

DEVELOPER.PITNEYBOWES.COM SERVICES AGREEMENT
SHIPPING & MAILING API

(8/23/17)

IMPORTANT: DO NOT USE THIS SERVICE UNTIL YOU HAVE READ AND AGREED TO THIS SERVICES AGREEMENT. This is an agreement between you ("You" "Your" or "Developer") and Pitney Bowes Inc. ("PBI"). If You are accessing the Service on behalf of a company or organization, You certify that you are authorized to agree to this Agreement on behalf of such organization, and "You" as used in this Agreement will mean all authorized users within your organization. If You are located in a geography outside the United States, PBI will mean the affiliate or subsidiary of PBI operating in Your geography. By clicking next to "UPGRADE" prior to accessing the Service or by registering in the Developer Portal, You are agreeing to the terms of this Services Agreement (the "Agreement"). IF YOU ARE NOT WILLING TO BE BOUND BY THE AGREEMENT, terminate Your access to the Service. The terms of this Agreement will only apply to the extent You and PBI have not executed a separate Services Agreement for the same Service.

1. Definitions. For the purposes of this Agreement, the following terms will have the corresponding definitions:

"Acceptable Use Policy" means the terms under which You may access and use the Service;

"Available Hours of Operation" means twenty-four (24) hours per day, seven (7) days per week exclusive of Scheduled Downtime, described in Section 9(b), (PBI Responsibilities; Support), and downtime arising from causes beyond the reasonable direct control of PBI, such as the interruption or failure of telecommunications or digital transmission links, hostile network attacks or a Force Majeure event, as set out in Section 12;

"Available Hours of Support" means the hours set out in the Documentation during which time You may obtain technical support for the Services;

"Developer Data" means any data, such as an address record, geographic data, telephone number, individual or business record or user query, or other material submitted by You to the Service or provided by You to PBI for the performance of the Service;

"Developer Portal" means the part of the Service designated as providing You with information regarding the Services purchased by You, recording the number of Transactions performed and other pertinent information regarding Your access and use of the Service;

"Documentation" means the current technical and user documentation for the Service provided on the Developer Portal;

"Plan" or "Plans" means the option selected by You, which includes a Term of Service;

"Privacy Statement" means the terms under which PBI will collect, use and store Developer Data;

"Service" means the services offered by PBI, including the Shipping APIs, under the terms of this Agreement, further described in the Developer Portal;

"Shipping API" means the application program interface that PBI employs to deliver the appropriate Service.

"Term" means the period of time within which You may access and use the Service under the terms of this Agreement as set forth in the Plan selected by You; and

"Transaction" means the submission and processing of each individual Developer Data to the Service or the response to each individual Developer Data or user query submitted to the Service.

2. Grant of Rights. PBI hereby grants You a non-exclusive, non-transferable license to access and use the Service in accordance with the terms of this Agreement and the Acceptable Use Policy located at <http://www.pitneybowes.com/content/pb/us/en/license-terms-of-use/apis-acceptable-use-policy.html> during the Term indicated in the applicable Plan selected by You. PBI reserves all rights to the Service not expressly granted by this Agreement.

3. Term; Termination.

- a) This Agreement is effective upon Your selecting to Upgrade and will remain in effect for a month to month term. This Agreement will terminate when You provide thirty (30) days written notice to PBI of cancelation.
- b) Either party may terminate this Agreement and Your access to the Service by written notice if the other party commits a material breach of this Agreement and fails to cure such breach within fifteen (15) days after receipt of such notice, or an additional period of time as agreed to by the parties.
- c) Upon termination of this Agreement for any reason, You will immediately cease use of the Service and each party will promptly return all Confidential Information of the other party.
- d) Sections 4 (Fees, Payment Terms), 6 (Privacy Statement), 7 (Proprietary Rights; Suggestions), 8 (Non-infringement; Indemnification), 10 (Warranties; Disclaimers), 11 (Limitation of Liability), 15 (Applicable Law) and 16 (Verification) will survive termination of this Agreement indefinitely or to the extent set out therein.

4. Fees; Payment Terms.

- a) You will pay PBI the fees associated with the selected Plan. Unless otherwise identified in the Developer Portal, all fees are stated in and will be paid in United States currency. If You fail to pay any fees due by the due date, PBI may suspend performance of the Services upon ten (10) days written notice to You. PBI may change the monthly fees upon thirty (30) days' notice to You. Any increase in fees will not be effective until the commencement of the subsequent Term for the specific Plan for which the increase applies.
- b) The fees do not include any amount for taxes. You will pay all federal, state and local sales, use, property, excise, privilege, ad valorem, Internet-related, and other taxes imposed on or with respect to this Agreement for the Services provided hereunder. If any sales, use, excise or other taxes (except for taxes based on PBI's net income) are assessed against or required to be collected in connection with this Agreement it will be set forth at the point of purchase in the Developer Portal.
- c) You may access the Developer Portal to view Your usage and transaction history.
- d) **MAILING & SHIPPING ADJUSTMENT TRANSACTIONS.** If you use a shipping service provided by Pitney Bowes or a partner of Pitney Bowes, and it is determined that a mailing or shipping transaction did not contain sufficient postage, Pitney Bowes may automatically deduct the amount for the unpaid or short-paid transaction from your Postage Account. You will be able to review these adjustments in your Postage Account history and reports. If one or more of these payments cannot be collected from your account due to a lack of available funds, you may be charged a surcharge and your account may be suspended. You will be notified that your service has been temporarily suspended until all overdue balances have been paid. Pitney Bowes reserves the right to retain the services of a collection agency to recover the amount due for outstanding payments.

5. Your Responsibilities.

- a) Use of the Service is contingent on Your compliance with the Acceptable Use Policy and Your conveyance of the terms contained therein to any End User. Failure to comply with the Acceptable Use Policy may result in immediate suspension or termination of Your access to the Service.
- b) You hereby represent and warrant that You have maintained and will maintain any and all certifications, licenses or other authorizations necessary or proper in furtherance of Your use of the Service.

c) Developer shall comply with USPS known shipper requirement by linking a unique transaction ID to the requisite information required by the USPS as identified in the Shipping API documentation. Such identifier and related data shall be expeditiously provided to the USPS or other valid legal requestor. Developer shall be solely responsible for compliance with applicable privacy laws concerning the disclosure of such information. Developer shall inform their customer(s) of the transaction identifier and its purpose.

d) Developer shall not contact the USPS Postage Technology Management Group during the Term of the Agreement nor shall Developer contact or work directly with any similar entity or successor that is responsible for approving postage vendors with respect to PC Postage, e-Postage or similar technology. All such contact shall be made through PBI with respect to this Agreement and for technical support matters.

6. Privacy Statement. PBI will hold Developer Data in confidence in accordance with the Privacy Statement located at <http://www.pitneybowes.com/us/license-terms-of-use/lbs-api-privacy-statement.html>.

7. Proprietary Rights; Suggestions. You will retain all right, title and interest in and to all Developer Data. You grant PBI a royalty-free, worldwide, irrevocable, perpetual license to use or incorporate into the Service any suggestions, enhancement requests, recommendations or other feedback provided by You relating to the operation of the Service.

8. Non-infringement; Indemnification.

a) PBI will indemnify, defend and hold You, and Your officers, directors and employees harmless from all losses, damages, and reasonable costs and expenses to the extent they arise out of a claim by a third party that the Service, when used in accordance with the Documentation and in compliance with the terms of this Agreement, infringe or misappropriate any copyright, trademark, trade secret or patent registered or valid within the country the Service is authorized to be accessed. PBI will have control of the defense and will defend, at its own expense, any claim or litigation to which this indemnity relates, including the right to settle any such claim. You must notify PBI promptly of any such claim and will provide reasonable cooperation to PBI, upon PBI's request and at PBI's cost, to defend such claim. PBI will not agree to any settlement which requires acknowledgment of fault or an incurred liability on the part of an indemnified party not otherwise covered by this indemnification without indemnified party's prior consent. You may elect to participate in the defense of any claim with counsel of Your choosing at Your own expense.

b) If the Service is subject to a claim of infringement or misappropriation, or if PBI reasonably believes that the Service may be subject to such a claim, PBI reserves the right to: (i) offer a non-infringing replacement Service, at no cost to You, which replacement will be functionally equivalent to such Service; (ii) procure, at no cost to You, the right to continue to use such Service; or (iii) direct You to terminate use of such Service. If PBI directs You to terminate use of such Service, Your remedies, in addition to the indemnification set out herein, will be limited to a refund of any prepaid but unused fees for the Service.

c) PBI will not indemnify You or be liable for claims arising from the use of the Service with data, hardware or software not provided by PBI, use of the Service in a manner not authorized by this Agreement or the Acceptable Use Policy, or Your use of the Service other than as permitted in this Agreement and the Documentation.

d) You will indemnify, defend and hold PBI harmless against any claim arising from: (i) Your use of the Service in a manner not permitted under this Agreement; (ii) a third party claim that the Developer Data or any other data, files or other materials provided by You to PBI infringes any patent, copyright or trademark or misappropriates any trade secret; (iii) a violation of any law, rule or regulation regarding the protection of personal data or the use or access to the Service; or (iv) acts of gross negligence or willful misconduct. You will have control of the defense and will defend at Your own expense, any claim or litigation to which this indemnity relates including the right to settle any such claim. PBI must notify You promptly of any such claim and will provide reasonable cooperation to You, upon Your request and at Your cost, to defend such claim. You will not agree to any settlement which requires acknowledgment of fault or an incurred liability on the part of an indemnified party not otherwise covered by this indemnification without indemnified party's prior consent. PBI may elect to participate in the defense of any claim with counsel of its choosing at its own expense.

9. PBI Responsibilities; Support.

a) Support for the Service will be available during the Available Hours of Support. Support will consist of online chat, forum, and email technical support to assist You with the use of the Service and will be provided in accordance with the Documentation.

Client support is provided via email or telephone during “normal business hours” Monday to Friday 8AM-8PM Eastern Time. System availability is monitored and supported through Network Operations Center 24X7X365. Outside of “normal business hours”, for SEV1 issues, a callback service will be provided. SEV2-4 issues will be answered in business hours. Support details are posted at developer.pitneybowes.com and emails can be sent to ShippingAPISupport@pb.com. Support # is 844-470-6626 and 8PM Eastern Saturday to 8AM Eastern Sunday is reserved as a maintenance window for the application.

b) PBI will use commercially reasonable efforts to make the Services available during the Available Hours of Operation. The Service may be inaccessible or inoperable during certain periods to permit PBI to perform maintenance support services (“Scheduled Downtime”). PBI will use reasonable commercial efforts to minimize any disruption, inaccessibility or inoperability of the Services in connection with the Scheduled Downtime or other disruption of Service.

c) PBI will maintain USPS approvals and comply with all USPS rules and regulations. Loss of USPS approval status shall be considered a material breach and subject to Section 3 (b).

10. Warranties; Disclaimers.

a) PBI represents and warrants that it has the right to grant You the rights granted hereunder.

b) PBI represents and warrants to You that the Service will materially conform to the Documentation. PBI does not warrant the operability or accuracy of any Developer Data processed by PBI.

c) PBI DOES NOT WARRANT THAT THE SERVICE WILL OPERATE ERROR FREE OR THAT PBI WILL CORRECT ALL ERRORS IN THE SERVICE. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT, THE SERVICE IS PROVIDED “AS IS” AND PBI AND ITS THIRD PARTY SUPPLIERS DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE USE OF THE SERVICE, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, RELIABILITY, NONINFRINGEMENT, COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE IN TRADE.

d) PBI WILL NOT BE LIABLE FOR ANY CLAIMS OR DAMAGES CAUSED BY THE UNAUTHORIZED USE OF THE SERVICE OR ACTS OF ABUSE OR MISUSE OF THE SERVICE BY YOU. IN ADDITION, PBI WILL NOT BE LIABLE FOR ANY: (I) LOSS OR CORRUPTION OF DEVELOPER DATA USED IN THE SERVICE; OR (II) LOSS OR DAMAGE IN CONNECTION WITH OR ARISING OUT OF THE INTERRUPTION OR LOSS OF USE OF THE SERVICE.

11. Limitation of Liability.

A) DISCLAIMER. NEITHER PARTY NOR PBI’S THIRD PARTY SUPPLIERS WILL BE LIABLE FOR ANY PUNITIVE, SPECIAL, CONSEQUENTIAL, INCIDENTAL OR INDIRECT DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUE, BUSINESS INTERRUPTION, OR LOST DATA, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

B) MAXIMUM LIABILITY. IN ANY EVENT, EITHER PARTY’S (AND LICENSOR’S THIRD PARTY SUPPLIER’S) MAXIMUM LIABILITY FOR ANY CLAIM ARISING IN CONNECTION WITH THIS AGREEMENT (IN TORT, CONTRACT OR OTHERWISE) WILL BE LIMITED TO THE AMOUNT OF FEES PAID BY YOU TO PBI DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRIOR TO THE DATE OF SUCH CLAIM.

C) EXCLUSIONS. THE FOREGOING DISCLAIMER SET FORTH IN SECTION 11(A) DOES NOT APPLY TO YOUR BREACH OF SECTION 5 (YOUR RESPONSIBILITIES), OR EITHER PARTY’S LIABILITY UNDER SECTION 8 (NONINFRINGEMENT, INDEMNIFICATION). THE FOREGOING MAXIMUM LIABILITY SET FORTH IN SECTION 11(B) DOES NOT APPLY TO YOUR BREACH OF SECTION 5 (YOUR RESPONSIBILITIES), YOUR OBLIGATIONS TO PAY AMOUNTS DUE UNDER A PLAN, OR EITHER PARTY’S LIABILITY UNDER SECTION 8 (NONINFRINGEMENT, INDEMNIFICATION).

12. Force Majeure. Except for Your payment obligations, neither party is responsible from any delay or failure to perform resulting from causes beyond its reasonable control.
13. Assignment. You are not permitted to transfer or assign (by operation of law or otherwise) any of Your rights or obligations under this Agreement without the prior written consent of PBI, which consent will not be unreasonably withheld, delayed or denied. Any such transfer or assignment without PBI's written consent will be void and of no force and effect.
14. Publicity. Except as otherwise set forth in the Acceptable Use Policy, neither party will use the name of the other party in any publicity, press releases or similar activity without the consent of the other party.
15. Applicable Law. This Agreement will be governed by, and construed in accordance with, the laws of the State of New York without regard to its principals of conflict of laws. In the event of any dispute arising out of or relating to this Agreement, a suit will be brought only in a federal or state court of competent jurisdiction located in New York County in the State of New York.
16. Verification. Upon thirty (30) days written notice, PBI or its designated third party may verify Your compliance with the terms of the Agreement from which You access the Service. Such verification will take place no more than one (1) time per twelve (12) month period during normal business hours in a manner which minimizes disruption to Your work environment. The scope of such verification process shall be limited to subjects for which PBI has evidence of non-compliance. PBI may use an independent third party under obligations of confidentiality to provide assistance. The independent third party is subject to the prior written approval of Client, such approval not to be unreasonably withheld or delayed. PBI will initially provide written notice of any suspected non-compliance with the terms of the Agreement and allow a seven (7) day period to cure or clarify such suspected non-compliance. If in the event that You do not cure or provide evidence clarifying such non-compliance, PBI shall have the right for further verification. You agree to pay all associated fees directly to PBI for the charges that PBI specifies for such excess use.
17. General.
- a) No waiver of or failure to act regarding any breach of this Agreement by either party or the failure of either party to insist on the exact performance of any provision of this Agreement will constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions hereof, and no waiver will be effective unless made in writing.
 - b) Any notice alleging a breach of this Agreement will be in writing and will be sent by overnight courier or delivered in person to the party's address set forth in the Developer Portal. Notices to PBI will include a copy to: Pitney Bowes Inc., 3001 Summer Street, Stamford, CT 06926 Attn: Legal Department. Any other notice required to be provided by PBI under this Agreement may be sent by postal mail or e-mail to the individual designated by You in the Developer Portal, and to PBI at the e-mail addresses designated in the Developer Portal.
 - c) If any provision of this Agreement or portion thereof, is held to be invalid, illegal or unenforceable by a court of competent jurisdiction, such provision will be severed and the remaining provisions of the Agreement will remain in full force and effect.
 - d) Each party will act as an independent contractor and employees of each party will not be considered to be employees of the other party. No agency, partnership, joint venture or other joint relationship is created by this Agreement. Neither party may make any commitments binding on the other, nor may either party make any representation that they are acting for, or on behalf of, the other.
 - e) Developer shall a) maintain sufficient records so that it can identify the place from which each mail piece is sent; b) maintain records to advise USPS how many points of contact Developer has with End User, (including credit card charges from End User, agreements between Developer and End User, email or regular mail contacts between Developer and End User, shipment of product between Developer and End User. Developer shall comply with the technical interface specifications set forth in Acceptable Use Policy.

18. Entire Agreement. This Agreement, the Acceptable Use Policy, the Privacy Statement, and all appendices, exhibits, schedules and attachments thereto, including those incorporated by reference, constitutes the entire agreement between the parties with regard to Your access to and use of the Service, may not be modified or amended except by a writing signed by both parties except as otherwise indicated herein, and supersedes all proposals, purchase orders, understandings, representations, prior agreements or communications relating to Your use of the Service. This Agreement also supersedes any preprinted terms contained on a purchase order or similar document issued by You and any such terms will have no force or effect. You certify that You have not been induced to enter into this Agreement by any representations or promises not specifically stated herein. This Agreement will not be construed against the party that prepared such document, but instead will be construed as if both parties prepared the Agreement.