AGREEMENT

THIS AGREEMENT is made and entered into this 4th 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: **Sheri Shafer**
Name: Sheri Shafer  
Title: Chief Financial Officer

By: **AA**
Name: Alex Szudak  
Title: Managing Director
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
<table>
<thead>
<tr>
<th>Library Name</th>
<th>Old Renewal Date</th>
<th>New Renewal Date</th>
<th><strong>Credit Toward 2023</strong></th>
<th>Renewal Bonus</th>
</tr>
</thead>
<tbody>
<tr>
<td>Middletown Public Library</td>
<td>1/31/21</td>
<td>6/30/21</td>
<td>$2,160</td>
<td></td>
</tr>
<tr>
<td>Newark Public Library</td>
<td>3/31/21</td>
<td>6/30/21</td>
<td>$3,700</td>
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<tr>
<td>Plainfield Public Library</td>
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<td>6/30/21</td>
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<tr>
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<td>4/30/21</td>
<td>6/30/21</td>
<td>$3,600</td>
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<td>Edison Township Free Public Library</td>
<td>5/31/21</td>
<td>6/30/21</td>
<td>$2,837</td>
<td></td>
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<tr>
<td>Kearny Public Library</td>
<td>5/31/21</td>
<td>6/30/21</td>
<td>$1,227</td>
<td></td>
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<tr>
<td>Elizabeth Public Library</td>
<td>6/30/21</td>
<td>6/30/21</td>
<td>$4,375</td>
<td>4,166</td>
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<tr>
<td>Teaneck Public Library</td>
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<td>6/30/21</td>
<td>$1,437</td>
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<td>6/30/21</td>
<td>$1,733</td>
<td>1,650</td>
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<td>Westfield Memorial Library</td>
<td>7/31/21</td>
<td>7/31/21</td>
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<td>1,050</td>
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<td>Princeton Public Library</td>
<td>8/16/21</td>
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<td>$1,063</td>
<td>1,013</td>
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<td>Haddonfield Public Library</td>
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<td>$984</td>
<td>938</td>
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<tr>
<td>Piscataway Public Library</td>
<td>8/31/21</td>
<td>8/31/21</td>
<td>$2,036</td>
<td>1,993</td>
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<td>Hoboken Public Library</td>
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<td>$1,814</td>
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<td>Ocean County Library</td>
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<td>Palisades Park Public Library</td>
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<td>825</td>
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<td>Gloucester County Library</td>
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<td>$1,869</td>
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<td>River Vale Public Library</td>
<td>9/30/21</td>
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<td>750</td>
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<tr>
<td>New Brunswick Free Public Library Foundation</td>
<td>9/30/21</td>
<td>9/30/21</td>
<td>$1,575</td>
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<tr>
<td>PALS Plus NJ Library Consortium</td>
<td>10/20/21</td>
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<td>West Milford Township Library</td>
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<td>$1,024</td>
<td>975</td>
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<td>Somerset County Library System of New Jersey</td>
<td>10/30/21</td>
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<td>South Brunswick Public Library</td>
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<td>Union City Public Library</td>
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<td>$2,093</td>
<td>1,994</td>
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<td>Garwood Public Library</td>
<td>11/5/21</td>
<td>11/5/21</td>
<td>$866</td>
<td>825</td>
</tr>
<tr>
<td>Metuchen Public Library</td>
<td>11/9/21</td>
<td>11/9/21</td>
<td>$866</td>
<td>825</td>
</tr>
<tr>
<td>Maywood Public Library</td>
<td>12/22/21</td>
<td>12/22/21</td>
<td>$866</td>
<td>825</td>
</tr>
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<td>Mahwah Public Library</td>
<td>12/31/21</td>
<td>12/31/21</td>
<td>$1,103</td>
<td>1,050</td>
</tr>
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<td>Main-Morris Automated Information Network</td>
<td>12/31/21</td>
<td>12/31/21</td>
<td>$6,096</td>
<td>5,805</td>
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</tbody>
</table>

* 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.
<table>
<thead>
<tr>
<th>Description</th>
<th>Quantity</th>
<th>Unit Cost</th>
<th>Total Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Statewide subscription tp HelpNow online, 7 days/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</td>
<td>1.000</td>
<td>259,350.000</td>
<td>259,350.00</td>
</tr>
</tbody>
</table>
I. STATE LAW REQUIRING MANDATORY COMPLIANCE

II. BUSINESS REGISTRATION – All New Jersey and out of state contractors must obtain a valid and current 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 current BRC to the University’s Treasurer or his/her Purchasing designee before entering into an agreement with said Contractor. All subcontracts must be made to a current BRC. Contractors shall maintain records for at least five (5) years of the BRC’s of subcontractors to the direct and indirect contracts.

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 as issued thereunder.

IV. PRICE FLUCTUATIONS DURING CONTRACT – Unless noted otherwise in the specification all prices for products and services delivered against a contract for a period of three (3) years shall be subject to change due to material and/or service variations, price increases, and/or escalation after thirty days written notice to the contractor.

V. DELIVERY GUARANTEE – The university shall have the right to void the contract or order and to proceed with the contract. The Contractor’s performance of the contract is otherwise deemed no longer to be in the University's interest.

VI. TAXES – The Contractor will render prompt service without charge regardless of the method of quoting shipments the Contractors 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.

VII. SUBCONTRACTING OR ASSIGNMENT – The contract may not be subcontracted or assigned by the Contractor to a third party without prior written consent of the University. No subcontractor or assignee shall enter into any agreement or contract with the University. The Contractor shall be responsible for the performance of the contract by the subcontractor.

VIII. PERFORMANCE BY CONTRACTOR – If the Contractor fails to perform or comply with any of the terms or conditions of this contract the Contractor may be deemed in default and may be considered insolvent. The University shall have the right to void the contract or order and to proceed with the contract. The Contractor’s performance of the contract is otherwise deemed no longer to be in the University’s interest.

IX. TAXES – All taxes including federal, state, local and other governmental taxes and duties levied or imposed upon the goods, and materials, and/or services supplied under any contract or agreement. This includes, but is not limited to, sales and use taxes, gross receipts taxes, excise taxes, and severance taxes. The University will provide invoices, including subcontracted services, for all invoices. Invoices shall be submitted to the University along with the supporting documents, including any subcontractor invoices.

X. PERFORMANCE GUARANTEE – The Contractor hereby certifies that:

a. The equipment offered is a standard new equipment and is the manufacturer’s latest model in production with parts regularly used for the type of equipment with a current BRC. Contractors must forward the BRC’s of subcontractors to the direct and indirect contracts.

b. The Contractor’s performance of the contract is otherwise deemed no longer to be in the University’s interest.

c. All equipment supplied to the University that is operated by electrical current is UL listed where applicable.

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

e. The Contractor will render prompt service without charge regardless of geographic location.

f. The University will accept deliveries during normal business hours 9 am to 4 pm on normal business days. Monday through Friday.

g. All shipments must be made to 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 elevator access.

h. All shipments must be made to 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 elevator access.

i. All shipments must be made to 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 elevator access.

j. All shipments must be made to 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 elevator access.

k. All shipments must be made to 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 elevator access.

l. All shipments must be made to 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 elevator access.

m. All shipments must be made to 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 elevator access.

n. All shipments must be made to 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 elevator access.

o. All shipments must be made to 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 elevator access.

p. All shipments must be made to 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 elevator access.

q. All shipments must be made to 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 elevator access.

r. All shipments must be made to 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 elevator access.

s. All shipments must be made to 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 elevator access.

t. All shipments must be made to 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 elevator access.

u. All shipments must be made to 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 elevator access.

v. All shipments must be made to 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 elevator access.

w. All shipments must be made to 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 elevator access.

x. All shipments must be made to 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 elevator access.

y. All shipments must be made to 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 elevator access.

z. All shipments must be made to 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 elevator access.
The provisions set forth in this Rider apply to all purchases funded, in whole or in part, by Federal funds as required by 2 C.F.R. 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 C.F.R. 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; (7)
   3. Certain construction products as listed in 40 CFR 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

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-use as a consumer item, including: used boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage; and
      b. All paper, paperboard, and fibrous wastes that enter and are collected from municipal solid waste, and
      c. 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, extractions, 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 is subsection (A). For all contracts subject to 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


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 advertising; layoff or termination; rates of pay or other terms of compensation; and selection for training, 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 inquired about, discussed, or disclosed the compensation 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 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 section 204 of 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 refusal 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 under the Davis-Bacon Act. 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 work under a Federal 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.


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 (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 exclusion list 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 employee of any 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.