspended.

a. FedEx Date Certain Delivery Money-Back Guarantee. The FedEx Date Certain Delivery Money-Back Guarantee applies if shipment delivery is not attempted on the valid date requested. To be considered valid, the requested date must be a Business Day within 7 calendar days after the originally scheduled delivery date. If the delivery date requested is invalid, the FedEx Date Certain Money-Back Guarantee will not apply.

b. FedEx Evening Delivery Money-Back Guarantee. The FedEx Evening Delivery Money-Back Guarantee applies if shipment delivery is not attempted between 5 and 8 p.m. by the scheduled delivery date as published on fedex.com.

c. FedEx Appointment Delivery Money-Back Guarantee. The FedEx Appointment Delivery Money-Back Guarantee applies if shipment delivery is not attempted during the appointment time-frame and on the date requested by the Recipient and agreed to by FedEx.

d. Deliver To Another Address Money-Back Guarantee. The Deliver To Another Address Money-Back Guarantee applies if shipment delivery is not attempted at the new delivery address by the scheduled delivery date and time as published on fedex.com

e. Exceptions and Limitations. FedEx will not be obligated to refund or credit your charges if:

1. We provide you with proof of timely completion of the delivery option, consisting of the date and time of delivery and, if applicable, the name of the person who signed for the shipment, or service-exception information reflecting that the failure to provide the delivery option resulted from circumstances described under the Liabilities Not Assumed sections of the FedEx Service Guide.

2. The shipment was scheduled for delivery on the Wednesday immediately prior to Thanksgiving or during the seven calendar days before Christmas Day, and was delivered within 90 minutes of the new requested delivery date, time, or delivery window.

3. The shipment was undeliverable as described in the Undeliverable Shipments sections of the FedEx Express Terms and Conditions or the FedEx Ground Tariff in the FedEx Service Guide.

f. Refund Requests: To qualify for a refund, you must notify us of a delivery option failure and request a refund of your charges in compliance with the conditions listed below. If you do not comply with these conditions, you are not entitled to receive a refund and cannot recover compensation for a delivery option failure in any lawsuit.

1. You may request a refund of charges due to a delivery option failure by submitting your request through the billing adjustment application at fedex.com/billingadjustment.

2. Your notification of a delivery option failure must include the FedEx tracking number; and the last 4 digits of the credit card used to pay for the delivery option.

3. All requests for refund or credit of charges must be received within 90 calendar days from the ship date.

VII. If the Sign For A Package option is selected, Recipient authorizes FedEx to leave the shipment, and any other eligible shipment available for delivery, at the

recipient's location and releases FedEx from all liability for any loss or damage that may result from leaving the shipment at Recipient's request.

VIII. If Recipient provides delivery instructions, preferences, or requests to suspend deliveries for their address, Recipient releases FedEx from all liability for any loss or damage that may result from FedEx following the delivery instructions, preferences, or requests to suspend deliveries.

IX. Recipient understands that FedEx Delivery Manager calendar and tracking visibility will be based on information readily available to FedEx, that it may be limited, estimated or incomplete and that such information may change or be modified.

X. Recipient agrees not to sue FedEx as a class plaintiff or class representative, join as a class member, or participate as an adverse party in any way in a class-action lawsuit against FedEx regarding FedEx Delivery Manager.

BACK TO TOP

Section 25. FedEx InSight[®]/FedEx Advanced Tracking

THE FOLLOWING ADDITIONAL TERMS OF USE GOVERN YOUR USE OF FEDEX[®] INSIGHT AND FEDEX ADVANCED TRACKING. YOUR VIEWING OR USE OF THIS SITE CONSTITUTE YOUR AGREEMENT, ON BEHALF OF YOURSELF AND THE ENTITY YOU REPRESENT (HEREINAFTER "YOU" OR "YOUR"), TO ALL OF THE TERMS AND CONDITIONS PROVIDED BELOW.

In order to facilitate tracking and related analytics relating to your shipments, sent and received, FedEx may, at its sole discretion, offer certain functionality and analytics to approved customers through InSight or FedEx Advanced Tracking. As a condition for approval to register for and use FedEx InSight or FedEx Advanced Tracking you must agree to these terms:

I. Information.

a. You request that FedEx compile and format information regarding shipments for which You are the shipper, recipient or third party payer ("InSight Information") and, subject to the terms and conditions of this Agreement, FedEx grants You the non-exclusive, royalty-free right and license to use the InSight Information provided by FedEx.

b. FedEx will provide InSight Information by means of Internet, email, FedEx automation device or other means at its sole discretion. You understand that the InSight Information will be based on information readily available to FedEx, that it may be limited, estimated or incomplete (resulting, in part, but not completely from shipper's request that FedEx block certain shipment information from the InSight Information provided to You) and that such information may change or be modified.

II. Use. You may use the InSight Information for Your own internal business purposes, to facilitate delivery, customs clearance, or communication with a shipment's shipper, recipient, broker, third party payer or carrier, provided such uses are legal and do not violate any Federal, state or local laws. However, you agree not to use or allow any other party to use InSight, FedEx Advanced Tracking or the InSight Information (or any portion thereof) on your behalf for any other purpose, including without limitation, to audit the accuracy of FedEx/s performance, to obtain adjustments or refunds of shipping charges under FedEx Money-Back Guarantees or otherwise, or as an invoice for remittance purposes for shipments tendered to FedEx. You agree that FedEx shall have authority to deny any such Money-Back Guarantee claims made or filed based on InSight, FedEx Advanced Tracking or InSight Information. You also acknowledge that FedEx holds and retains all worldwide rights, title and interests, including without limitation, copyright, in and to InSight and FedEx Advanced Tracking. You agree not to copy, modify,

translate, transmit, distribute, adapt, reproduce, decompile, reverse engineer or disassemble InSight, FedEx Advanced Tracking or any InSight Information.

III. Maintenance and Updates. FedEx, in its sole discretion, may modify at any time, without notice, the nature and amount of InSight Information provided, the InSight Service, which consists of the features and services of InSight, as amended and updated, or the FedEx Advanced Tracking Service, which consists of the features and services of FedEx Advanced Tracking, as amended and updated.

BACK TO TOP

Section 26. FedEx® Electronic Trade Documents

THE FOLLOWING ADDITIONAL TERMS OF USE GOVERN YOUR USE OF FEDEX® ELECTRONIC TRADE DOCUMENTS. YOUR VIEWING OR USE OF THIS SITE CONSTITUTE YOUR AGREEMENT, ON BEHALF OF YOURSELF AND THE ENTITY YOU REPRESENT (HEREINAFTER "YOU" OR "YOUR"), TO ALL OF THE TERMS AND CONDITIONS PROVIDED BELOW.

FEDEX MAY MAKE FUTURE CHANGES OR MODIFICATIONS TO SUCH TERMS AND CONDITIONS AT ANY TIME WITHOUT NOTICE, AND YOUR SUBSEQUENT VIEWING OR USE OF THIS SITE WILL CONSTITUTE YOUR AGREEMENT TO THE CHANGES AND MODIFICATIONS.

1. Acknowledgment of Agreement with FedEx Software or Web-based Shipping Platform End User License Agreement or Terms of Use and Conditions of Carriage. Prior to accessing FedEx® Electronic Trade Documents, You acknowledge that You have accepted the Terms of Use or the End User License Agreement for the applicable FedEx internet-based shipping application or FedEx shipping software, including but not limited to FedEx Ship Manager Software, FedEx Ship Manager Server, FedEx Ship Manager at fedex.com, and FedEx

Web Services, and agree with said Terms of Use or End User License Agreement. You also agree that all shipments are subject to the Conditions of Carriage as published by FedEx in the applicable Service Guide or Standard Conditions of Carriage on www.fedex.com or elsewhere and set out on the Air Way bill.

2. Agreement to Use Electronic Trade Documents Instead of Printed Documents. By utilizing FedEx[®] Electronic Trade Documents, You authorize FedEx to ship Your international shipments using electronic documents instead of printed documents, including but not limited to the applicable commercial invoice, pro forma invoice, and export certificate of origin.

3. Agreement to Provide Information, Letterhead and Signature Image. By utilizing FedEx[®] Electronic Trade Documents, You agree to provide FedEx with all information necessary to ship Your international packages, including but not limited to package level detail information, Your company letterhead and a signature image for You or an authorized representative of Your company.

4. Accuracy of Information. You represent, warrant and covenant that any information provided by You to FedEx shall be true, accurate and complete.

5. Validity of Letterhead. You represent, warrant and covenant that the letterhead provided by You to FedEx for use in executing electronic trade documents on Your behalf shall be a valid letterhead and that You possess the necessary right, title and interest in the letterhead to authorize FedEx to use the letterhead to execute electronic trade documents on Your behalf.

6. Validity of Signature Image. You represent, warrant and covenant that any signature image provided by You to FedEx for use in executing electronic trade documents on Your behalf shall be of a valid signature by a person authorized by You or Your company to ship with FedEx

and execute shipping-related documents on Your company's behalf, and shall be sufficient to constitute Your signature.

7. Authorization for FedEx to Use Information. For any electronic trade documents completed by FedEx on behalf of You or Your company, You authorize FedEx to use the information provided by You to ship Your international packages, including but not limited to package level detail information, Your company letterhead and Your signature image or a signature image of an authorized representative of Your company.

8. Original Documentation May Be Required for Some Shipments. You acknowledge that applicable customs laws, rules and regulations may require additional documentation for certain commodities, values or quantities and/or require that original hardcopy commercial invoices, licenses, permits, declarations, forms, certificates or other documentation accompany the shipment. You agree that it is Your responsibility to include all required documentation (including, without limitation, original hardcopy documentation) with any shipment You send using FedEx Electronic Trade Documents.

9. Indemnification. You will, at Your sole cost and expense, defend, indemnify and hold harmless FedEx, its parent corporation, subsidiaries, affiliated companies and their respective officers, directors, employees, agents, successors, and assigns from all claims, demands, suits, damages, costs, expenses, fines and judgments, including reasonable attorneys' fees (hereinafter collectively "Claims"), arising out of FedEx's use of the information provided by You, including but not limited to package level detail information, Your company letterhead and Your signature image or a signature image of an authorized representative of Your company. FedEx may intervene and assume its defense in any such claims, at its expense and in its sole

discretion. You will not settle any action relating to any Claim that involves FedEx without the prior written consent of FedEx.

BACK TO TOP

Section 27. FedEx® Reporting

THE FOLLOWING ADDITIONAL TERMS OF USE GOVERN YOUR USE OF FEDEX® REPORTING. YOUR VIEWING OR USE OF THIS SITE CONSTITUTES YOUR AGREEMENT, ON BEHALF OF YOURSELF AND THE ENTITY YOU REPRESENT (HEREINAFTER "YOU" OR "YOUR"), TO ALL OF THE TERMS AND CONDITIONS PROVIDED BELOW.

FEDEX MAY MAKE FUTURE CHANGES OR MODIFICATIONS TO SUCH TERMS AND CONDITIONS AT ANY TIME WITHOUT NOTICE, AND YOUR SUBSEQUENT VIEWING OR USE OF THIS SITE WILL CONSTITUTE YOUR AGREEMENT TO THE CHANGES AND MODIFICATIONS.

1. Information. FedEx possesses certain proprietary and confidential Information regarding customers' shipping activity with FedEx (hereinafter "Information"). Subject to these terms of use, FedEx grants You the non-exclusive royalty-free right and license to use the Information and any related documentation (collectively the "Information") provided by FedEx for the purpose of analyzing your shipping activity with FedEx and FedEx affiliated companies.

2. Use. You may desire to obtain the Information to review Your activity with FedEx. You will use the Information solely to analyze trends in Your shipping activity with FedEx. You will follow any instructions provided by FedEx from time to time regarding access and use of the Information.

3. Confidentiality. You will hold all Information in strict confidence, will not use it other than in connection with the rights granted under this Agreement and will cause

Your employees to be bound by the same obligations of confidentiality to which You are bound under this Agreement. You will not provide access to or communicate the Information in any form to any third party without prior written consent from FedEx.

4. Termination. FedEx may cease providing the Information at any time and is not obligated to provide any Information either in whole or in part.

5. Shipments. All shipments, and any claims in regard to such shipments, must be made in accordance with the terms and conditions of carriage contained in the applicable FedEx service guide, tariff or other applicable FedEx terms and conditions of carriage.

[BACK TO TOP](#)

OUR COMPANY

[About FedEx \(https://www.fedex.com/en-us/about.html\)](https://www.fedex.com/en-us/about.html)

[Our Portfolio \(https://www.fedex.com/en-us/about/company-structure.html\)](https://www.fedex.com/en-us/about/company-structure.html)

[Investor Relations
\(https://investors.fedex.com/home/default.aspx\)](https://investors.fedex.com/home/default.aspx)

[Careers \(https://careers.fedex.com/fedex/\)](https://careers.fedex.com/fedex/)

[FedEx Blog \(https://www.fedex.com/en-us/blog.html\)](https://www.fedex.com/en-us/blog.html)

[Corporate Responsibility \(https://www.fedex.com/en-us/about/corporate-social-responsibility.html\)](https://www.fedex.com/en-us/about/corporate-social-responsibility.html)

[Newsroom \(https://newsroom.fedex.com/\)](https://newsroom.fedex.com/)

[Contact Us \(https://www.fedex.com/en-us/customer-support/contact-us.html\)](https://www.fedex.com/en-us/customer-support/contact-us.html)

MORE FROM FEDEX

FedEx Compatible (<https://www.fedex.com/en-us/compatible.html>)

FedEx Developer Portal (<https://developer.fedex.com/api/en-us/home.html>)

FedEx Logistics (<https://www.fedex.com/en-us/logistics.html>)

FedEx Cross Border (<https://www.fedex.com/en-us/cross-border.html>)

ShopRunner (<https://www.fedex.com/en-us/shoprunner.html>)

LANGUAGE

United States (<https://www.fedex.com/?location=home>)

English

FOLLOW FEDEX



(<https://www.fedex.com/en-us/email.html>)



(<https://www.fedex.com/en-us/terms-of-use.html>)

© FedEx 1995-2023

[Site Map \(https://www.fedex.com/en-us/sitemap.html\)](https://www.fedex.com/en-us/sitemap.html)

[Terms of Use \(https://www.fedex.com/en-us/terms-of-use.html\)](https://www.fedex.com/en-us/terms-of-use.html)

[Privacy & Security \(https://www.fedex.com/en-us/trust-center.html\)](https://www.fedex.com/en-us/trust-center.html)

