

## **AGREEMENT**

THIS AGREEMENT is made and entered into this 14<sup>th</sup> day of January, 2021 by and between Brainfuse, Inc., a corporation organized and existing under the laws of the State of New York (hereinafter, "Brainfuse"), all New Jersey Public libraries (collectively referred to as the "Library"), and the New Jersey State Library, an institution organized and existing under the laws of the State of New Jersey, (hereinafter, "the State Library").

### **WITNESSETH:**

WHEREAS, Brainfuse is engaged in the development and provision of educational services and content; and

WHEREAS, the State Library wishes to license the Brainfuse HelpNow service on behalf of all New Jersey public libraries; and

WHEREAS, the parties desire to supply Library students with an online tutoring services program pursuant to the terms set forth herein.

NOW, THEREFORE, in consideration of the mutual promises of each party to the other contained herein, it hereby is mutually agreed as follows:

### **ARTICLE I - PURPOSE**

Brainfuse shall provide online tutoring to Library students pursuant to the terms set forth herein.

### **ARTICLE II - RESPONSIBILITIES OF THE PARTIES**

#### **Section 2.1     Responsibilities of Brainfuse**

- (a) Brainfuse shall prepare and provide instant access homework help for Library students in mathematics, English, social studies, and science to the Library branches (hereinafter, the "Brainfuse Program").
- (b) Brainfuse shall serve all eligible students Monday through Sunday for nine hours per day from 2 PM ET – 11 PM ET. The Brainfuse Program shall commence on February 1, 2021.
- (c) Brainfuse shall make its online tutors available through any compatible computer to participating students, both within and without the library facility.

#### **Section 2.2     Responsibilities of Library**

- (a) The Library shall provide computers with Internet access, suitable for use by the Brainfuse application for students participating in the Brainfuse Program.
- (b) Technical support staff from the Library shall cooperate in good faith with Brainfuse to ensure that the Brainfuse Program is accessible from Library computers.
- (c) The Library understands that HelpNow is designed as a student-initiated homework assistance service and may not be used as part of school or class-wide mandated assignments.

### **ARTICLE III - LIABILITY**

Brainfuse shall not be responsible or liable for any disruption, pause or cessation of the Brainfuse Program caused by actions or events beyond Brainfuse's immediate control, including, but not limited to, Internet disruptions, the Library's computers, hardware malfunctions, firewall restrictions, browser incompatibilities, other systems problems, or the failure of patrons to attend sessions.

### **ARTICLE IV - COMPENSATION AND EXPENSES**

#### **Section 4.1     Compensation**

The State Library shall pay to Brainfuse a fee of \$259,350 for the Brainfuse Program. It should be noted that payment by the State Library to Brainfuse is contingent upon Brainfuse complying with state statutes, requirements, and Executive Orders regarding the filing of pertinent certifications, forms and statements, as required. For every contract term that spans more than one fiscal year, the State Library's obligation to make payment beyond the current fiscal year is contingent upon legislative appropriation and the availability of funds. All expenses incurred and invoiced against this Agreement are due and payable within sixty (60) days of invoice date. Interest will be paid on delinquent accounts at a rate established by the State Treasurer. Interest will not be paid until it exceeds \$5.00 per properly executed invoice.

Brainfuse shall also calculate and provide appropriate pro-rated refunds and/or credits to any New Jersey public libraries which are receiving and paying for the Brainfuse Program during any part of the period from February 1, 2021 – June 15, 2021. Refunds and/or credits are contingent upon payment by the State Library to Brainfuse.

#### **Section 4.2     Expenses**

Except as provided otherwise herein, the parties to this Agreement shall be responsible for their own expenses, including taxes and general administrative expenses. Brainfuse shall not be responsible for providing the necessary hardware or software (including, but not limited to, computers, speakers, microphones, Internet access, as well as browsers and firewall modifications) for the proper operation of the Brainfuse Program.

### **ARTICLE V - TERM OF THE AGREEMENT**

This Agreement shall remain valid through June 15, 2021 and may be renewed on an annual basis by the parties upon the written consent of both Brainfuse and the State Library. Such mutual consent to renew shall take place at least 15 days prior to the expiration of the Agreement ("Renewal Period").

### **ARTICLE VI - NOTICES AND LEGAL ADDRESSES OF THE PARTIES**

**Section 6.1     Legal Addresses** All notices or other communications required or which may be given hereunder shall be addressed and forwarded as set forth herein. Any such notice if sent to State Library shall be addressed as follows:

New Jersey State Library  
PO Box 520  
Trenton, NJ 08625  
Telephone: (609) 278-2640

Any such notice if sent to Brainfuse shall be addressed as follows:

Brainfuse, Inc.  
271 Madison Avenue  
Third Floor  
New York, New York 10016  
Telephone: (212) 683-5212

**Section 6.2 Electronic Transmissions** Any notice, invoice or other communication hereunder shall be deemed to have been properly transmitted when sent by telegraph, telecopy, cable transmission, or any other form of electronic communication, and shall be deemed to have been given on the date of receipt thereof.

#### **ARTICLE VII - GENERAL PROVISIONS**

**Section 7.1 Survival** The representations, warranties, general covenants, and indemnities contained herein shall survive the termination of this Agreement.

**Section 7.2 Applicable Law** This Agreement shall be construed in accordance with, and governed by the laws of the State of New Jersey.

**Section 7.3 Entire Agreement** This instrument contains the entire agreement between the parties and supersedes all other prior negotiations, undertakings, notes, memoranda, and agreements, whether written or oral, concerning the specific subject matter hereof, and may only be modified, altered, changed, or amended by agreement between the parties in writing.

**Section 7.4 Waiver** No waiver, alteration, amendment, or modification of this Agreement, or any covenant, condition, or limitation contained in this Agreement is valid unless in writing and duly executed by the party to be charged therewith.

**Section 7.5 Illegality/Unenforceability** In the event that any provision of this Agreement is declared illegal or unenforceable in any respect under applicable law, rule, or court decision, (1) the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired, and (2) this Agreement shall be construed so as to effectuate as nearly as possible the intent of said provision and the intent of the parties hereto.

**Section 7.6 Successors and Assigns** This Agreement, and the rights and benefits under this Agreement, shall not be assignable, without the written consent of each of the parties hereto.

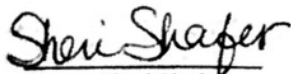
**Section 7.7 Signatures** The parties agree that facsimile and/or digital signature of this Agreement shall be deemed to be valid, binding, and legally enforceable.

IN WITNESS WHEREOF the parties hereto have set their hands as of the date above written.

New Jersey State Library

Brainfuse, Inc.

By:



Name: Sheri Shafer

Title: Chief Financial Officer

By:



Name: Alex Sztuden

Title: Managing Director

**Brainfuse HelpNow Quote  
New Jersey State Library  
1/11/2021**

**HelpNow**

**\$259,350 (February 1 – June 15, 2021)**

**Includes access to:**

LIVE Tutors/FAFSA/Resume Coaches (7 days/week; 2pm – 11pm ET)  
Writing Lab (writing specialists critique submissions provide feedback)  
Skill Surfer (library of assessments, worksheets, articles, and videos for self-learning)  
Flashbulb Library (library of flashcards and games/activities for self-study)  
Adult Learning Center (includes GED test prep, US Citizenship test prep, and more)  
Optimal Resume  
eParachute  
More ...

**LIVE SERVICE HOURS: Sunday – Saturday; 2pm – 11pm local time**

**ELECTRONIC RESOURCES: Available 24Hrs/Day**

	CURRENT RENEWAL DATE	NEW RENEWAL DATE	**CREDIT TOWARD 2021		
			RENEWAL	REFUND	
Middletown Public Library	1/31/21	6/30/21	\$ 2,160	\$ -	
Newark Public Library	3/31/21	6/30/21	\$ 3,700	\$ -	
Plainfield Public Library	3/31/21	6/30/21	\$ 447	\$ -	
Mercer County Library System	4/30/21	6/30/21	\$ 3,600	\$ -	
Edison Township Free Public Library	5/31/21	6/30/21	\$ 2,837	\$ -	
Kearny Public Library	5/31/21	6/30/21	\$ 1,227	\$ -	
Elizabeth Public Library	6/30/21	6/30/21	\$ 4,375	\$ 4,166	
Teaneck Public Library	6/30/21	6/30/21	\$ 1,437	\$ 1,369	
Fort Lee Public Library	6/30/21	6/30/21	\$ 1,386	\$ 1,320	
North Brunswick Public Library	6/30/21	6/30/21	\$ 1,733	\$ 1,650	
Westfield Memorial Library	7/31/21	7/31/21	\$ 1,103	\$ 1,050	
Princeton Public Library	8/16/21	8/16/21	\$ 3,544	\$ 3,375	
Bergenfield Public Library	8/31/21	8/31/21	\$ 1,063	\$ 1,013	
Haddonfield Public Library	8/31/21	8/31/21	\$ 984	\$ 938	
Piscataway Public Library	8/31/21	8/31/21	\$ 2,036	\$ 1,939	
Hoboken Public Library	8/31/21	8/31/21	\$ 1,814	\$ 1,728	
Ocean County Library	8/31/21	8/31/21	\$ 3,818	\$ 3,636	
Palisades Park Public Library	9/2/21	9/2/21	\$ 866	\$ 825	
Gloucester County Library	9/30/21	9/30/21	\$ 1,969	\$ 1,875	
River Vale Public Library	9/30/21	9/30/21	\$ 788	\$ 750	
New Brunswick Free Public Library Foundation	9/30/21	9/30/21	\$ 1,575	\$ 1,500	
PALS Plus NJ Library Consortium	10/20/21	10/20/21	\$ 3,406	\$ 3,244	
West Milford Township Library	10/20/21	10/20/21	\$ 1,024	\$ 975	
Somerset County Library System of New Jersey	10/30/21	10/30/21	\$ 6,635	\$ 6,319	
South Brunswick Public Library	10/31/21	10/31/21	\$ 3,898	\$ 3,713	
Union City Public Library	10/31/21	10/31/21	\$ 2,093	\$ 1,994	
Garwood Public Library	11/5/21	11/5/21	\$ 866	\$ 825	
Metuchen Public Library	11/9/21	11/9/21	\$ 866	\$ 825	
Maywood Public Library	12/22/21	12/22/21	\$ 866	\$ 825	
Mahwah Public Library	12/31/21	12/31/21	\$ 1,103	\$ 1,050	
MAIN-Morris Automated Information Network	12/31/21	12/31/21	\$ 6,096	\$ 5,805	

\* New renewal date for highlighted libraries in which renewal date occurs during Statewide program and includes 2-week free service as Early Renewal Bonus.

\*\* Other libraries can opt for a direct refund -OR- credit toward their upcoming 2021 renewal. If opting for credit, a 5% renewal bonus is included.



PO Number: P0019099

Issue Date: 01/14/21

Requisition Number: 0016948

New Jersey State Library  
Business Office  
PO Box 520  
Trenton, New Jersey 08625

Vendor:

Brainfuse, Inc  
271 Madison Ave 3rd Floor  
New York NY 10016

Ship To:

New Jersey State Library  
185 West State Street  
Trenton NJ 08608

General Ledger Account Number

Vendor Payment Terms

56-0-5510000-53420

Upon Receipt

Description	Quantity	Unit Cost	Total Cost
Statewide subscription tp HelpNow online, 7days/week, 2pm-11pm, 2/1/21-6/15/21. Includes access to: Live Tutors/ FAFSA/Resume Coaches; Writing Lab; Skill Sufer; Flashbulb Library; Adult Learning Center, Optimal Resume, eParachute Electronic Resources available 24 hours/day.  BID WAIVER #53 JUNE 2020	1.000	259,350.0000	259,350.00

Authorized By:

Date:

2/19/21

Total PO Amount:

259,350.00

This transaction is authorized by the Vice President of Administration and Finance, or his designee, in accordance with the provisions established by the State Colleges Contract Law 64, Title 18A of the New Jersey Statutes, and Thomas Edison State University's Purchasing and Contracting Policy. The Vice President of Administration and Finance, or his designee's signature guarantees all provisions governing the authorization of this transaction have been complied with. Material delivered against this order is not subject to Federal Excise Taxes. Thomas Edison State University Tax Exempt Certificate Number [REDACTED]. Exemption certificate will be submitted upon request.

## **THOMAS EDISON STATE UNIVERSITY STANDARD TERMS AND CONDITIONS (REV 1.19.2016)**

- I. The Contractor certifies that it understands and agrees that the following terms and conditions are incorporated into any contract entered into by or purchase made on behalf of Thomas Edison State University.
- II. Contract is defined as any written contract or purchase order issued by Thomas Edison State University.
- III. In the event that the terms and conditions within a Contractor's proposal conflict with the standard terms and conditions of Thomas Edison State University the University's standard terms and conditions will govern.
- IV. Contractors are notified by this statement that all standard terms and conditions will become part of any contract awarded or purchase order provided whether stated in part in summary or by reference unless the University issues a duly authorized and signed written directive specifically stating otherwise.

As an affiliate of Thomas Edison State University all University purchasing policies including the standard terms and conditions apply to all contracts and purchases made on behalf of the New Jersey State Library.

### **1. STATE LAW REQUIRING MANDATORY COMPLIANCE**

- I. **CORPORATE AUTHORITY** – It is required that all corporations be authorized to do business in the State of New Jersey. Corporations incorporated out of the State must file a Certificate of Authority with the Secretary of State department of State State House Trenton New Jersey. Refer to NJSA 14A:13-3.
- II. **BUSINESS REGISTRATION** – All New Jersey and out of state corporations must obtain a Business Registration Certificate (BRC) from the Department of the Treasury Division of Revenue prior to conducting business in the State of New Jersey. All Contractors must provide a valid and current BRC to the University's Purchasing Department before doing business with the University via contract or purchase order. All subcontractors of the contractor must provide the contractor with a current BRC. Contractors must forward the BRC's of subcontractors to the University's purchasing department.
- III. **ANTI DISCRIMINATION** – All parties to any contract with Thomas Edison State University agree not to discriminate in employment and agree to abide by all anti-discrimination laws including those contained within NJSA 10:2-1 through 10:2-4 NJSA 10:5-1 et seq. and NJSA 10:5-31 through 10:5-38 and all rules and regulations issued thereunder.
- IV. **PREVAILING WAGE ACT** – The New Jersey Prevailing Wage Act PL 1963 Chapter 150 is hereby made a part of every contract entered into on behalf of Thomas Edison State University except those contracts which are not within the scope of the Act. The Contractor hereby guarantees that neither the contractor nor any subcontractors who might be employed to perform the work covered by this proposal are listed or are on record in the Office of the Commissioner of the Department of Labor and Industry as one who has failed to pay prevailing wages in accordance with the provisions of this Act.
- V. **THE WORKER AND COMMUNITY RIGHT TO KNOW ACT** – The provisions of NJSA 34:5A-1 et seq. require the labeling of all containers of hazardous substances. All goods offered for purchase to the University must be labeled in compliance with the provisions of the Act and shall be deemed a term and condition of any University purchasing agreement or contract.
- VI. **COMPLIANCE WITH LAWS** – All Contractors of the University shall comply with all local state and federal laws rules and regulations applicable to any contracts or purchases and to the goods delivered and/or services provided under such.
- VII. **COMPLIANCE WITH NEW JERSEY STATE LAW** – All agreements between Thomas Edison State University and outside Contractors shall be governed by the laws of the State of New Jersey. Any and all actions relating to the provisions of a contract or purchasing agreement shall be brought in the courts of New Jersey and venue in Mercer County Trenton New Jersey. New Jersey law shall apply to all issues regardless of any principles of conflict of law policies statutes or case law. All agreements shall be subject to the New Jersey Contractual Liability Act NJSA 59:13-1 et seq. All agreements shall be subject to the New Jersey Tort Claims Act NJSA 59:1-1 et seq.
- VIII. **POLITICAL DISCLOSURE BY CONTRACTOR** – If the contract is in excess of \$17,500 the Contractor must complete and return Pay to Play certification and disclosure forms which include the ownership disclosure form to the University before a contract can be awarded. The University must receive approval from the Chapter 51 Review Unit before entering into an agreement with said Contractor. NJSA 19:44A-20.13 et seq.
- IX. **PUBLIC WORKS CONTRACTOR REGISTRATION ACT** – The New Jersey Public Works Contractor Registration Act requires that all contractors subcontractors and lower tier subcontractor(s) who engage in any contract for public work as defined in NJSA 34:11-56.26 be first registered with the New Jersey Department of Labor and Workforce Development. Any questions regarding the registration process should be directed to the New Jersey Division of Wage and Hour Compliance.

### **2. LIABILITIES**

- I. **COPYRIGHT LIABILITY** – The Contractor shall hold and save Thomas Edison State University the State of New Jersey their respective officers agents servants and employees harmless from liability of any nature or kind for or on account of the use of any copyrighted or un-copyrighted composition secret process patented

or unpatented invention article or appliance furnished or used in the performance of any contract or agreement.

- II. **INDEMNIFICATION** - The Contractor shall assume all risk of and responsibility for and agrees to indemnify defend and save harmless Thomas Edison State University the State of New Jersey and respective employees trustees officers volunteers and agents from and against any and all claims demands suits actions recoveries judgments costs and expenses (including reasonable attorney's fees) in connection therewith on account of the loss of life property or injury or damage to the person body or property of any person or persons whatsoever which shall arise from or result directly or indirectly from the work materials and/or services supplied under any contract or agreement. This indemnification obligation is not limited by but is in addition to the insurance obligations contained in contracts or agreements.
- III. **INSURANCE** - The Contractor shall secure and maintain in force for the term of the contract liability insurance as provided herein. The Contractor shall provide Thomas Edison State University with current certificates of insurance for all coverage and renewals thereof which must contain the provision that the insurance provided in the certificate shall not be canceled for any reason except after thirty days written notice to Thomas Edison State University Office of the Treasurer. The insurance to be provided by the Contractor shall be as follows:
  - a. Comprehensive General Liability policy as broad as the standard coverage form currently in use in the State of New Jersey which shall not be circumscribed by any endorsements limiting the breadth of coverage. The policy shall include an endorsement (broad form) for contractual liability and products liability (completed operations). Limits of liability shall not be less than \$1,000,000.00 per occurrence for bodily injury and \$1,000,000.00 per occurrence for property damage liability.
  - b. Comprehensive General Automobile Liability insurance covering owned non-owned and hired vehicle with minimum limits of \$1,000,000.00 combined single limits.
  - c. Worker's Compensation Insurance applicable to the laws of the State of New Jersey and Employers Liability Insurance with Limits of not less than \$1,000,000.00.
  - d. Upon request the successful Contractor will provide certificates of such insurance to Thomas Edison State University prior to the start of the contract and periodically during the course of a multi-year contract.

### **3. TERMS GOVERNING ALL CONTRACTS (Unless otherwise specified in Bid Specifications)**

- I. **CONTRACT PERIOD AND EXTENSION OPTION** – If in the opinion of the Treasurer it is in the best interest of the University to extend any contract entered into as a result of any proposal for a period of all or any part of a year the Contractor will be so notified of the Treasurer's intent at least 30 days prior to the expiration date of the existing contract. The Contractor shall have 15 calendar days to respond to the Treasurer's request to extend the contract. If the Contractor agrees to the extension all terms and conditions of the original contract including price will be applicable.

### **II. CONTRACT TERMINATION –**

- a. Change of Circumstances – Notwithstanding any provision or language in any contract to the contrary where the needs of the University significantly change or the contract is otherwise deemed no longer to be in the University's interest the University may terminate the contract upon 30 days written notice to the Contractor. In the event of contract termination due to Change of Circumstances the Contractor will be compensated by the University for goods and/or services satisfactorily performed and accepted in accordance with the contract up to the date of termination.
- b. For Cause – Where the Contractor fails to perform or comply with a contract the University may terminate the contract upon 10 days notice to the Contractor with an opportunity to respond. Where a Contractor continues to perform a contract poorly as demonstrated by documented late delivery poor performance of service short-shipping etc. the University may terminate the contract upon 10 days' notice to the Contractor. In the event of contract termination due to Cause the University may acquire the goods and/or services which are the subject of the terminated contract from another source. If the price paid is greater than the contract price the University may deduct the difference in price from any monies due the terminated Contractor or if no monies are due the terminated Contractor the difference in price shall be an obligation owed the University by the terminated Contractor.

### **III. PERFORMANCE GUARANTEE** – The Contractor hereby certifies that:

- a. The equipment offered is standard new equipment and is the manufacturer's latest model in production with parts regularly used for the type of equipment offered that such parts are all in production and not likely to be discontinued and that no attachment or part has been substituted or applied contrary to manufacturer's recommendations and standard practice.
- b. All equipment supplied to the University that is operated by electrical current is UL listed where applicable.
- c. All new machines are to be guaranteed as fully operational for the period stated in the Contractor's proposal from time of written acceptance by the University. The Contractor will render prompt service without charge regardless of geographic location.

- d. During the warranty period the Contractor shall replace immediately any material which is rejected for failure to meet the requirements of the contract.

### **IV. DELIVERY GUARANTEE –**

- a. Deliveries shall be made at such time and in such quantities as ordered in strict accordance with conditions contained in the contract or proposal. The Contractor shall be responsible for the delivery of material in first class condition to the University in accordance with good commercial practice.
- b. Items delivered must be strictly in accordance with bid or contract specifications.
- c. In the event delivery of goods or services are not made within the number of days stipulated or under the schedule defined in the specifications the University may obtain the materials or services for any other available source the difference in price if any to be paid by the Contractor failing to meet his commitments.
- d. Contractors are authorized to ship only those items and quantities that are covered by the contract. If a review or material received indicated that material other than that covered by the contract has been ordered and delivered the Treasurer or his/her Purchasing designee will take such steps as are necessary to have the material returned regardless of the time lapsed between the date of delivery and discovery of the violation. Full credit will be required. Compliance with this requirement is the full responsibility of the Contractor. Violation of this clause may result in the removal of the offending Contractor's name from the University's approved Contractor list.
- e. Contractors shall acquaint themselves with conditions to be found at the University and shall assume all responsibility for placing and installing the equipment in the locations required. All freight or other delivery charges shall be paid by the Contractor.
- f. The University will accept deliveries during normal business hours 9 am to 4 pm on normal business days Monday through Friday.
- g. All items must be delivered into and placed at a point within the University buildings as directed by the University. Based on space limitations deliveries should be made utilizing no larger than a box truck. Lift gates are required as there is no dock for deliveries.
- V. **SUBCONTRACTING OR ASSIGNMENT** – The contract may not be sub-contracted or assigned by the Contractor in whole or in part without the prior written consent of the Treasurer or his/her Purchasing designee. Such consent if granted shall not relieve the Contractor of any responsibilities under the contract.
- VI. **UNIVERSITY'S RIGHT TO INSPECT CONTRACTOR'S FACILITIES** – The University reserves the right to inspect a Contractor's establishment before making an award for purposes of ascertaining whether the Contractor has the necessary facilities for performing the contract.
- VII. **MAINTENANCE OF RECORDS** – The Contractor shall maintain records for products and services delivered against a contract for a period of three (3) years from the date of final payment. Such records shall be made available to the University upon request.

### **4. TERMS RELATING TO PRICE**

- I. **PRICE FLUCTUATIONS DURING CONTRACT** – All prices quoted shall be firm and not subject to increase during the period of the contract. In the event of a manufacturer's price decrease during the contract period the University shall receive the full benefit of such price reduction on any undelivered goods or services and on any subsequent order placed during the contract period.
- II. **DELIVERY COSTS** – Unless noted otherwise in the specification all prices for items in bid or contract proposals are to be submitted F.O.B. destination. Proposals submitted other than F.O.B. destination may not be considered. Regardless of the method of quoting shipments the Contractors shall assume all liability and responsibility for the delivery of the merchandise in good condition to the University or designated purchaser. F.O.B. destination does not cover spotting but does include delivery on the receiving platform of the ordering agency at any destination in the University unless otherwise specified. No additional charges will be allowed for any transportation costs resulting from partial shipments made at a Contractor's convenience when a single shipment is ordered.
- III. **TAX CHARGES** - Thomas Edison State University is an instrumentality of the State of New Jersey and is exempt from the New Jersey sales and use taxes and Federal excise taxes. These taxes must not be included in the Contractor's price quotations. The University's Federal Excise Tax Exemption number is V21600092800.
- IV. **PAYMENT TO CONTRACTORS** – Upon receipt and acceptance of goods or services payment for goods and/or services purchased by the University will be made to the contractor following the receipt of an acceptable invoice from the contractor.

5. **CONFIDENTIAL INFORMATION** - The Contractor will not either directly or indirectly use or disclose any confidential or proprietary information including without limitation employee and student data financial data and information technology of the University for any purpose other than the performance of the specific contract services unless the Contractor has obtained prior written consent of the University to the contrary. Contractor shall limit disclosure of confidential information to Contractor's employees with a need to know the confidential information.

## RIDER FOR PURCHASES FUNDED, IN WHOLE OR IN PART, BY FEDERAL FUNDS

The provisions set forth in this Rider apply to all purchases funded, in whole or in part, by Federal funds as required by 2 CFR 200.317.

### I. PROCUREMENT OF RECOVERED MATERIALS

To the extent that the scope of work or specifications in the contract requires the contractor to provide any of the following items, this Section 7.1 of the Standard Terms and Conditions modifies the terms of the scope of work or specification.

Pursuant to 2 CFR 200.322, the contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6962. 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.

A. Designated items are those set forth in 40 CFR 247 subpart B, as may be amended from time to time, including:

1. Paper and paper products listed in 40 C.F.R. 247.10;
2. Certain vehicular products as listed in 40 CFR 247.11;
3. Certain construction products listed in 40 C.F.R. 247.12;
4. Certain transportation products listed in 40 C.F.R. 247.13;
5. Certain park and recreation products, 40 C.F.R. 247.14;
6. Certain landscaping products listed in 40 C.F.R. 247.15;
7. Certain non-paper office products listed in 40 C.F.R. 247.16; and
8. Other miscellaneous products listed in 40 C.F.R. 247.17.

B. As defined in 40 CFR 247.3, "recovered material" means:

1. waste materials and byproducts which have been recovered or diverted from solid waste, but such term does not include those materials and byproducts generated from, and commonly reused within, an original manufacturing process; and
2. for purposes of purchasing paper and paper products, means waste material and byproducts that have been recovered or diverted from solid waste, but such term does not include those materials and byproducts generated from, and commonly reused within, an original manufacturing process. In the case of paper and paper products, the term recovered materials includes:
  - a. Postconsumer materials such as -
    - i. Paper, paperboard, and fibrous wastes from retail stores, office buildings, homes, and so forth, after they have passed through their end-usage as a consumer item, including: used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage; and
    - ii. All paper, paperboard, and fibrous wastes that enter and are collected from municipal solid waste, and
  - b. Manufacturing, forest residues, and other wastes such as -
    - i. Dry paper and paperboard waste generated after completion of the papermaking process (that is, those manufacturing operations up to and including the cutting and trimming of the paper machine reel in smaller rolls of rough sheets) including: envelope cuttings, bindery trimmings, and other paper and paperboard waste, resulting from printing, cutting, forming, and other converting operations; bag, box, and carton manufacturing wastes; and butt rolls, mill wrappers, and rejected unused stock; and
    - ii. Finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others;
    - iii. Fibrous byproducts of harvesting, manufacturing, extractive, or wood-cutting processes, flax, straw, linters, bagasse, slash, and other forest residues;
    - iv. Wastes generated by the conversion of goods made from fibrous material (that is, waste rope from cordage manufacture, textile mill waste, and cuttings); and
    - v. Fibers recovered from waste water which otherwise would enter the waste stream.

C. For contracts in an amount greater than \$ 100,000, at the beginning of each contract year, contractor shall provide the State estimates of the total percentage of recovered material utilized in the performance of its contract for each of the categories listed in subsection (A). For all contracts subject to this Section 7.1 of the Standard Terms and Conditions, at the conclusion of each contract year, contractor shall certify to the State the minimum recovered material content actually utilized in the prior contract year.

### II. 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."

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.

### **III. 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 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be 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. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the

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"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

### **IV. 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 include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

### **V. 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.

### **VI. CLEAN AIR ACT, 42 U.S.C. 7401-7671q, AND THE FEDERAL WATER POLLUTION CONTROL ACT, 33 U.S.C. 1251-1387, AS AMENDED**

Contracts and subgrants of amounts in excess of \$ 150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

### **VII. DEBARMENT AND SUSPENSION (EXECUTIVE ORDERS 12549 AND 12689)**

A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

### **VIII. 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.