

**FDX NON-MEMBER ATTENDANCE AGREEMENT
WITH NON-DISCLOSURE, ANTITRUST AND INTELLECTUAL
PROPERTY RIGHTS AGREEMENTS¹**

For Financial Data Exchange Spring 2023 Summit

1. Introduction. Financial Data Exchange, LLC (“**FDX**”), is a Delaware limited liability company dedicated to identify, define and/or adopt a common, interoperable standard for secure and convenient consumer and business access to their financial records (“**Purpose**”). FDX is an independent subsidiary of FS-ISAC, Inc., a Delaware non stock corporation (“**FS-ISAC**”). This FDX Non-Member Attendance Agreement with Non-Disclosure, Antitrust and Intellectual Property Rights Agreements (“**Agreement**”) shall be executed and binding on each Person participating or attending the Financial Data Exchange Spring 2023 Summit (the “**Group Event**”), that is not already a member of FDX. Compliance with, and agreement to, this Agreement is a prerequisite to the undersigned’s (the “**Participant**”) participation or attendance in any Group Event activity. A “**Party**” or “**Parties**” to this Agreement shall mean FDX and Participant. By becoming a Party to this Agreement, you agree to comply with and be bound by the terms and conditions of (A) this Agreement (B) the FDX Antitrust/Competitive Provisions (the “**Antitrust Guidelines**”), and (B) the FDX Intellectual Property Rights Agreement (the “**FDX IP Policy and Agreement**”), each of which are attached hereto as Exhibits A and B and incorporated into this Agreement by this reference thereto.

2. Confidential Information.

2.1 Confidential Information. Other than as authorized and permitted pursuant to the FDX IP Policy and Agreement, Participant (the “**receiving Party**”) shall hold in strict confidence, and will not disclose to any third party, other than on a confidential basis to its and its Affiliate’s directors, officers, employees, consultants, agents and representatives with a need to know such information and who are subject to obligations of confidentiality at least as protective as those set forth herein (but in no case less than those generally employed in the financial industry) to effectuate the Purpose, any Shared Information and the Background IP therein obtained from any disclosing party (whether FDX or another participant (but not including Participant) at the Group Event, “**disclosing Party**”), or to which the receiving Party has access, including without limitation Work Items (collectively, the “**Confidential Information**”).

(a) “**Applicable Law**” means, with respect to any Person, any transnational, domestic or foreign federal, state or local law (statutory, common or otherwise), constitution, treaty, convention, ordinance, code, rule, regulation, order, injunction, judgment, decree, ruling or other similar requirement enacted, adopted, promulgated or applied by a governmental authority that is binding upon or applicable to such Person, as amended, unless expressly specified otherwise.

¹ To be executed by Persons participating, sponsoring, presenting or just attending an FDX sponsored event that are not current members of FDX.

(b) “**Background IP**” of a Party shall mean Intellectual Property existing prior to the development or disclosure of the applicable Shared Information, that is owned by such Party or that such Party has the right to sublicense without paying additional fees to a third party.

(c) “**Intellectual Property**” mean (a) patents and patent applications; (b) trademarks, service marks, trade dress, Internet domain names, logos, trade names and corporate names and registrations and applications for registration thereof; (c) copyrights and registrations and applications for registration thereof; (d) computer software, data and documentation; (e) inventions, trade secrets, know-how, methodologies, and confidential business information and data, whether patentable or non-patentable and whether or not reduced to practice; (f) any other intellectual property or proprietary right; and (g) copies and tangible embodiments thereof.

(d) “**Person**” means a natural person, partnership, limited liability partnership, corporation, limited liability company, trust, unincorporated association, joint venture, or other entity or any federal, state or local government, agency, commission, department, or instrumentality.

(e) “**Shared Information**” means, without limitation, software, data, documents, or other materials or information, whether tangible or intangible, shared by a Party during the course of such Party’s participation (before, during or after) with respect to any Group Event.

(f) “**Work Item**” means any document, comment letter, white paper, research, materials, survey, technical specification, standard, schema, API, publication, data model, data set, definition, dictionary, software code, directory, invention, technology or other work or materials, and any modifications, enhancements or improvements thereof, developed, created, prepared, authored, conceived or reduced to practice by Participant (solely or jointly with other participants or FDX) in connection with any Group Event. For clarity, “Works Items” includes derivative works, including derivative works of Shared Information, authored in connection with any Group Event.

2.2 Exclusions. The following shall not be deemed Confidential Information for purposes of this Agreement: (i) information generally known in the industry or otherwise publicly available at the time of disclosure, (ii) information that a receiving Party can demonstrate was lawfully in its possession on a non-confidential basis prior to the date of disclosure, (iii) information which has been disclosed by third parties which have a right to do so, or (iv) information developed independently by the receiving Party without reference to or use of the Confidential Information. Each receiving Party’s obligations pursuant to this Section 2 shall survive the term of a Group Event together with any adjournments, continuations and extensions thereof. Notwithstanding anything herein to the contrary, each receiving Party shall have the right to retain (a) one (1) copy of Confidential Information only to the extent required for legal, regulatory or other governmental compliance purposes and (b) Confidential Information contained in its electronic back-up systems for so long as required to comply with its internal document retention policies, and, for the sake of clarity, in each case in compliance with Applicable Law.

2.3 Permitted Disclosures. Notwithstanding anything to the contrary in this Section, a receiving Party may disclose the Confidential Information of a disclosing Party to the extent such disclosure is compelled by Applicable Law, provided that the receiving Party shall, to the extent not prohibited by Applicable Law, (i) promptly inform the disclosing Party of the imminent disclosure, (ii) use its commercially reasonable efforts to cooperate with the disclosing Party's efforts to seek a protective order or similar treatment and (iii) disclose no more information than is necessary.

2.4 Pass Through of Confidentiality Restrictions to Recipients. Each receiving Party represents, warrants and covenants that all its staff, contractors and consultants will be bound by substantially similar obligations of confidentiality and restrictions regarding use of information as those set forth herein.

2.5 Equitable Relief. FDX and Participant acknowledge that improper disclosure of Confidential Information may cause irreparable injury to the disclosing Party, and that remedies at law for any such breach could be inadequate. In the event of a breach or threatened breach, the disclosing Party has the right to seek injunctive relief (in addition to any and all other remedies available at law or equity) without the need to post a bond or other security, or demonstrate the confidential nature of its Confidential Information.

3. Indemnification. Participant shall indemnify, defend and hold harmless FDX and its respective managers, officers, employees and agents, from and against any claims, losses, damages or expenses (including reasonable attorney fees, expenses and disbursements) by third parties pertaining to the actual or alleged infringement of any Intellectual Property right, including, without limitation, patents, copyrights, trademarks, service marks, or misappropriation of trade secrets or any similar property rights, arising from FDX accessing, using or distributing any Shared Information or Work Item provided by Participant, while in accordance with the terms and conditions of this Agreement.

In the event of any claim or suit relating to any matter for which Participant has agreed to provide indemnification under this Agreement, FDX shall promptly provide notice of such claim or suit to Participant. Participant shall then have the sole right to control the conduct of the claim or suit and FDX shall reasonably cooperate in the conduct of such claim or suit at the expense of Participant; provided, however, that FDX may, in its own discretion and at its own expense, participate in the defense of any claim including counsel of its own choosing but such participation shall not relieve Participant of its obligations to defend such claim. In no event, however, may there be a settlement of any such claim or suit without the written consent of FDX unless Participant agrees with all other parties to the dispute to keep the terms of such settlement confidential, such settlement requires only monetary payments that are fully paid by Participant pursuant to this Section 3, and such settlement requires no specific performance on the part of FDX, other than to cease using the infringing item. Subject to the foregoing sentence, Participant has the sole and exclusive authority to enter into any settlement that would impose an injunction or any other equitable relief on FDX.

4. Limited Representations; Disclaimers.

4.1 General. FDX and Participant represents, warrants and covenants that it (i) is duly formed and existing and in good standing under the laws of the State or Country of its incorporation, if a corporation, or formation otherwise; (ii) has been duly authorized to enter into this Agreement; and (iii) shall comply with this Agreement, the Antitrust Guidelines and FDX IP Policy and Agreement.

4.2 Compliance with Law. Participant shall comply with Applicable Law in connection with the performance of its obligations and the exercise of its rights under this Agreement.

4.3 Right to Grant Licenses. Participant represents and warrants that such Party has the right to grant the rights and licenses which are purported to be granted hereunder by such Party. With respect to any presentations, materials, feedback, input, advice or other form of information provided to FDX (the “**Presentation**”), the Participant represents and warrants that the Presentation and accompanying materials, including any handouts / booklets prepared by him/her for attendees (“**Presentation Materials**”) and FDX’s exercise of any rights granted to it under this Agreement does not and will not infringe or violate the rights of any third party, including without limitation any copyrights, trademarks, patents or rights of publicity or privacy. Participant is hereby instructed to **not provide any information it deems confidential** to the Participant or any party he/she is affiliated with. Any Presentation or Presentation Materials shall be deemed non-confidential and available for public use and may be used in any Draft or Final Specifications (as such terms are defined in the FDX IP Policy and Agreement) without cost, license or other required grant.

4.4 Disclaimer. While the information contained in each Work Item is believed by the Participant and FDX to be accurate, and except as provided in Section 4.3, PARTICIPANT AND ITS AFFILIATES AND FDX MAKE NO WARRANTY, EXPRESS OR IMPLIED, WRITTEN OR ORAL, UNDER THIS AGREEMENT, AS TO ANY SHARED INFORMATION, BACKGROUND IP OR WORK ITEM OR THEIR SUITABILITY FOR USE OR ADOPTION IN ANY FINAL WORK PRODUCT OR OTHERWISE, AND ANY SUCH WARRANTY IS EXPRESSLY DISCLAIMED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. NOTHING IN THIS AGREEMENT SHALL REQUIRE OR BE DEEMED TO REQUIRE FDX OR PARTICIPANT TO ADOPT, IMPLEMENT OR SUPPORT ANY SHARED INFORMATION, BACKGROUND IP, WORK ITEM OR FINAL WORK PRODUCT. ALL INFORMATION PROVIDED BY FDX IS PROVIDED “AS IS.” ALL INFORMATION ACCESSIBLE ON OR THROUGH FDX IS PROVIDED WITH ALL FAULTS, AND THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY AND EFFORT IS WITH THE USER.

5. Limitation of Liability. IN NO EVENT SHALL FDX OR PARTICIPANT BE LIABLE TO ANY OTHER PARTY OR TO ANY THIRD PARTY FOR INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION

LOST PROFITS) ARISING FROM BREACH OF THIS AGREEMENT EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

6. Amendment. This Agreement may be amended only by the written consent of FDX and Participant.

7. Assignment. Participant may not assign this Agreement, or its rights and obligations hereunder, without the prior written consent of FDX. Any purported assignment in violation of this Section shall be null and void. This Agreement shall be binding upon, and inure to the benefit of, the Parties and their respective successors and permitted assigns.

8. Notice. Any notice required or permitted to be given under this Agreement shall be given in writing and shall be hand delivered, sent by e-mail, sent by certified or registered mail or sent by overnight courier service to (a) Participant as set forth on the signature page of this Agreement, or at such address or e-mail address as it may have specified in writing to FDX, and (b) FDX at the below address or at such location as FDX shall have specified in writing to Participant as its principal office.

Financial Data Exchange, LLC
c/o FS-ISAC
12120 Sunset Hills Road, Suite 500
Reston, VA 20190
Attention: FDX Managing Director

9. Miscellaneous.

9.1 Governing Law. This Agreement will be interpreted and construed in accordance with the laws of the state of Delaware, without regard to its principles of conflict of law or choice of laws.

9.2 Dispute Resolution. The parties (a) hereby irrevocably and unconditionally submit to the jurisdiction of the state courts of Delaware and to the jurisdiction of the United States District Court for the District of Delaware for the purpose of any suit, action or other proceeding arising out of or based upon this Agreement, (b) agree not to commence any suit, action or other proceeding arising out of or based upon this Agreement except in the state courts of Delaware or the United States District Court for the District of Delaware, and (c) hereby waive, and agree not to assert, by way of motion, as a defense, or otherwise, in any such suit, action or proceeding, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Agreement or the subject matter hereof may not be enforced in or by such court.

9.3 No Third-Party Beneficiaries. This Agreement does not create, and shall not be construed as creating, any rights enforceable by any person not a Party to this Agreement.

9.4 Headings. The headings of the Sections contained in this Agreement are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

9.5 Press Releases and Marketing. Participant may only issue press releases related to FDX or the Group Event upon receiving the approval of the FDX, acting in its sole discretion.

9.6 Force Majeure. No Party shall be held financially or otherwise responsible for any delay or failure in performance under this Agreement, which is caused by the unavailability of third-party communications facilities, fires, strikes, embargoes, government requirements, civil or military authorities, acts of God, acts by terrorists or terrorist organizations or by the public enemy or other similar causes beyond the reasonable control and without the fault or negligence of such Party.

9.7 Severability. If any provision in this Agreement is found to be invalid, unlawful or unenforceable to any extent, the Parties shall endeavor in good faith to amend this Agreement to preserve its intention. If the Parties fail to agree on such an amendment, such invalid provision will be enforced to the maximum extent permitted by law or, if not enforceable, will be severed from the remaining terms, conditions and provisions, which will remain in full force and effect.

9.8 Waiver. No failure on the part of any Party to exercise, or delay in exercising, any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or remedy by such Party preclude any other or further exercise thereof or the exercise of any other right or remedy. A waiver on one occasion shall not constitute a waiver on any further occasion.

9.9 Entire Agreement. The provisions of this Agreement, including all documents incorporated herein by reference, constitute the entire agreement between the Parties and supersede all prior agreements and understandings relating to the subject matter hereof.

9.10 Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if all Parties hereto had signed the same document. All counterparts shall be construed together and shall constitute one instrument.

9.11 Further Assurances. Each of the Parties to this Agreement covenants to execute upon request of the other Parties any further documents that the requesting Party reasonably deems necessary to effectuate the terms, conditions or intent of this Agreement.

9.12 Rights and Remedies. The remedies afforded to the Parties in this Agreement are not intended to be exclusive, and each remedy shall be cumulative and shall be in addition to all other remedies available to the Parties at law or in equity. This Agreement shall not be construed to confer any rights or remedies upon any person or entity, except FDX and the Participant. No delay or omission by any Party in exercising any rights or remedies under this Agreement or Applicable Law shall impair such right or remedy or be construed as a waiver of any such right or remedy.

9.13 Independent Contractors. Nothing in this Agreement shall make FDX and Participant partners, joint venturers, or otherwise associated in or with the business of the other. No Party shall be liable for any debts, accounts, obligations, or other liabilities of any other Party, its agents, or employees. The Parties are not authorized to incur debts or obligations of any kind, on the part of or as agent for the other except as may specifically be authorized in writing.

[Signature Page Follows]

COUNTERPART SIGNATURE PAGE

Notices to Participant shall be provided at the following addresses:

Participant Name: _____

Address: _____

Attention of: _____

Title: _____

Email address: _____

Accepted, Acknowledged and Agreed

Financial Data Exchange, LLC

Participant: _____
[Name of Participant]

By: _____

By: _____

Name: Don Cardinal

Name: _____

Title: Managing Director

Title: _____

Date: _____

Date: _____

Exhibit A

Antitrust/Competitive Provisions

- (a) FDX is committed to conducting its affairs in compliance with federal, state, and, as applicable, international antitrust and competition laws (collectively, the “**Antitrust Laws**”). The FDX Members and Group Event participants may compete with one another in various lines of business and it is therefore imperative that they approach and engage in all FDX activities, including all meetings, discussions, communications, and other interactions, with compliance with the Antitrust Laws in mind. Accordingly, all Group Event Participants, as a condition of participating in the Group Event, must acknowledge and adhere to the guidelines in (b) below.
- (b) Antitrust guidelines:
1. Participants are prohibited from discussing or engaging in any written or oral exchange of information relating to any company-specific, competitively sensitive information, including terms, sales, conditions, pricing, or future plans, related to their firms or other firms, including vendors or service providers they engage;
 2. Group Event meetings and any Participant portal or forum are not to serve as an opportunity or conduit for discussions or negotiations between or among vendors, manufacturers, service providers, or other entities with respect to their own competitive activities or to the activities of any other participant or group of participants;
 3. Neither Participant staff, officers, or directors nor its members, working groups, or working group chairs are to recommend in any FDX-sponsored exchange, event or forum in favor of a coordinated boycott of or against the adoption of any product or service of particular manufacturers or vendors;
 4. Participant will determine unilaterally the effect of any exchanged information on its individual purchasing and related decisions;
 5. Participant in its workings with FDX must base decisions to develop or adopt guidelines, specifications, standards, test procedures, or certification programs upon appropriate technical, business, and consumer considerations, and not upon any effort or purpose to reduce or eliminate competition from any business entity or to impede the development or adoption of new or innovative products or services;
 6. Any breach of these guidelines will be reviewed by the Board of Directors of FDX and may result in termination of the Participant’s participation in Group Events, future group events and forfeiture of remaining fees; and
 7. Group Event chairs, directors, or staff will designate a responsible party to keep and disseminate minutes of all formal meetings at the Group Event.

Exhibit B

Amended and Restated FDX Intellectual Property Rights Agreement (Adopted by the Board of Directors on February 12, 2020 and amended on July 15, 2021)

The Financial Data Exchange, LLC, (“**FDX**”), is a Delaware limited liability company dedicated to identify, define and/or adopt a common, interoperable standard for secure consumer and business access to their financial records (“**Purpose**”). This FDX Intellectual Property Rights Agreement (“**Agreement**”) shall be binding on each Member of FDX. Compliance with, and agreement to, this Agreement is a prerequisite to each Member joining FDX and/or participation in any Working Group. A “**Party**” or “**Parties**” to this Agreement shall mean any or all of FDX Members that is a party to this Agreement at a given time.

1. Definitions.

“**Adopter**” shall mean any Person that implements a Final Specification.

“**Affiliate**” means, with respect to any Person, any other Person directly or indirectly Controlling, Controlled by, or under Common Control with, such other Person.

“**Control**” with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms “Controlling” and “Controlled” have correlative meanings.

“**FDX LLC Agreement**” has the meaning set forth in the FDX Membership Agreement.

“**FDX Membership Agreement**” means the Financial Data Exchange, LLC Membership Agreement to which this Agreement is attached as an Exhibit (and by signing the FDX Membership Agreement the Members agree to be bound by the terms of this Agreement as amended from time to time).

“**Final Specification**” means any Draft Specification adopted by FDX.

“**Compliance Requirement Documents**” means the document that specifies the requirements that must be met and the process that must be executed by Products for purposes of demonstrating that such Products comply with a Final Specification. FDX may change or add to this document.

“**Compliant Product Portion**” means only those specific portions of Products that: (i) implement and are compliant with the actual Final Specification, whichever the case may be, (ii) are qualified pursuant to the Product Qualification Process, (iii) are within the bounds of the Scope and (iv) meet the requirements set forth in the Compliance Requirement Documents.

“**Contribution**” means any written or electronic document submitted to a Working Group for inclusion into a Draft Specification or Final Specification by a Member, unless explicitly stated in the submission as “NOT A CONTRIBUTION”. “Contribution” shall also mean any oral submission to a Working Group for inclusion into a Draft Specification or Final Specification by a FDX Member unless the Member notifies FDX and the Working Group in writing within five (5) days of the oral submission, that such submission is not a contribution.

“**Draft Specification**” means all versions of the document developed by a specific Working Group based on and within the scope of the given Working Group Directive and all formal comments thereto provided by any FDX Member within said Working Group that are to be considered for inclusion in the Final Specification to be adopted by FDX to achieve the Purpose of this Agreement.

“Errata and Forms Corrections” or “E&F Corrections” means corrections made to Final Specifications for (I) the purpose of (a) fixing errors in existing and published features (but not for additional features), (b) clarifying the specifications or for providing context/rationale or (c) removing features required because of an uncertainty or error in existing feature operation; (II) correcting references to form documents (such as tax or other governmental forms) published in the public domain that are changed, added or otherwise modified by such governmental agencies such that references (or the lack thereof) in the current Final Specifications are no longer accurate; and/or (III) updating references to documents or standards referred to (or incorporated by reference) in the current Final Specification (e.g., Control Considerations for Consumer Financial Account Aggregation Services, User Experience Guidelines and other referenced documents, collectively **“Referenced Materials”**) that have been updated/revised since ratification of the then current Final Specification to the updated/revised version of the Referenced Materials so long as such updated/revised version of the applicable Referenced Materials are approved by at least two-thirds of the FDX Board of Directors.

“Member” means a Member of FDX as defined in Section 1.01 of FDX’s LLC Agreement.

“Necessary Claims” means claims of a patent or patent application that (a) are owned or controlled by a Member or its Affiliates (Licensor) now or at any future time while this Agreement remains in effect; and (b) are necessarily infringed by implementing those portions of a Final Specification within the bounds of the Scope, wherein a claim is necessarily infringed only when it is not possible to avoid infringing it because there is no technically reasonable non-infringing alternative for implementing such portions of the Final Specification within the bounds of the Scope. Notwithstanding the foregoing sentence, Necessary Claims do not include any claims (i) other than those set forth above even if contained in the same patent as Necessary Claims; (ii) that read solely on any implementations of any portion of the Final Specification that are not within the bounds of the Scope; or (iii) that, if licensed, would require a payment of royalties by the Licensor to unaffiliated third parties.

“Person” means a Person as defined in Section 1.01 of FDX’s LLC Agreement.

“Products” means software or hardware products, or combinations thereof.

“Product Qualification Process” means the process created by FDX for qualifying Products.

“Scope” means the protocols and data formats needed for the implementation of the Final Specification. For clarification, the Scope shall not include (i) any enabling technologies that may be necessary to make or use any Product or portion thereof that complies with the Final Specification, but are not themselves expressly set forth in the Final Specification; or (ii) the implementation of other published specifications developed elsewhere but explicitly referred to in the body of the Final Specification; or (iii) any portions of any Product and any combinations thereof the purpose or function of which is not required for compliance with the Final Specification.

“Working Group” means the body of individuals given the task of creating a Final Specification that meets the criteria of the Working Group Directive assigned that particular Working Group by FDX. Working Groups are formed by FDX based on Working Group Directives. Working Groups are formed in accordance with FDX’s LLC Agreement.

“Working Group Directive” means a range of intended uses for Compliant Product Portions, where a Final Specification is to be prepared so as to specify implementations in accordance with those intended uses. A Working Group Directive may be part of a Working Group’s charter or directives specifically given to such Working Group by FDX.

2. Non-Confidentiality of Submissions. Each Member of FDX agrees that any Contributions shall be deemed to be made on a non-confidential basis and that the Members shall be free to disclose these submissions for purposes of developing and adopting any Final Specification(s) and in connection with such activities.

3. Copyright License.

(a) Subject to Sections 2 and 5 hereof, each Member hereby grants to each of the other Members of FDX who participate in a Working Group of FDX and to FDX, a worldwide, royalty-free, license under its copyrights in its Contributions to reproduce, distribute, display, perform and create derivative works for the purposes of developing any Draft Specifications, Final Specifications or derivative works thereof in furtherance of the Purpose of this Agreement.

(b) All Contributions submitted by a contributing Member shall be licensed by the contributing Member to FDX and all Adopters under the grant specified in Section 4(b) hereof for all Final Specifications in which the Contributions become included, even if such Member has withdrawn or been terminated as a Member of FDX.

4. License Grant.

(a) Effective upon the adoption by FDX of each Final Specification, and subject to Section 5, each Member and its Affiliates hereby grants to each Adopter a non-exclusive, royalty-free, perpetual, irrevocable, nontransferable, nonsublicenseable, worldwide license under the Member's Necessary Claims with respect to the Final Specification solely to make, have made, use, import, offer to sell, sell and otherwise distribute and dispose of Compliant Product Portions; provided that such license need not extend to any part or function of a product in which a Compliant Product Portion is incorporated that is not itself part of the Compliant Product Portion.

(b) In addition, effective as of adoption of each Final Specification, each Member hereby grants to FDX and each Adopter a worldwide, royalty-free license under its copyrights in such Final Specification to reproduce, distribute, display and create derivative works of such Final Specification solely as necessary to make, have made, use, import, offer to sell, sell and otherwise distribute and dispose of Compliant Product Portions.

(c) In the event that a Member ("Member A"), other than a Member who has Necessary Claims that they are providing a license for under Section 4(a), or an Adopter, files suit against a Member ("Member B") for patent infringement arising from Member B's use or sale of products and systems that are compatible with the Final Specification(s) then Member B shall have the unilateral right to change the license grant set forth in Section 4(a) above under Necessary Claims, if any, from a royalty-free license to a reasonable royalty bearing license with respect to Member A or the Adopter and be able to collect such royalty retroactively commencing on the date that Member A or the Adopter filing such suit is alleging Member B commenced the infringement which is the basis of the suit.

(d) For the purposes of this Section 4, a product or system is "compatible" with the Final Specification(s) if it actually implements or incorporates a Compliant Product Portion.

(e) In addition to being bound by the terms of this Agreement, effective upon the execution of the FDX Membership Agreement, each Member hereby grants the licenses set forth in Section 4(a) – (b) (License Grant) with respect to the Final Specifications then in effect. Each

Member represents that it was provided the opportunity to review such Final Specifications then in effect and grants the licenses stated in the prior sentence (Section 4(a) – (b) (License Grant)) whether or not such Member actually reviewed the Final Specifications then in effect. Said license grant is effective as of the date such Member executed the FDX Membership Agreement.

5. Draft Specification Review.

(a) No less than thirty (30) days prior to a vote of the FDX Board of Directors (the “**Notice and Review Period**”) to approve a Draft Specification as a Final Specification (“**Draft Final Specification**”), FDX shall provide each Member with a copy of the Draft Final Specification for review. Within thirty (30) days of its receipt of the Draft Final Specification, a Member may, in the Member’s sole discretion, provide to FDX a notice of objection to the Draft Final Specification under review on the ground that the Member will not license its Necessary Claims under Section 4(a) (“**Notice of Objection**”). The Notice of Objection shall include a list of any Necessary Claims that the Member believes in good faith it may own or control, and that it is unwilling to license under Section 4(a). The Notice of Objection shall also identify, in the Member’s good faith belief, the portion of the Draft Final Specification that, if implemented, may infringe such Necessary Claims. If a Member resigns from FDX within the thirty (30) day period after receipt of a Draft Final Specification, and does not provide a Notice of Objection under this Section 5(a), the Member’s licensing obligations under Section 4(a) of this Agreement shall survive with respect to any Final Specification that is approved based on the Draft Final Specification at issue.

(b) If one or more Members submit a Notice of Objection pursuant to Section 5(a), FDX shall either (i) cause further deliberations to occur regarding the content of the Draft Final Specification in light of any Notices of Objection, or (ii) obtain Board approval of the Draft Final Specification without regard to a Notice of Objection.

(c) Draft Final Specifications will be deemed approved as Final Specifications when approved by two-thirds of the Board of Directors following the Notice and Review Period.

(d) In the event a Draft Final Specification is approved as a Final Specification without modification of a provision to which a Notice of Objection was directed, the Member providing the Notice of Objection shall, within twenty one (21) days of receipt of the approved Final Specification either (i) take no action, which will constitute a withdrawal of its Notice of Objection, and bind the Member to the licensing obligations of Section 4(a) hereof, or (ii) resign as a Member of FDX consistent with Section 2.2 of the FDX Membership Agreement. Upon a Member’s resignation in accordance with this Section 5(c), any license provided by the Member pursuant to Section 3(b), and Sections 7(b)(ii), 7(b)(iii), 7(b)(iv) or 7(b)(v) hereof, shall survive, as shall any licenses granted under Section 4(a) with respect to previously approved Final Specifications and any Necessary Claims not identified in the Member’s Notice of Objection relating to the Final Specification to which the Notice of Objection was directed, but no license shall be granted by the Member to its Necessary Claims identified in its Notice of Objection with respect to the Final Specification to which the Notice of Objection was directed. A Member’s resignation in accordance with this Section 5(c) shall be deemed effective immediately prior to adoption of the Final Specification. In all other respects, the terms of the Member’s FDX Membership Agreement and FDX’s LLC Agreement shall apply.

(e) If any Draft Final Specification is further amended or modified, whether as a result of any Notice of Objection or other reason, when such revised Draft Final Specification is again distributed to Members for review as contemplated in Section 5(a), the procedures, rights and obligations set forth in Sections 5(a), 5(b), and 5(c) shall apply.

(f) E&F Corrections. FDX will notify all Members of E&F Corrections at least 14 calendar days before the date upon which the Board of Directors is scheduled to vote to approve incorporating E&F Corrections into a Final Specification; provided, however, the Board of Directors may shorten such 14 calendar day period for urgent matters when approved by four-fifths of the Board of Directors. E&F Corrections will be deemed made to the Final Specification when approved by two-thirds of the Board of Directors. FDX may provide a Log of E&F Corrections (or Errata and Forms Corrections Log) available for all Members to review. The posting of an E&F Correction to the Errata and Forms Corrections Log shall be deemed the first day of effective notice provided to all Members of such E&F Correction. The Board of Directors may delegate its authority to one or more task forces, working groups, committees or other bodies to establish procedures and processes for the determination, collection, circulation and approval of E&F Corrections to be presented to the FDX Board of Directors for final approval.

(g) Deprecation and Withdrawal of Final Specifications. A Final Specification may be deprecated or withdrawn after it has been adopted when the deprecation or withdrawal is approved by at least two-thirds of the FDX Board of Directors.

6. Confidentiality of Draft Specification. Until FDX adopts each Final Specification(s) and makes it generally publicly available, each Member will maintain all versions and revisions of the Draft Specifications and any other information designated as confidential (“Confidential Material”) in confidence with at least the same degree of care that it uses to protect its own confidential and proprietary information, but no less than a reasonable degree of care under the circumstances and will not use, disclose or copy the Confidential Material except as necessary for its employees or contractors with a need to know to evaluate and comment thereon. Each Member shall mark any copies it makes “confidential,” “proprietary” or with a similar legend and shall reproduce all copyright notices and disclaimers therein. Unless the parties agree otherwise, this obligation of confidentiality will expire two (2) years from the date of disclosure to such Member. Notwithstanding the foregoing, Confidential Material shall not include any information that is (a) in the public domain other than by a breach of a duty to the disclosing party; (b) received from a third party without any obligation of confidentiality; (c) rightfully known to the receiving party without any limitation on use or disclosure prior to its receipt from the disclosing party; (d) independently developed by employees of the receiving party; or (e) generally made available to third parties by the disclosing party without restrictions on disclosure.

7. Withdrawal and Termination.

(a) Conditions and Procedure for Withdrawal. Upon withdrawal or termination of a Member from FDX, this Section 7 shall apply to all licenses granted to or by such Member pursuant to this Agreement. The timing of such withdrawal or termination will determine the effect on such Member’s licensing obligations as specified in Section 7(b) below. Except as provided in Section 5(c), the effective date of withdrawal or termination shall be determined in accordance with the FDX Membership Agreement.

(b) Effect of Withdrawal. Subject to Section 5 of this Agreement, if Member withdraws from or is terminated from Membership in FDX:

(i) This Agreement shall continue in full force and effect for all remaining Members;

(ii) With respect to such Member, Sections 2, 6, 7 and 8 of this Agreement shall continue in full force and effect; and

(iii) With respect to Contributions from the withdrawing Member which are included in any Final Specification which is adopted after the effective date of withdrawal or termination, such Member shall be entitled to receive a license from all Members regarding all such Final Specifications under the terms of Section 3 and 4, but only if and when such Member agrees to and grants a license under the terms of Section 3 and 4 to all Adopters with respect to all such Final Specifications.

(iv) Section 4 of this Agreement shall continue in full force and effect with respect to all Final Specifications adopted prior to the effective date of withdrawal or termination (the “Committed Specifications”).

(v) This Section 7 is not intended to authorize, permit or allow the survival (or co-incident licensing) of any unmodified portion of a Committed Specification to be contained in any Final Specification approved after a Member’s termination unless (i) the unmodified portion of the Committed Specification is contained in a subsequent Final Specification that only extends or corrects the Committed Specification, or (ii) only if the withdrawing or terminated Member is granted and accepts a reciprocal license commensurate with and of the same scope as set forth in Section 4 with respect to such subsequent Final Specification incorporating the unmodified portion of the Committed Specification.

(vi) All other rights, licenses, obligations, terms and conditions of this Agreement shall terminate with respect to such withdrawing or terminated Member, including those set forth in Section 4, except as set out in Section 3(b), 7(b)(ii), (iii), (iv) and (v).

8. General.

(a) No Other Licenses. Except for the rights expressly provided by this Agreement, no Member grants or receives, by implication, or estoppel, or otherwise, any rights under any patents or other intellectual property rights from any other Member.

(b) No Warranty. All parties acknowledge that all information provided under this Agreement, including as part of the Final Specification(s) development process and the Draft Specification(s) and/or Final Specification(s) itself, are all provided “**AS IS**” **WITH NO WARRANTIES WHATSOEVER, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, AND THE PARTIES EXPRESSLY DISCLAIM ANY WARRANTY OF MERCHANTABILITY, NONINFRINGEMENT, FITNESS FOR ANY PARTICULAR PURPOSE, OR ANY WARRANTY OTHERWISE ARISING OUT OF ANY PROPOSAL (WHETHER PROVIDED IN WRITING OR ORALLY), SPECIFICATION, OR SAMPLE.**

(c) Limitation of Liability. **IN NO EVENT WILL ANY PARTY HERETO OR ANY OTHER MEMBER OF FDX BE LIABLE TO ANY OTHER PARTY OR MEMBER OF FDX FOR THE COST OF PROCURING SUBSTITUTE GOODS OR SERVICES,**

LOST PROFITS, LOSS OF USE, LOSS OF DATA OR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, OR SPECIAL DAMAGES OF ANY PARTY INCLUDING THIRD PARTIES, WHETHER UNDER CONTRACT, TORT, WARRANTY OR OTHERWISE, ARISING IN ANY WAY OUT OF THIS AGREEMENT, WHETHER OR NOT SUCH PARTY HAD ADVANCE NOTICE OF THE POSSIBILITY OF SUCH DAMAGES. THE PROVISIONS IN THIS SECTION 8(c) SHALL ONLY APPLY TO CLAIMS ARISING OUT OF THE CONTRACTUAL PROVISIONS OF THIS AGREEMENT AND NOT TO ANY OTHER MATTERS, AGREEMENTS, CLAIMS (INCLUDING CLAIMS OF INFRINGEMENT), SUITS OR OTHER PROCEEDINGS BETWEEN OR AMONG THE MEMBERS OR ANY OTHER PARTY.

(d) Governing Law. This Agreement shall be construed and controlled by the laws of the State of Delaware without reference to conflict of laws principles.

(e) Notices. All notices hereunder shall be electronic or written and sent to the parties at such addresses as the Parties may specify by such notice to FDX. For purposes of this section, notice can include notice by written mail, electronic mail or by facsimile. Such notices shall be deemed served when received and acknowledged by addressee or, if delivery is not accomplished by reason of some fault of the addressee, when tendered for delivery. Any party may give notice of a change of address and, after notice of such change has been received, any notice or request shall thereafter be given to such party at such changed address.

(f) Good Faith Dealing. Each party hereby represents and warrants that it has the power to cause all patents owned or controlled by such party and its Affiliates to be licensed as set forth in this Agreement.

(g) Not Partners. The parties hereto are independent companies and are not partners or joint venturers with each other.

(h) Complete Agreement; No Waiver. The provisions of this Agreement, including all documents incorporated herein by reference, the FDX Membership Agreement, and the FDX's LLC Agreement constitute the entire agreement between the Parties and supersede all prior agreements and understandings relating to the subject matter hereof. No modifications or additions to or deletions from this Agreement shall be binding unless in accordance with the provisions of the FDX Membership Agreement and the FDX's LLC Agreement, and the waiver of any breach or default will not constitute a waiver of any other right hereunder or any subsequent breach or default.

(i) No Rule of Strict Construction. If any provision of this Agreement is determined by a court to be unenforceable, the parties shall deem the provision to be modified to the extent necessary to allow it to be enforced to the extent permitted by law, or if it cannot be modified, the provision will be severed and deleted from this Agreement, and the remainder of the Agreement will continue in effect.

(j) Compliance with Laws. Anything contained in this Agreement to the contrary notwithstanding, the obligations of the parties hereto shall be subject to all laws, present and future, of any government having jurisdiction over the parties hereto, and to orders, regulations, directions or requests of any such government.

(k) Effect of Divestiture, Merger or Acquisition. In the event that an Affiliate ceases to be an Affiliate, such as by divestiture, then, if such former Affiliate becomes a Member of FDX, including agreement to the terms of this Agreement, within 90 days from the date the Affiliate status ceases, then all licenses shall continue uninterrupted. If such former Affiliate does not so sign-up, then Section 7(b) hereof shall apply with the former Affiliate to be considered the same as a withdrawing Member.

(l) Assignment. No Member may assign this Agreement, or its rights and obligations hereunder, without the prior written consent of FDX. Any purported assignment in violation of this Section shall be null and void. This Agreement shall be binding upon, and inure to the benefit of, the Parties and their respective successors and permitted assigns.