

FEDEX SHIP MANAGER SOFTWARE END-USER LICENSE AGREEMENT  
(United States, Canada and Puerto Rico Use Only)

SET OUT BELOW ARE THE TERMS AND CONDITIONS UNDER WHICH YOU ARE PERMITTED TO USE FEDEX SHIP MANAGER FSM SOFTWARE ("FSM SOFTWARE"). PLEASE READ THIS INFORMATION CAREFULLY. IF YOU AGREE TO BE BOUND BY THESE TERMS AND CONDITIONS, YOU MUST ACKNOWLEDGE YOUR AGREEMENT BELOW ON BEHALF OF YOURSELF AND THE ENTITY, IF ANY, WITH WHOM YOU ARE EMPLOYED OR REPRESENT AND ON WHOSE BEHALF YOU ARE AGREEING. ONCE ACKNOWLEDGED, THIS DOCUMENT WILL CONSTITUTE A LEGAL AGREEMENT BETWEEN FEDEX CORPORATE SERVICES ("FedEx") AND YOU AND SUCH ENTITY (collectively referred to as "You" or "Your" hereinafter) GOVERNING ALL USE OF FSM SOFTWARE. YOU WARRANT THAT YOUR ACKNOWLEDGMENT OF THIS AGREEMENT ("AGREEMENT") EVIDENCES YOUR INTENTION TO LEGALLY BIND YOU AND SUCH ACKNOWLEDGMENT IS INTENDED AS A SYMBOL OF YOUR SIGNATURE. PLEASE PRINT OUT A COPY OF THIS AGREEMENT AND RETAIN IT WITH YOUR FILES FOR FUTURE REFERENCE.

Section 1. Acknowledgment. You acknowledge that for the purposes of this Agreement "FedEx" shall mean and include FedEx Corporate Services, Inc. its parent company, and any and all of its affiliate companies including FedEx Express and FedEx Ground; provided, however, You further acknowledge that the sole obligor FedEx Corporate Services, Inc. alone. You further acknowledge that the contract of carriage for shipments made by You using FSM SOFTWARE (and not the terms governing use of FSM SOFTWARE) and originating in the United States is between You and the FedEx company to which You tender the package within the United States. You further acknowledge that for those shipments processed by You using FSM SOFTWARE and originating outside of the United States, the contract of carriage for Your shipment is with the FedEx subsidiary, branch, affiliate or independent contractor who originally accepts the shipment from You. If Your shipment originates in Canada, Your contract of carriage is with Federal Express Canada Ltd., its principals, subsidiaries, branches, and affiliates, and their respective agents and independent contractors.

Section 2. Grant. (a) FedEx grants You a personal, non-exclusive, non-transferable, royalty-free license to install and use FSM SOFTWARE only on Your internal computer systems located in Canada, the United States or Puerto Rico, along with any modifications and upgrades thereof, if any, and any related manuals, documents, or other items (hereinafter collectively the "Materials"), provided by or on behalf of FedEx, solely for the purpose of connecting with FedEx servers to label, rate, route, record, ship, track and invoice shipments tendered to FedEx by You using FSM SOFTWARE, and for no other purpose. For purposes of this Agreement, the term FSM SOFTWARE includes the physical media, if any, on which FSM SOFTWARE is provided to You.

(b) For purposes of this Agreement, the term SOFTWARE shall include all software, sample codes, screens, templates, designs, files, instructions, specifications, and other Materials, if any, provided to You by FedEx in connection with FSM SOFTWARE.

(c) If You are required to make any programming changes in Your internal hardware and software systems to enable You to install, use or remove FSM SOFTWARE, or any modification or upgrade thereof, such changes shall be at Your sole cost and expense and at Your sole risk. Your failure to make any changes or upgrades as required by FedEx may result in You being unable to continue using FSM SOFTWARE. FedEx may modify, upgrade and terminate the use of FSM SOFTWARE at any time for any reason.

Section 3. Intellectual Property Rights. (a) You acknowledge that FedEx holds and retains, other than as provided in this Agreement, all worldwide rights, title and interests, including without limitation, copyright and patent rights, in and to FSM SOFTWARE, and the Materials. You acknowledge that FedEx is not selling or otherwise transferring title in FSM SOFTWARE or the Materials to You.

(b) You may not copy, modify, adapt or reproduce FSM SOFTWARE or the Materials. You may not translate, decompile, reverse engineer or disassemble FSM SOFTWARE or the Materials in any event, except to the extent this limitation is prohibited by applicable law.

(c) You may not transfer or transmit, in whole or in part, FSM SOFTWARE or the Materials or FedEx trademarks and service marks as defined below, to any third party without FedEx's written approval.

(d) FedEx grants You a limited, personal, nonexclusive, royalty-free, non-transferable license to use and display the FedEx word and logo trademarks and service marks (hereinafter collectively the "Marks") only in the form as provided and presented by FedEx in FSM SOFTWARE solely in connection with Your use of FSM SOFTWARE as authorized under Section 2, above, provided that You comply with all provisions of this Agreement regarding the manner in which the Marks may be used. You may not use the Marks for any other purpose. You may not remove or alter in any way any Mark, including without limitation, distorting, animating or changing the color, font or proportions of any Mark, or combining it with any other name, mark or logo.

(e) You acknowledge that FedEx holds and retains all worldwide rights, title and interest in and to the Marks, and that all use of the Marks by You shall inure to the benefit of FedEx. You further acknowledge and agree that You will not claim, whether in whole or in part, any rights in the Marks, and will do nothing to impair, in any way, the Marks or FedEx's rights in the Marks. You may not use the Marks in any manner that is likely to cause confusion, mistake, or deception regarding whether FedEx sponsors or endorses Your use of FSM SOFTWARE or whether the You or Your use of Software is affiliated, associated, or connected with FedEx. You may not use the Marks to advertise, sell, market or otherwise distribute any products or services.

(f) In no event may FSM SOFTWARE or the Marks be used in such a way that, in FedEx's judgment, damage FedEx's goodwill. In the event FedEx, in its sole judgment, believes that any of Your uses of FSM SOFTWARE or the Marks violate this provision, FedEx reserves the right, to terminate this Agreement, or to notify You and You agree to comply with this provision.

Section 4. Use. (a) You agree to follow the instructions provided from time to time with FSM SOFTWARE, and in any Materials which may be provided with FSM SOFTWARE, for the installation and use of FSM SOFTWARE, the Marks, and FedEx services. FedEx may, from time to time and at its option, download directly to Your computer, by whatever means available, updates, upgrades, bug-fixes, patches or other modifications to FSM SOFTWARE. Use of FSM SOFTWARE to prepare shipments by or for the benefit of third party shippers is expressly prohibited.

(b) You acknowledge that You will not use FSM SOFTWARE in such a manner that adversely affects the functionality of the FedEx servers.

(c) You acknowledge that this Agreement does not include, and FedEx is not obligated to provide, any integration services, technical support, updates, upgrades, bug-fixes, patches or any other modifications to FSM SOFTWARE.

Notwithstanding the foregoing, as above provided, FedEx may from time to time and at its option, download directly to Your computer, by whatever means available, modifications and upgrades to FSM SOFTWARE. If requested by You, FedEx may, in its sole discretion, provide limited installation and integration assistance or technical support (collectively "Limited Support Services") with respect to Your installation and use of FSM SOFTWARE.

Section 5. Termination. (a) This Agreement is effective until terminated by either You or FedEx. This Agreement will terminate independently without notice if You fail to comply with any provision of this Agreement or any instructions regarding FSM SOFTWARE, the Materials or the Marks.

(b) Upon termination for any reason, You must cease all use of FSM SOFTWARE, the Materials and the Marks and return to FedEx all FSM SOFTWARE, all documentation and Materials provided to You in connection with FSM SOFTWARE and all copies thereof.

(c) FedEx reserves the right to unilaterally terminate this Agreement and the use of FSM SOFTWARE, the Materials and the Marks at any time and for any reason.

Section 6. Payment. You agree to remit payment for all invoices generated through the use of FSM SOFTWARE in accordance with the terms and conditions contained in the applicable FedEx Service Guide ("Service Guide"), Standard Conditions, tariff, or contract of carriage under which the shipment is accepted by FedEx, its subsidiary, branch or independent contractor, and to reference the invoice number when payment is remitted. You are responsible for payment of all charges generated through the use of FSM SOFTWARE under Your account number and registration number.

Section 7. Invoice Adjustments and Refunds. (a) If the use of FSM SOFTWARE in any way results in the generation of an inaccurate invoice for any shipping transaction, FedEx will bill You for, and You agree to pay to FedEx within fifteen (15) days of the invoice date, any additional amount applicable to the transaction or as otherwise provided in the applicable Service Guide, Standard Conditions, tariff, or contract of carriage under which the shipment is accepted by FedEx, its subsidiary, branch or independent contractor.

(b) You may bill shipping charges only to valid FedEx account numbers, either bill sender, bill recipient or bill third party.

(c) Shipments tendered with incorrect routing, labeling, commitment date, service designation or other errors through no fault of FedEx will not be eligible for any applicable refunds under FedEx's money-back guarantee policies. Refunds requested by You with respect to any shipment must be made in accordance with the applicable Service Guide, Standard Conditions, tariff, or contract of carriage under which the shipment is accepted by FedEx, its subsidiary, branch or independent contractor. You will not be entitled to any refund or credit under FedEx's money-back guarantees if FedEx determines that the claim resulted from improper use or installation of FSM SOFTWARE, or any modifications or upgrades thereof, or is due to the use of the Internet. FedEx, in its sole discretion, may suspend or terminate its money-back guarantees for any reason.

Section 8. Disclaimer of Warranty. You expressly acknowledge and agree that FSM SOFTWARE, the Materials, and any Limited Support Services are being provided to You by FedEx for Your use free of charge and that Your use of FSM SOFTWARE, the Marks, the Materials, and Limited Support Services is at Your sole risk. FedEx warrants that FSM SOFTWARE and the Materials will be free from performance

defects on the day You receive them which constitutes FedEx's sole and exclusive warranty. FedEx makes no warranties regarding the provision of any Limited Support Services FedEx agrees to provide hereunder. YOU FURTHER ACKNOWLEDGE THAT FEDEX EXPRESSLY DISCLAIMS AND EXCLUDES ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT AND NON-INFRINGEMENT. FEDEX DOES NOT WARRANT THAT FSM SOFTWARE OR THE MATERIALS OR ANY LIMITED SUPPORT SERVICES WHICH MAY BE PROVIDED BY FEDEX HEREUDNER WILL MEET ALL OR ANY OF YOUR REQUIREMENTS OR THAT THEIR OPERATIONS WILL BE UNINTERRUPTED OR ERROR FREE, OR THAT ANY DEFECT WITHIN FSM SOFTWARE OR THE MATERIALS OR THE LIMITED SUPPORT SERVICES, IF ANY, WILL BE CORRECTED. FURTHERMORE, FEDEX DOES NOT WARRANT NOR MAKE ANY REPRESENTATION REGARDING THE RESULTS OF ANY LIMITED SUPPORT SERVICES PROVIDED OR YOUR USE OF FSM SOFTWARE OR THE MATERIALS IN TERMS OF CAPABILITY, CORRECTNESS, ACCURACY, RELIABILITY OR OTHERWISE. NO ORAL OR WRITTEN INFORMATION, REPRESENTATION OR ADVICE GIVEN BY FEDEX OR AN AUTHORIZED REPRESENTATIVE OF FEDEX SHALL CREATE A WARRANTY.

Section 9. Remedies. . In the event of a breach of the express warranty provided in Section 8 above, FedEx will replace FSM SOFTWARE or the Materials with another copy of FSM SOFTWARE or the Materials or, if not practical, supply You with another of FedEx's proprietary automated shipping products, if available; provided that You return the defective copy of FSM SOFTWARE or the Materials to, or notify, FedEx within thirty (30) days of the date You receive them. You acknowledge that this Section sets forth Your SOLE AND EXCLUSIVE remedy and FedEx's SOLE AND EXCLUSIVE liability, for breach of warranty or any other duty.

Section 10. Limitation of Liability. YOU ACKNOWLEDGE THAT FEDEX IS PROVIDING FSM SOFTWARE, THE MATERIALS, AND, IF APPLICABLE, LIMITED SUPPORT SERVICES FREE OF CHARGE AND THAT THERE ARE OTHER FEDEX AUTOMATION SOLUTIONS AVAILABLE DIRECTLY FROM FEDEX OTHER THAN FSM SOFTWARE. UNDER NO CIRCUMSTANCES, INCLUDING BUT NOT LIMITED TO NEGLIGENCE, SHALL FEDEX OR ANY OF ITS PARENT CORPORATION, SUBSIDIARIES, EMPLOYEES, OFFICERS, DIRECTORS, AGENTS, SUBSIDIARIES, OR BRANCHES BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR OTHER DAMAGES IN TORT, CONTRACT, PRODUCT LIABILITY OR UNDER ANY OTHER THEORY OF LAW RESULTING FROM THE INSTALLATION OR REMOVAL OF FSM SOFTWARE OR THE MATERIALS, OR YOUR USE, OR INABILITY TO USE, FSM SOFTWARE, THE MARKS OR THE MATERIALS, OR RESULTING FROM THE LIMITED SUPPORT SERVICES, IF ANY, PROVIDED BY FEDEX HEREUNDER, INCLUDING, WITHOUT LIMITATION, DAMAGES RESULTING FROM LOSS OF USE, PROFITS, DATA, OR BUSINESS, AND DAMAGE TO YOUR INTERNAL COMPUTER SYSTEMS EVEN IF FEDEX, OR AN AUTHORIZED REPRESENTATIVE OF FEDEX, HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS EXCLUSION OF DAMAGES IS EFFECTIVE EVEN IF THE EXCLUSIVE REMEDY STATED IN SECTION 9 ABOVE FAILS OF ITS ESSENTIAL PURPOSE.

Section 11. Indemnification. You will, at Your sole cost and expense, defend, indemnify and hold harmless, FedEx, its parent corporation, subsidiaries and branches and their respective officers, directors, employees, agents, successors and assigns from all claims, demands, suits, damages, costs, expenses, suits, fines and judgments, including reasonable attorneys fees, hereinafter collectively "Claims") arising out of Your installation, use and removal of FSM SOFTWARE, the Materials, the Marks, the Limited Support Services, if any. FedEx may intervene and assume its defense in any such claims, at its expense and in its sole discretion. You will not settle any such action involving FedEx or FSM SOFTWARE, the Materials, the Marks, the Limited Support Services, if any, without the prior written consent of FedEx.

Section 12. Controlling Law and Severability. This Agreement shall be governed by and construed in accordance with the laws of the United States and the State of Tennessee, excluding its conflict of laws provision. If for any reason a court of competent jurisdiction finds any provision of this Agreement, or a portion thereof, to be unenforceable, that provision shall be enforced to the maximum extent permissible so as to effect the intent of the parties and the remainder of this Agreement shall remain in full force and effect. Any cause of action with respect to FSM SOFTWARE or any Limited Support Services provided hereunder must be instituted within one year after the claim or cause of action has arisen or be barred and must be brought in a court of competent jurisdiction within Western Tennessee. The terms of carriage for Your shipments shall be governed by the applicable Service Guide, Standard Conditions, or contract of carriage under which the shipment is accepted by FedEx, its subsidiary, branch or independent contractor.

Section 13. Terms of Carriage (a) You agree that domestic and international carriage by FedEx of any shipments tendered to FedEx pursuant to this Agreement shall be in accordance with the terms, conditions and limitations of liability set out on the NONNEGOTIABLE Air Waybill, Label, Manifest, or Pick-Up Record (collectively "Shipping Documentation") and as appropriate any transportation agreement between You and FedEx covering such shipment and in any applicable tariff, Service Guide or Standard Conditions of Carriage, copies of which are available upon request, and which are incorporated into this Agreement by reference. If there is a conflict between the Shipping Documentation and any such document then in effect or this Agreement, the transportation agreement, tariff, Service Guide, Standard Conditions of Carriage, or this Agreement will control, in that order of priority. If a shipment originates outside the United States, the contract of carriage is with the FedEx subsidiary, branch, or independent contractor who originally accepts the shipment. (b) In the event You use the FSM SOFTWARE to process shipments tendered to FedEx for delivery to locations outside the United States or country of shipment origin, You will, at Your sole expense, assure that the terms and conditions of international carriage supplied by FedEx from time to time (and which may be amended or modified from time to time at FedEx's sole discretion) are placed on the Shipping Documentation, as instructed by FedEx, for all such international shipments. You will defend, indemnify and hold harmless FedEx, its officers, directors, employees and agents from and against any and all losses, damages, claims and other items of cost and expense arising out of Your failure to apply the international carriage terms to the Shipping Documentation for such international shipments, including without limitation claims from the recipient of any shipment, and Your failure to follow FedEx's instructions in regard to the placement of the terms on the Shipping Documentation for such international shipments. (c) Printed Signature. You acknowledge that if the FSM SOFTWARE is used to process shipments to locations outside the United States or country of shipment origin, You must enter the name of the person completing the Shipping Documentation to print in lieu of Your manual signature on the Shipping Documentation, as applicable, for all shipments tendered by You to FedEx using the FSM SOFTWARE. You further acknowledge that such printed name shall be sufficient to constitute Your signature, and Your acceptance of FedEx's terms and conditions of carriage contained in the applicable transportation agreement, tariff, Service Guide, Standard Conditions, or Shipping Documentation, under which the shipment is accepted by FedEx, or its independent contractor. (d) Unless otherwise indicated, the shipper's address indicated on the face of any Shipping Documentation is the place of execution and the place of departure and the recipient's address listed on the face of the Shipping Documentation is the place of destination. Unless otherwise indicated on the face of the Shipping Documentation the first carrier of all shipments is FedEx Express, 3610 Hacks

Cross Road, Memphis, TN, 38125. In the event another carrier is listed on any such document, that carrier is the first carrier of the shipment. The address for FedEx Ground is P.O. Box 108, Coraopolis, PA 15230.-

Section 14. Notices. Any notice required or permitted to be given relating to this Agreement shall be given in writing as addressed below by mail, electronic mail, facsimile, or via FedEx service.

If to FedEx:

email: bldahmer@fedex.com  
street address: Customer Fulfillment Support Systems  
90 FedEx Parkway, Second Floor Horizontal  
Collierville, TN 38017

If to Licensee: To the name and address listed in the registration process or otherwise provided to FedEx in connection with FSM SOFTWARE or FedEx may provide notice by general posting to the various FedEx web sites. Any such notice shall be effective and deemed received when posted.

Section 15. Waiver. If FedEx fails to give notice or enforce any right under this Agreement, such failure shall not constitute a waiver of the same, unless reduced to writing and signed by FedEx. The waiver of any provision shall not constitute a waiver of the same or any other provision in the future.

Section 16. Export. By agreeing to this Agreement, and installing and using FSM SOFTWARE, You acknowledge and agree that You (i) assume all responsibility for compliance with, and are in compliance with all laws and regulations of the United States or the country in which You received FSM SOFTWARE regarding export, reexport and import of FSM SOFTWARE and the Materials and any related or underlying information, technology, process, product or service and (ii) will not export or reexport FSM SOFTWARE or the Materials. You further acknowledge that You are not a national of Cuba, Iran, Iraq, Libya, North Korea, Sudan or Syria or a Denied Party listed on the U.S. Denied Persons List or a Special Designated National on the U.S. Treasury Department's list of Specially Designated Nationals or equivalent legislation in the country of download. You further acknowledge that FSM SOFTWARE will not be used for the design or development of nuclear, chemical, biological, weapons or missile technology.

Section 17. Restricted Rights. Pursuant to 48 C.F.R. 12.212 or 48 C.F.R. 227.7202, as applicable, FSM SOFTWARE and any related materials and documentation are Commercial Items as defined in 48 C.F.R. 2.101 and are licensed to U. S. Government end users only as Commercial Items and only with the rights granted to all other end users as provided in this Agreement.

Section 18. Complete Agreement. This Agreement constitutes the entire agreement between You and FedEx with respect to FSM SOFTWARE, Limited Support Services, if any, the Marks and all Materials provided to You by FedEx and supersedes any prior or contemporaneous understandings, representations, statements or agreements, written or oral, regarding FSM SOFTWARE, Limited Support Services, if any, the Marks and all Materials provided to You by FedEx. The terms governing Your shipments are contained in the applicable Service Guide, Standard Conditions, tariff or contract of carriage under which the shipment is accepted by FedEx, its subsidiary, branch or independent contractor. No amendment to or modification of this Agreement will be binding on FedEx without FedEx's written consent. The provisions of Sections 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, and 17 will survive the termination of this Agreement. FedEx may modify this Agreement at any time for any reason.

I acknowledge my agreement to this Agreement as set out above on behalf of myself and the entity, if any, with whom I am employed or represent, and further acknowledge that I am the same person identified on the registration screen and that the information provided on the registration screen or otherwise provided to FedEx in connection with FSM SOFTWARE is true and accurate.