



Pitney Bowes Inc., through its Document Messaging Technologies division

## **ON-CALL EQUIPMENT MAINTENANCE AGREEMENT**

This Maintenance Agreement is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between Pitney Bowes Inc., through its Document Messaging Technologies Division, having a place of business at 37 Executive Drive, Danbury, Connecticut 06810-4148 ("Pitney Bowes"), and \_\_\_\_\_, having a place of business at \_\_\_\_\_ ("Client").

### **1. SCOPE AND TERM OF AGREEMENT**

1.1 This Agreement is for maintenance of the products described in Schedule A (the "Products").

1.2 This Agreement shall be effective as of the date described in Schedule A ("Service Date") and shall continue for an initial term of one (1) year. Thereafter, this Agreement shall renew automatically for successive one (1) year terms. After the initial term, either party may terminate this Agreement upon sixty (60) days' prior written notice to the other. In the event Client elects to terminate this Agreement without cause prior to the expiration of the then-current one (1) year term, no pro-rata refund will be provided, even if any prepaid hours of service have not yet been performed by Pitney Bowes.

1.3 Notwithstanding anything contained herein to the contrary, Pitney Bowes may terminate this Agreement upon one (1) business day's written notice to Client if Client breaches the payment provision of this Agreement and such payment breach is not cured within ten (10) business days after receipt of written notice of such breach from Pitney Bowes.

### **2. BASIC SERVICE SUPPORT**

2.1 Pitney Bowes shall perform such maintenance services with respect to Products, including providing adequately trained and qualified Client Service Representatives ("CSRs"), as described in Schedule B hereto.

2.2 Maintenance activities will include reasonable remedial maintenance and preventative maintenance necessitated by normal usage. Remedial maintenance will include replacement of parts, excluding consumable parts, and machine enhancements. Parts provided hereunder shall be new or equivalent to new including refurbished parts.

2.3 Preventative maintenance will consist of inspecting, cleaning and periodically lubricating various components as well as replacing any worn parts. Pitney Bowes shall inform Client of the timing and nature of preventative maintenance required and Pitney Bowes and Client shall mutually agree on the scheduled time for CSRs to perform the preventative maintenance. Pitney Bowes shall use commercially reasonable efforts to conduct preventative maintenance as scheduled. Client shall make the Products reasonably available to Pitney Bowes for preventative maintenance.

2.4 Software and firmware maintenance shall be provided by Pitney Bowes under this Agreement as set forth in Schedule C.

2.5 Notwithstanding anything in this Agreement to the contrary, Pitney Bowes will not be responsible: (i) for maintaining any Products that Client has failed to operate under suitable temperature, humidity, line voltage, or any specified environmental conditions; (ii) if reasonable care is not used in handling, operating, and maintaining the Product; (iii) if the Product is not used in accordance with the agreed applications and for the ordinary purpose for which it is designed; (iv) if the inability of any Product to perform is due to any act or failure to act on the part of Client, including without limitation, any alteration of or adding components to any Product; (v) unqualified operators' use of the Product; (vi) use of the Product in a manner not intended; (vii) use of the Product to process applications not previously approved in writing by Pitney Bowes; or (viii) use of damaged materials, such as paper or envelopes. If Pitney Bowes performs any repairs or maintenance as a result of any of the foregoing, the Client shall pay Pitney Bowes at Pitney Bowes' normal rates in effect at such time. Client shall promptly notify Pitney Bowes of any unauthorized alteration of or addition to the Product that occurred after Client accepted the Product. Pitney Bowes will not be required to maintain Products that have become obsolete, either due to age, discontinuance of Product's manufacture or irreparability. Pitney Bowes shall make recommendations to Client regarding the replacement or refurbishment of such obsolete Products.

2.6 Service outside of the contracted hours or beyond what is described in Schedule B will be provided at Pitney Bowes' rates in effect at such time.

#### **2.7 Obsolescence**

From time to time, Pitney Bowes may provide notice to Client of its election, in its sole discretion, to terminate support for certain hardware, software, servers and/or databases due to obsolescence, end of life or a third party manufacturer's election to discontinue certain servers, platforms and/or software (collectively "Obsolescence"). In the event Client's support is terminated due to Obsolescence, Client will be provided a pro-rata refund for any amounts prepaid for maintenance for the obsolete hardware or software. In the event of a termination due to Obsolescence, Client will be provided an option to replace the obsolete software, servers and/or databases with replacements that meet or exceed Client's original system requirements, provided; however,

additional costs, including but not limited to installation and support fees associated with the new solution may apply.

Parts and/or assemblies for the obsolete products described above or for products not sold as new will be provided only if available.

## 2.8 Nonsolicitation

Client agrees that during the term of this Agreement and for a period of six (6) months after the termination of this Agreement, it will not hire or solicit for employment any employee with whom it has had contact in connection with the performance of this Agreement, provided, however, that the foregoing provision shall not prevent Client from (a) employing any such employee where the first contact between it and the employee with regard to employment is made by the employee on his or her own initiative without any direct or indirect solicitation by or encouragement from Client, (b) placing any public advertisement or general solicitation that is not targeted at any such employee specifically or employees of Document Messaging Technologies generally (a "General Solicitation") or (c) hiring any such employee where the first contact between Client and the employee with regard to employment is made by the employee on his or her own initiative in response to a General Solicitation and without any other direct or indirect solicitation or encouragement from Client. The provisions of this Section 2.8 shall survive termination of this Agreement as necessary to affect its purpose.

## 3. MAINTENANCE CHARGES AND PAYMENTS

3.1 Commencing on the Service Date, Client shall pay to Pitney Bowes the maintenance charges described in Schedule B. Pricing will be reviewed on an annual basis and Pitney Bowes shall notify Client in writing of any price increases not less than thirty (30) days prior to the end of the then-current term. Within thirty (30) days after its receipt of such notice, Client may terminate this Agreement by delivering to Pitney Bowes written notice of its desire to terminate, which notice must include the Client account number and be sent to Pitney Bowes at the address on page 1, Attention: Finance, by certified mail, return receipt requested. Any such termination by Client shall be effective ten (10) business days after Pitney Bowes' receipt of the notice of termination. If no such notice is received the Agreement shall continue at the rates contained in the notice sent to Client. In the event Client notifies Pitney Bowes that it desires to have additional Products covered under this Agreement, modifications to this Agreement will be made by mutual agreement.

3.2 Pitney Bowes will invoice Client for maintenance charges in advance (or for any *pro rata* portion thereof) as of the Service Date and annually thereafter. Such invoices are due thirty (30) days after the date of the invoice. If Client payment is not made in full on or before its due date, Client will pay Pitney Bowes a late payment administrative fee on the delinquent payments in the amount of 1.5% per month (or the maximum rate allowed by law) until paid in full. For each dishonored or returned payment, Client will pay Pitney Bowes

the applicable returned item fee. In the event that charges due and owing have not been paid by Client and Pitney Bowes brings an action to collect such charges, Client shall pay Pitney Bowes for all costs and fees (including reasonable attorneys' fees) incurred in the collection of any unpaid amount.

3.3 For Products added after the Service Date, Pitney Bowes will invoice Client for monthly maintenance charges on a *pro rata* basis. Extended hours of coverage will also be invoiced by Pitney Bowes on a monthly basis.

3.4 Pitney Bowes will also invoice Client for additional fees that result from annual cycle volume overages according to Schedule D.

## 4. OUTAGES

4.1 Once at the Client site, the CSR has sixty (60) minutes to diagnose the problem. Once the problem is diagnosed, a time estimate for resolution shall be provided to the Client.

4.2 If the problem is not diagnosed within sixty (60) minutes, the CSR will escalate to a Region Technical Specialist ("RTS") and the service manager. The RTS shall try to diagnose the problem over the phone based on the symptoms described by the site CSR. A decision will be made by the senior CSR to go to the site if unresolved. The Client and service manager shall be notified of the status as well as the estimated time of arrival of the senior CSR.

4.3 Once at the Client site, the RTS has sixty (60) minutes to diagnose the problem. If the senior CSR does not diagnose the problem, the Service Manager, and the Division Director shall be notified for the purpose of determining whether additional support is required.

4.4 If parts are required for diagnoses, confirmation on parts availability must be made and the Client, as well as service management, must be informed.

## 5. TERMS AND CONDITIONS

5.1 Taxes. Client shall pay all federal, state and local sales, use, property and excise taxes imposed on or with respect to this Agreement or the services provided hereunder.

### 5.2 Indemnification

(a) Pitney Bowes shall indemnify and defend Client and its officers, directors, and employees (collectively referred to in this Section as "Client"), against any and all liabilities, claims, damages, costs, and expenses (including reasonable attorneys' fees) of third parties resulting from bodily injury or death to any person or tangible property damage, to the extent that such injury or damage is caused by Pitney Bowes' gross negligence or willful misconduct in its performance of services while on Clients' business premises.

(b) In the event that Client becomes aware of any claim alleging bodily injury or death or tangible property damage as described above, Client shall immediately notify Pitney Bowes. Pitney Bowes shall have the right and option in the first instance, through counsel of its own choosing and its own expense, to deal with, defend, settle or compromise any such claim. If Pitney Bowes does not appoint counsel to deal with, defend, settle or compromise any such claim after receiving notice thereof, Client may then deal with, defend, settle or compromise such claim through counsel of its own choosing at the expense of Pitney Bowes. In such event, (1) Client shall be permitted to control the defense of such claim and shall keep Pitney Bowes advised with respect to the conduct of such defense, settlement or compromise; (2) any settlement or compromise shall be for the account of Pitney Bowes; and (3) no settlement or compromise shall be made without the prior written consent of Pitney Bowes, which consent shall not be unreasonably withheld.

### 5.3 Default

If a material breach by either party of any of its obligations or responsibilities under this Agreement is not cured within thirty (30) days after the other party notifies the breaching party thereof, the non-breaching party may by notice to the breaching party terminate this Agreement.

### 5.4 No Implied Warranties

PITNEY BOWES DISCLAIMS ALL IMPLIED WARRANTIES INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

### 5.5 Limitation of Liability

a. PITNEY BOWES' TOTAL LIABILITY FOR ANY COST, LOSS DAMAGE OR OTHER POTENTIAL OR ACTUAL EXPENSES ARISING DIRECTLY OUT OF THE EXECUTION, PERFORMANCE OR SUBJECT MATTER OF THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT OF THE PAYMENTS MADE BY CLIENT TO PITNEY BOWES HEREUNDER IN THE TWELVE (12) MONTHS PRIOR TO THE EVENTS GIVING RISE TO THE CLAIM. REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT OR OTHERWISE, PITNEY BOWES SHALL IN NO EVENT BE LIABLE FOR ANY DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, OR FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE OR OTHER DAMAGES ARISING OUT OF THIS AGREEMENT, EVEN IF PITNEY BOWES HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

b. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, PITNEY BOWES SHALL NOT IN ANY EVENT BE LIABLE FOR ANY CLAIMS OF ANY KIND, ASSERTED BY CLIENT OR ANY THIRD PARTY, CAUSED BY THE REMOVAL, MODIFICATION,

## FAILURE TO MAINTAIN OR BY-PASSING OF BUILT-IN SAFETY FEATURES BY CLIENT.

### 5.6 Force Majeure

Neither party shall be liable for any delays in performance hereunder due to unforeseen circumstances beyond its control, including, but not limited to, acts of nature, governments, or terrorists, labor disputes, delays in transportation, or delivery, or inability of suppliers to deliver.

### 5.7 Independent Contractor Relationship

Services by Pitney Bowes' employees, or persons under contract to Pitney Bowes, shall be performed hereunder as independent contractors of Client, and no such employees or persons doing such work or subcontractors shall be considered employees of Client.

### 5.8 Complete Agreement

This Agreement, along with the Schedules attached hereto, shall be the total and complete understanding of the parties, as to the subject matter of the Agreement, superseding all prior negotiations and discussions between the parties and cannot be modified, waived or amended except as agreed to in writing by both parties.

### 5.9 Miscellaneous

(a) This Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of the parties hereof. Neither party may assign any interest in this Agreement without the prior written consent of the other, which shall not be unreasonably withheld or delayed; any such purported assignment without such consent shall be null and void.

(b) This Agreement shall be governed by, construed and interpreted in accordance with, the laws of the State of Connecticut without regard to its conflicts of laws principles.

(c) Failure to enforce any rights hereunder or under law, irrespective of the length of time for which said failure continues, shall not constitute a waiver of those or any other rights.

(d) Captions used herein are for the convenience of the parties and shall not be used in construing the meaning of this Agreement.

(e) If any of the provisions of this Agreement shall be invalid or unenforceable, such provision(s) shall not render the entire Agreement unenforceable or invalid but rather this Agreement shall be read and construed as if the invalid or unenforceable provision(s) are not contained therein, and the rights and obligations of the parties shall be construed and enforced accordingly.

(f) The terms and conditions of Sections 3, 5 and 6 of this Agreement shall survive the termination of this Agreement.

(g) This Agreement may be executed in one or more counterparts, each of which shall be considered an original, and together they shall constitute one and the same instrument.

## 6. NOTIFICATIONS

Any notices or other communications pursuant to this Agreement by either party shall be communicated in writing, shall be effective upon receipt and shall be personally delivered or sent via U.S. registered or certified mail, first class postage prepaid. Any notices or communications shall be sent to the parties at their addresses set forth in this Agreement unless a party otherwise notifies the other party. Notices or communications to Client shall be sent to the attention of Client's Vice President of Purchasing. Notices or communications to Pitney Bowes shall be sent to the attention of President, Document Messaging Technologies.

IN WITNESS WHEREOF, the undersigned hereby execute this Agreement on behalf of the parties as of the date first above written.

Pitney Bowes Inc., through its  
Document Messaging Technologies division

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

Email: DMT\_Consoleprocessing@pb.com

CLIENT

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

Email: \_\_\_\_\_

PBI-DMT Contracts Review  
Initials: \_\_\_\_\_  
Date: \_\_\_\_\_

**SCHEDULE A**

**EQUIPMENT COVERED UNDER MAINTENANCE AGREEMENT:**

Products model and serial number:

Location:

Service Date:

On-call maintenance schedule:

## SCHEDULE B

**PRICING – Effective dates of the Agreement / / through / / .**

**Annual maintenance fee = \$ \_\_\_\_\_**

Price includes: On-call service coverage, parts and labor, Monday through Friday 8:00am – 5:00pm excluding Pitney Bowes observed holidays.

**Extended Hours of Coverage at the rates described in the table below:**

Pitney Bowes shall invoice Client for any coverage requests outside of defined service personnel hours as follows.

- Coverage can be purchased per eight hour shift, per technician with two weeks prior written notice.
- Coverage during observed holidays can be purchased per eight hour shift, per technician with two weeks prior written notice.
- Coverage outside of defined service personnel hours requested without prior notification will be billed at the standard Pitney Bowes standby rates listed below. Stand-by charges reserve a technician to remain on-call outside service personnel hours for one shift, eight hours in length. Hourly charges are calculated from portal to portal, two hour minimum.

Stand By & Call Out - Random Basis (unless otherwise covered/stated)								
	<u>Sun</u>	<u>Mon</u>	<u>Tues</u>	<u>Wed</u>	<u>Thurs</u>	<u>Fri</u>	<u>Sat</u>	<u>Holiday</u>
1st Shift								
Standby	\$35.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$35.00	\$35.00
Call-out	\$760.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$570.00	\$1,140.00
Qtr. Hr.	\$95.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$71.25	\$142.50
2nd Shift								
Standby	\$35.00	\$35.00	\$35.00	\$35.00	\$35.00	\$35.00	\$35.00	\$35.00
Call-out	\$760.00	\$380.00	\$380.00	\$380.00	\$380.00	\$380.00	\$570.00	\$1,140.00
Qtr. Hr.	\$95.00	\$47.50	\$47.50	\$47.50	\$47.50	\$47.50	\$71.25	\$142.50
3rd Shift								
Standby	\$35.00	\$35.00	\$35.00	\$35.00	\$35.00	\$35.00	\$35.00	\$35.00
Call-out	\$760.00	\$380.00	\$380.00	\$380.00	\$380.00	\$380.00	\$570.00	\$1,140.00
Qtr. Hr.	\$95.00	\$47.50	\$47.50	\$47.50	\$47.50	\$47.50	\$71.25	\$142.50
Callout charges listed above cover two hours of time and are charged portal to portal. The quarter hour increments represent what is charged after the initial two hours have been used. Rates per CSR per 8 hour shift								
Additional Onsite Shift Coverage								
	<u>Sun</u>	<u>Mon</u>	<u>Tues</u>	<u>Wed</u>	<u>Thurs</u>	<u>Fri</u>	<u>Sat</u>	<u>Hol</u>
1st Shift	\$1,560	\$1,040	\$1,040	\$1,040	\$1,040	\$1,040	\$1,560	\$2,850.00
2 <sup>nd</sup> Shift	\$1,716	\$1,144	\$1,144	\$1,144	\$1,144	\$1,144	\$1,716	\$2,850.00
3rd Shift	\$1,794	\$1,196	\$1,196	\$1,196	\$1,196	\$1,196	\$1,794	\$2,850.00
Onsite Operator and Service Training: \$5,046 Maximum class size is 4 students; 2 week prior written notice required.								

## **SCHEDULE C**

### **SOFTWARE MAINTENANCE SCHEDULE**

#### **1. SCOPE AND TERM OF SCHEDULE**

1.1 This schedule relates to maintenance for Pitney Bowes software and/or databases, as well as for software and databases developed by third parties and distributed under license by Pitney Bowes (collectively the “Licensed Programs”), all as further described in Schedule A to the On-Call Equipment Maintenance Agreement (“EMA”) to which this Schedule is attached and made a part thereof. By executing the EMA, Pitney Bowes agrees to provide to Client and Client hereby subscribes to Software Maintenance Services (“SMS”) and Database Services (“DBS”) for the Licensed Programs subject to the following additional terms and conditions:

1.2 The term of this schedule for SMS and DBS shall be the same as the EMA between Client and Pitney Bowes. Termination of the EMA shall automatically terminate this Schedule without further action by either party. The services provided herein will be included in the on-call EMA fee detailed in Schedule B. Similarly, termination of the agreement pursuant to which the Licensed Products were licensed shall result in termination of this Schedule

1.3 Notwithstanding anything contained herein to the contrary, Pitney Bowes may terminate this Schedule upon one (1) business day’s written notice to Client if Client breaches the payment provision of the EMA, and such breach is not cured within ten (10) business days after receipt of written notice from Pitney Bowes.

#### **2. SOFTWARE MAINTENANCE SUPPORT**

2.1 Software Maintenance. Software maintenance shall consist of the distribution by Pitney Bowes to Client of fixes made from time to time to the Licensed Programs (“Fixes”).

2.2 Fixes. Fixes to the Licensed Programs may include all or part of the following:

- Fixes to previously reported “bugs” to the Licensed Programs
- Technical improvements to the Licensed Programs

2.3 Client shall be advised of required Fixes made to the Licensed Programs during the term of maintenance support. Fixes shall be made available to Client, for implementation by Client or Pitney Bowes using the method deemed most appropriate; however, installation of a Fix to Licensed Programs which have been modified by Client or Pitney Bowes may require additional modifications, for which there will be an additional charge.

2.4 Upgrades and Version Releases. Upgrades and version releases to the Licensed Programs may be issued periodically by Pitney Bowes, shall consist of additional and enhanced functions, may be available at an additional charge to the Client, and may be installed at Client’s option. Upgrades incorporate functional and technical capability not provided in the last Version Release but deemed required prior to the next Version Release (“Upgrade(s)”). Version releases incorporate all of the Upgrades; including functionality changes, and Fixes which have been issued since the previous release (“Version Release”). Installation of an Upgrade or Version Release to a Licensed Program that has been modified by Pitney Bowes at Client’s request (“Modified Licensed Programs”) may require additional modification, for which there will be an additional charge. All Version Releases, Upgrades, and Fixes provided under this Schedule shall be subject to the terms and conditions of the applicable agreement pursuant to which the original Licensed Program was licensed.

2.5 DBS will consist of distribution at no additional charge to Client of updates to the databases identified in the relevant purchase and/or license agreement; as such updates are made available by Pitney Bowes from time to time. DBS updates include postal or carrier rate changes, all zip or zone changes, and changes in service provided by carriers, provided that Pitney Bowes does not warrant the availability, accuracy or timely dissemination of non-Pitney Bowes originated source data incorporated in the databases.

2.6 Notwithstanding anything in this Schedule to the contrary, Pitney Bowes will not be responsible under this Schedule: (i) for maintaining any Licensed Programs that Client has failed to operate properly on the approved platform; (ii) if the Licensed Programs are not used in accordance with the agreed applications and for the ordinary purpose for which they are designed; (iii) if the inability of any Licensed Program to perform is due to any act or failure to act on the part of Client, including without limitation, any alteration of or adding components to any Licensed Program or failure to install updates, Version Releases, Upgrades or Version releases; (iv) unqualified operators’ use of the Licensed Programs; (v) use of the Licensed Programs in a manner not intended; (vi) use of the Licensed Programs to process applications not previously approved in writing by Pitney Bowes; (vii) if the Licensed Programs have been operated with other media, not meeting or not maintained in accordance with the manufacturer’s specifications; or (viii) where Client’s service issue results from a problem

other than from the Licensed Programs. If Pitney Bowes performs any SMS or DBS as a result of any of the foregoing, the Client shall pay Pitney Bowes at Pitney Bowes' normal rates in effect at such time. Pitney Bowes is not responsible for maintaining software and/or hardware that communicates or operates with the Licensed Programs, and Client hereby agrees to indemnify and hold harmless Pitney Bowes in the event that any such communicating or operating software or hardware causes loss or damage to the Licensed Programs or related equipment. Client shall promptly notify Pitney Bowes of any unauthorized alteration of or addition to the Licensed Programs that occurred after Client accepted the Licensed Programs.

2.7 If Client upgrades to a new release, i.e., major enhancements and/or new functionality of the programs licensed by Pitney Bowes, the SMS provided hereunder may be transferred to the new release at the then current subscription fee for the new release less credit for fees previously paid hereunder.



## **SCHEDULE D**

### ANNUAL CYCLE VOLUME:

*Effective dates of the Agreement   / /   through   / /   .*

This Agreement will cover \_\_\_\_\_ (number of systems) on the \_\_\_\_\_ (type) inserter systems with annual volume count of \_\_\_\_\_ million cycles (each or per).

All cycles exceeding this amount will be subject to an additional fee according to the rate schedule below:

Machine type:

Maximum number of annual cycles:

Overage rate:

The number of annual cycles is determined by measuring complete cycles and not individual page counts.