

STATE OF MICHIGAN  
 DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET  
 PROCUREMENT  
 P.O. BOX 30026, LANSING, MI 48909  
 OR  
 530 W. ALLEGAN, LANSING, MI 48933

**NOTICE OF CONTRACT NO. 071B3200013**  
 between  
**THE STATE OF MICHIGAN**  
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Pitney Bowes Inc. One Elmcroft Road Stamford, CT 06926-0700	Eric Schmude	<a href="mailto:Eric.Schmude@pb.com">Eric.Schmude@pb.com</a>
	TELEPHONE	CONTRACTOR #, MAIL CODE
	804-496-6912	

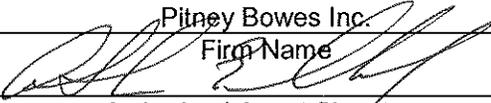
STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR:	Various	Various		
BUYER:	DTMB	William C. Walsh	(517) 373-6535	walshw@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION: Mailing Equipment, Software, Supplies and Maintenance for Pitney Bowes Products			
INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
11 Months – 11 Days	November 1, 2013	October 11, 2014	2 – 1 year options
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
Net 45	Destination	As Directed	Various Locations
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input checked="" type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
MINIMUM DELIVERY REQUIREMENTS:			
No Minimum Delivery Quantity			
MISCELLANEOUS INFORMATION:			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:			\$180,000.00

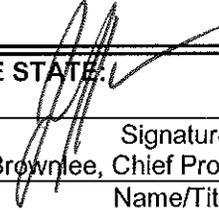
**THIS IS NOT AN ORDER:** This Contract Agreement is awarded on the basis of the Participating Addendum with the State of Arizona Contract ADSP011-00000411-7. Orders for delivery will be issued directly by the State of Michigan Agencies and MiDEAL members through the issuance of a Purchase Order Form or P-card transaction. In the event that the State of Michigan Terms and Conditions conflict with the State of Arizona Contract Terms and Conditions, the State of Michigan Terms and Conditions shall prevail.

Notice of Contract #: 071B3200013

FOR THE CONTRACTOR:

Pitney Bowes Inc.  
Firm Name  
  
Authorized Agent Signature  
Arthur E. Adams Jr.  
Authorized Agent (Print or Type)  
10/23/2013  
Date

FOR THE STATE:

  
Signature  
Jeff Brownlee, Chief Procurement Officer  
Name/Title  
DTMB, Procurement  
Enter Name of Agency  
10/31/13  
Date

**PARTICIPATING ADDENDUM**  
**WESTERN STATES CONTRACTING ALLIANCE and**  
**NATIONAL ASSOCIATION OF STATE PROCUREMENT OFFICIALS**  
**MAIL ROOM EQUIPMENT, SERVICES AND SUPPORT**  
**Administered by the State of Arizona (hereinafter "Lead State")**

MASTER PRICE AGREEMENT

Pitney Bowes Inc.  
ADSP011-00000411-7  
(hereinafter "Contractor")

And

[State of Michigan]  
(hereinafter "Participating State")

Page 1 of 4

1. Scope: This addendum covers the WSCA/NAPSO Mail Room Equipment, Services and Support contract lead by the State of Arizona for use by state agencies and other entities located in the Participating **State/Entity** authorized by that state's statutes to utilize **state/entity** contracts.

2. Participation: Use of specific WSCA/NASPO cooperative contracts by agencies, political subdivisions and other entities (including cooperatives) authorized by an individual state's statutes to use **state/entity** contracts are subject to the approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.

3. Participating State/Contractor Modifications or Additions to Master Price Agreement:  
(These modifications or additions apply only to actions and relationships within the Participating Entity.)

Modifications/Additions

- 3.1 State of Michigan Terms and Conditions (Attachment A)
- 3.2 Software license terms and conditions shall be mutually agreed upon in writing by the purchasing entity's authorized individual and Pitney Bowes Inc. List of Software Licenses offered under this Addendum are attached hereto as Attachment B.
- 3.3 All purchasing entities requiring the use of a Postage Meter will comply with all United States Postal Service regulations and meter terms and conditions applicable to the rental and use of postage meters supplied under this participating addendum as provided by the Contractor and attached hereto as Attachment C.
- 3.4 Administrative Fee: Pursuant to the State of Michigan Terms and Conditions Section 2.22.2 State Administrative Fee, the State Administrative Fee equals one (1) percent of the total quarterly sales reported net of any returns or credits. The Contractor's WSCA/NASPO pricing to the Participating Entity may be adjusted to reflect the equivalent amount of the Administration Fee.

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4. Lease Agreements: Equipment Lease and Rental Agreements are authorized in accordance with the terms of WSCA/NASPO Master Price Agreement number: ADSP011-00000411-7. Attachment D reflects the lease and/or rental options Participating State has agreed to use.

Any underlying leases to this agreement will remain in full force and effect throughout the stated lease term of such lease agreement, subject to termination provisions stipulated with such lease.

5. Primary Contacts: The primary contact individuals for this participating addendum are as follows (or their named successors):

Lead State

Name	Delia Walters, Procurement Supervisor
Address	Arizona DOA-SPO, 100 N. 15 <sup>th</sup> Ave, Suite 201, Phoenix, AZ 85007
Telephone	602-542-9125
Fax	602-542-5508
E-mail	<a href="mailto:delia.walters@azdoa.gov">delia.walters@azdoa.gov</a>

Contractor – Contract Terms and Conditions

Name	Arthur E. Adams, Jr., Director State and Local Contracts
Address	1 Elmcroft Rd, Stamford, CT 06926
Telephone	203-351-7866
Fax	203-460-3827
E-mail	<a href="mailto:art.adams@pb.com">art.adams@pb.com</a>

Contractor – Local Strategic State Account Manager

Name	Eric Schmude, Government Channel Manager
Address	7630 Little River Turnpike Annandale, VA 22003
Telephone	Office: 804-496-6912; Mobile: 804-205-2419
Fax	203-460-9653
E-mail	<a href="mailto:Eric.Schmude@pb.com">Eric.Schmude@pb.com</a>

**PARTICIPATING ADDENDUM  
WESTERN STATES CONTRACTING ALLIANCE and  
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And

[State of Michigan]  
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Participating Entity: State of Michigan

Name	William Walsh,
Address	530 W. Allegan St., Lansing, MI 48933
Telephone	517-373-6535
Fax	517-335-0046
E-mail	walshw@michigan.gov

**6. Subcontractors:**

All Pitney Bowes dealers and resellers authorized in the State of Michigan, as shown on the dedicated Pitney Bowes website, are approved to provide sales and service support to participants in the NASPO Master Price Agreement. The Pitney Bowes dealer's participation will be in accordance with the terms and conditions set forth in the aforementioned Master Price Agreement.

**7. Purchase Order Instructions:**

All orders should contain the following (1) Mandatory Language "PO is subject to WSCA/NASPO Contract # ADSP011-00000411-7" (2) Your Name, Address, Contact, & Phone-Number.

Orders can be made out to either (a) Pitney Bowes, or (b) to an AUTHORIZED reseller depending upon the preference of the Participating State or other participating legal entity.

**8. Price Agreement Number:**

All purchase orders issued by purchasing entities within the jurisdiction of this participating addendum shall include the Participating State contract number: 071B3200013 and the Lead State price agreement number: ADSP011-00000411-7.

**9. Compliance with reporting requirements of the "American Recovery and Reinvestment Act of 2009" ("ARRA"):** If or when contractor is notified by ordering entity that a specific purchase or purchases are being made with ARRA funds, contractor agrees to comply with the data element and reporting requirements as currently defined in Federal Register Vol 74 #61, Pages 14824-14829 (or subsequent changes or modifications to these requirements as published by the Federal OMB). Ordering entity is responsible for informing contractor as soon as the ordering entity is aware that ARRA funds are being used for a purchase or purchases. Contractor will provide the required report to the ordering entity with the invoice presented to the ordering entity for payment. The contractor, as it relates to purchases under this contract, is not a subcontractor or subgrantee, but simply a provider of goods and related services.

**PARTICIPATING ADDENDUM**  
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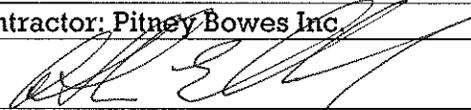
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**10. Individual Customer:**

Each State agency and political subdivision, as a Participating Entity, that purchases products/services will be treated as if they were Individual Customers. Except to the extent modified by a Participating Addendum, each agency and political subdivision will be responsible to follow the terms and conditions of the Master Agreement; and they will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement. Each agency and political subdivision will be responsible for their own charges, fees, and liabilities. Each agency and political subdivision will have the same rights to any indemnity or to recover any costs allowed in the contract for their purchases. The Contractor will apply the charges to each Participating Entity individually.

This Participating Addendum and the Master Price Agreement number ADSP011-00000411-7 (administered by the State of Arizona) together with its exhibits, set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Addendum and the Price Agreement, together with its exhibits, shall not be added to or incorporated into this Addendum or the Price Agreement and its exhibits, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Addendum and the Price Agreement and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms within the Participating State.

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

Participating State: Michigan	Contractor: Pitney Bowes Inc.
By: 	By: 
Name: Jeff Brownlee	Name: Arthur E. Adams Jr.
Title: Chief Procurement Officer	Title: Director, State and Local Contracts
Date: 10/23/13	Date: 10/23/2013



## Attachment A – Terms and Conditions

### 2.1 Contract Term

#### 2.1.1 Contract Term

Refer to the State of Arizona contract ADSPO11-00000411-7, located on [www.pb.com/states](http://www.pb.com/states) under the Michigan tab.

#### 2.1.2 Options to Renew

Refer to the State of Arizona contract ADSPO11-00000411-7, located on [www.pb.com/states](http://www.pb.com/states) under the Michigan tab.

### 2.2 Payments and Taxes

#### 2.2.1 Fixed Prices for Deliverable(s)

Prices are fixed for all Deliverable(s).

#### 2.2.2 Payment Deadlines

Undisputed invoices will be due and payable by the State, in accordance with the State's standard payment procedure as specified in 1984 PA 279, MCL 17.51 *et seq.*, within 45 days after receipt.

#### 2.2.3 Invoicing and Payment – In General – Deleted - Not Applicable

#### 2.2.4 Pro-ration – Deleted - Not Applicable

#### 2.2.5 Final Payment and Waivers

The Contractor's acceptance of final payment by the State constitutes a waiver of all claims by the Contractor against the State for payment under this Contract, other than those claims previously filed in writing on a timely basis and still disputed. For other claims, final payment by the State will not constitute a waiver by either party of any rights as to the other party's continuing obligations, nor will it constitute a waiver of any claims under this Contract, including claims for Deliverable(s) not reasonably known to be defective or substandard.

#### 2.2.6 Electronic Payment Requirement

As required by MCL 18.1283a, the Contractor must electronically register with the State at <http://www.michigan.gov/cpexpress> to receive electronic fund transfer (EFT) payments.

#### 2.2.7 Employment Taxes

The Contractor must collect and pay all applicable federal, state, and local employment taxes.

#### 2.2.8 Sales and Use Taxes

The Contractor must register and remit sales and use taxes on taxable sales of tangible personal property or services delivered into the State. If the Contractor lacks sufficient presence in Michigan to be required to register and pay taxes, it must do so on a voluntary basis. The requirement to register and remit sales and use taxes extends to (a) all members of a "controlled group of corporations" as defined in § 1563(a)



of the Internal Revenue Code, 26 USC 1563(a), and applicable regulations; and (b) all organizations under common control that make sales at retail for delivery into the State. Any United States Department of Treasury regulation that references "two or more trades or businesses under common control" includes organizations such as sole proprietorships, partnerships (as defined in § 7701(a)(2) of the Internal Revenue Code, 26 USC 7701(a)(2)), trusts, estates, corporations, or limited liability companies.

### **2.3 Contract Administration**

#### **2.3.1 Issuing Office**

This Contract is issued by DTMB-Procurement on behalf of all State of Michigan agencies (State). **DTMB-Procurement is the only entity authorized to modify the terms and conditions of this Contract, including the prices and specifications.** The Contract Administrator within DTMB-Procurement for this Contract is:

William C. Walsh  
Procurement  
Department of Technology, Management and Budget  
Mason Bldg, 2nd Floor  
PO Box 30026  
Lansing, MI 48909  
walshw@michigan.gov  
(517) 373-6535

#### **2.3.2 Contract Compliance Inspector**

The Contract Compliance Inspector, named below, will monitor and coordinate Contract activities on a day-to-day basis. However, monitoring of this Contract implies **no authority to modify the terms and conditions of this Contract, including the prices and specifications.**

Each State agency utilizing this Contract will assign a Contract Compliance Inspector to monitor activities for that agency or state in Purchase Order.

#### **2.3.3 Project Manager – Deleted – Not Applicable**

#### **2.3.4 Contract Changes**

(a) If the State requests or directs the Contractor to provide any Deliverable(s) that the Contractor believes are outside the scope of the Contractor's responsibilities under the Contract, the Contractor must notify the State before performing the requested activities. If the Contractor fails to notify the State any activities performed will be considered in-scope and not entitled to additional compensation or time. If the Contractor begins work outside the scope of the Contract and then ceases performing that work, the Contractor must, at the request of the State, retract any out-of-scope work that would adversely affect the Contract.



(b) The State or the Contractor may propose changes to the Contract. If the Contractor or the State requests a change to the Deliverable(s) or if the State requests additional Deliverable(s), the Contractor must provide a detailed outline of all work to be done, including tasks, timeframes, listing of key personnel assigned, estimated hours for each individual per Deliverable, and a complete and detailed cost justification. If the parties agree on the proposed change, DTMB-Procurement will prepare and issue a notice that describes the change, its effects on the Deliverable(s), and any affected components of the Contract (“Contract Change Notice”).

(c) No proposed change may be performed until DTMB-Procurement issues a duly executed Contract Change Notice for the proposed change.

**2.3.5 Price Changes**

Price changes are governed by State of Arizona Contract ADSP011-00000411-7.

**2.3.6 Notices**

All notices and other communications required or permitted under this Contract must be in writing and will be considered given when delivered personally, by fax (if provided) or by e-mail (if provided), or by registered mail, return receipt requested, addressed as follows (or any other address that is specified in writing by either party):

If to State:

State of Michigan  
DTMB-Procurement  
Attention: William C. Walsh  
PO Box 30026  
530 West Allegan  
Lansing, MI 48909  
Email: walshw@michigan.gov  
Fax: (517) 335-0046

If to Contractor:

Arthur E. Adams  
One Elmcroft Road  
Stamford, CT 06926  
Email: Art.adams@pb.com  
Fax: (203) 460-3827

Delivery by a nationally recognized overnight express courier will be treated as personal delivery.

**2.3.7 Covenant of Good Faith**

Each party must act reasonably and in good faith. Unless otherwise provided in this Contract, the parties will not unreasonably delay, condition or withhold their consent, decision, or approval any time it is



requested or reasonably required in order for the other party to perform its responsibilities under the Contract.

**2.3.8 Assignments**

(a) Neither party may assign this Contract, or assign or delegate any of its duties or obligations under the Contract, to another party (whether by operation of law or otherwise), without the prior approval of the other party. The State may, however, assign this Contract to any other State agency, department, or division without the prior approval of the Contractor. (b) If the Contractor intends to assign this Contract or any of the Contractor's rights or duties under the Contract, the Contractor must notify the State and provide adequate information about the assignee at least 90 days before the proposed assignment or as otherwise provided by law or court order. The State may withhold approval from proposed assignments, subcontracts, or novations if the State determines, in its sole discretion, that the transfer of responsibility would decrease the State's likelihood of receiving performance on the Contract or the State's ability to recover damages.

(c) If the State permits an assignment of the Contractor's right to receive payments, the Contractor is not relieved of its responsibility to perform any of its contractual duties. All payments must continue to be made to one entity.

**2.3.9 Equipment – Deleted – Not Applicable**

**2.3.10 Facilities- Deleted - Not Applicable**

**2.4 Contract Management**

**2.4.1 Contractor Personnel Qualifications**

All persons assigned by the Contractor to perform work must be employees of the Contractor or its majority-owned subsidiaries, or a State-approved Subcontractor, and must be fully qualified to perform the work assigned to them. The Contractor must include this requirement in any subcontract.

**2.4.2 Contractor Key Personnel**

The Contractor Key Personnel for this Contract are:

Arthur E. Adams Jr.  
One Elmcroft Road  
Stamford, CT 06926-0700  
(203) 351-7866  
Art.adams@pb.com  
Negotiation of Master Agreement and Individual State Participating Addenda

Lori Rossio  
325 Cramer Creek Court  
Suite 100



Dublin, OH 43017-3577  
(614) 975-4747  
Lori.rossio@pb.com  
Strategic Government Account Manager

Kathie Cool  
Site Leader/Billing Director  
Pitney Bowes  
Spokane Customer Operations  
1313 N Atlantic | Spokane, WA 99201 USA | MSC 27-00  
O: 509.363.3686 | F: 203.460.5733

**2.4.3 Removal or Reassignment of Personnel at the State's Request**

The State may require the Contractor to remove or reassign personnel if the State has legitimate, good-faith reasons articulated in a notice to the Contractor. Replacement personnel must be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed personnel, the State agrees to an equitable adjustment in schedule or other terms that may be affected.

**2.4.4 Contractor Personnel Location – Deleted – Not Applicable**

**2.4.5 Contractor Identification**

The Contractor's employees must be clearly identifiable while on State property, and must clearly identify themselves and the company they work for whenever making contact with State personnel by telephone or other means.

**2.4.6 Cooperation with Third Parties**

The Contractor and its Subcontractors must cooperate with the State and its agents and other contractors, including the State's quality assurance personnel. As reasonably requested by the State in writing, the Contractor will provide to the State's agents and other contractors reasonable access to its personnel, systems, and facilities related to the Contract to the extent that access will not interfere with or jeopardize the safety or operation of the systems or facilities.

**2.4.7 Relationship of the Parties**

The relationship between the State and Contractor is that of client and independent contractor. No agent, employee, or servant of the Contractor, or any of its subcontractors, is an employee, agent or servant of the State. The Contractor will be solely and entirely responsible for its acts and the acts of its agents, employees, servants, and subcontractors during the performance of the Contract.



#### **2.4.8 Contractor Return of State Equipment/Resources – Deleted – Not Applicable**

#### **2.4.9 Background Checks**

The State may investigate the Contractor's personnel before granting access to State facilities and systems. The scope of the background check is at the discretion of the State and the results will be used to determine eligibility for working within State facilities and systems. The investigations will include a Michigan State Police background check (ICHAT) and may include a Criminal Justice Information Services (CJIS) fingerprint check. Proposed Contractor personnel may be required to complete and submit an RI-8 Fingerprint Card for the CJIS fingerprint check.

#### **2.4.10 Compliance With State Policies**

All Contractor personnel must comply with the State's security and acceptable use policies for State IT equipment and resources, available at [http://www.michigan.gov/cybersecurity/0,1607,7-217-34395\\_34476---,00.html](http://www.michigan.gov/cybersecurity/0,1607,7-217-34395_34476---,00.html). Contractor personnel must agree to the State's security and acceptable use policies before the State grants access to its IT equipment and resources. The Contractor must provide these policies to prospective personnel before requesting access from the State. Contractor personnel must comply with all physical security procedures in State facilities.

### **2.5 Subcontracting by Contractor**

#### **2.5.1 Contractor Responsible**

The Contractor is responsible for the completion of all Deliverable(s). The State will consider the Contractor to be the sole point of contact with regard to all contractual matters, including payment of any charges for Deliverable(s). The Contractor must make all payments to its Subcontractors or suppliers. Except as otherwise agreed in writing, the State is not obligated to make payments for the Deliverable(s) to any party other than the Contractor.

#### **2.5.2 State Approval of Subcontractor**

(a) The Contractor may not delegate any duties under this Contract to a Subcontractor unless DTMB-Procurement gives prior approval to the delegation. The State is entitled to receive copies of and review all subcontracts. The Contractor may delete or redact any proprietary information before providing it to the State.

(b) The State may require the Contractor to terminate and replace any Subcontractor the State reasonably finds unacceptable. The required replacement of a Subcontractor must be written and contain reasonable detail outlining the State's reasons for the removal request. If the State exercises this right, and the Contractor cannot immediately replace the Subcontractor, the State will agree to an equitable adjustment in the schedule or other terms that may be affected by the State's required replacement. If this requirement results in a delay, the delay will not be counted against any applicable Service Level Agreement (SLA).

#### **2.5.3 Subcontract Requirements**

Except where specifically approved by the State, Contractor must include the obligations in Sections 2.24.2, Media Releases, 2.4, Contract Management, 2.11, Confidentiality, 2.12, Records and Inspections, 2.13, Warranties, 2.14, Insurance, and 2.23, Laws, in all of its agreements with Subcontractors.



#### **2.5.4 Competitive Selection**

Contractor must select Subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of this Contract.

#### **2.6 Reserved**

#### **2.7 Performance**

##### **2.7.1 Time of Performance**

(a) The Contractor must notify the State within two (2) business days upon becoming aware of any circumstances that may reasonably be expected to jeopardize the completion of any Deliverable(s) by the scheduled due dates in the latest State-approved delivery schedule and must inform the State of the projected actual delivery date.

(b) If the Contractor believes that a delay in performance by the State has caused or will cause the Contractor to be unable to perform its obligations according to specified Contract time periods, the Contractor must notify the State within two (2) business days and, to the extent practicable, continue to perform its obligations according to the Contract time periods. The Contractor will not be in default for a delay in performance to the extent the delay is caused by the State.

##### **2.7.2 Reserved**

##### **2.7.3 Reserved**

##### **2.7.4 Excusable Failure**

Neither party will be liable for any default, damage or delay in the performance of its obligations that is caused by government regulations or requirements, power failure, electrical surges or current fluctuations, war, forces of nature or acts of God, delays or failures of transportation, equipment shortages, suppliers' failures, acts or omissions of common carriers, fire, riots, civil disorders, labor disputes, embargoes, injunctions (provided the injunction was not issued as a result of any fault or negligence of the party seeking to have its default or delay excused), or any other cause beyond the reasonable control of a party; provided the non-performing party and any Subcontractors are without fault in causing the default or delay, and the default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans, or other means, including disaster recovery plans.

If a party does not perform its contractual obligations for any of the reasons listed, the non-performing party will be excused from any further performance of its affected obligation(s) for as long as the circumstances prevail. The non-performing party must promptly notify the other party in writing immediately after the excusable failure occurs, and when it abates or ends. Both parties must use commercially reasonable efforts to resume performance.

If any of the reasons listed substantially prevent, hinder, or delay the Contractor's performance of the Deliverable(s) for more than 10 Days, and the State reasonably determines that performance is not likely



to be resumed within a period of time that is satisfactory to the State, the State may: (a) procure the affected Deliverable(s) from an alternate source without liability for payment so long as the delay in performance continues; or (b) terminate any portion of the Contract so affected and equitably adjust charges payable to the Contractor to reflect those Deliverable(s) that are terminated. The State must pay for all Deliverable(s) for which Final Acceptance has been granted before the termination date.

The Contractor will not have the right to any additional payments from the State as a result of any Excusable Failure or to payments for Deliverable(s) not provided as a result of the Excusable Failure. The Contractor will not be relieved of a default or delay caused by acts or omissions of its Subcontractors except to the extent that a Subcontractor experiences an Excusable Failure and the Contractor cannot reasonably circumvent the effect of the Subcontractor's default or delay in performance through the use of alternate sources, workaround plans, or other means, including disaster recovery plans.

## **2.8 Acceptance of Deliverable(s)**

### **2.8.1 Quality Assurance**

By tendering any Deliverable to the State, the Contractor certifies to the State that (a) it has performed reasonable quality assurance activities; (b) it has performed any reasonable testing; and (c) it has corrected all material deficiencies discovered during the quality assurance activities and testing. To the extent that testing occurs at State Locations, the State is entitled to observe and otherwise participate in the testing.

### **2.8.2 Delivery Responsibilities**

(a) The Contractor is responsible for delivering the Deliverable(s) by the applicable delivery date to the location(s) specified on the individual Purchase Order or as directed by the P-card user. (b) The Contractor must ship the Deliverable(s) "F.O.B. Destination, within Government Premises. Additional rigging charges may apply, as mutually agreed upon in writing."

(c) The State will examine all packages at the time of delivery. The quantity of packages delivered must be recorded and any obvious visible or suspected damage must be noted at the time of delivery using the shipper's delivery document(s) and appropriate procedures to record the damage.

### **2.8.3 Process for Acceptance of Deliverable(s)**

The State's review period for acceptance of the Deliverable(s) is governed by the applicable Statement of Work, and if the Statement of Work does not specify the State's review period, it is by default 30 Days for a Deliverable (State Review Period). The State will notify the Contractor by the end of the State Review Period that either:

- (a) the Deliverable is accepted in the form delivered by the Contractor;
- (b) the Deliverable is accepted, but noted deficiencies must be corrected; or
- (c) the Deliverable is rejected along with notation of any deficiencies that must be corrected before acceptance of the Deliverable.

If the State delivers to the Contractor a notice of deficiencies, the Contractor will correct the described deficiencies and within 30 Days resubmit the Deliverable(s) with an explanation that demonstrates all corrections have been made to the original Deliverable(s). The Contractor's correction efforts will be made at no additional charge. Upon receipt of a corrected Deliverable from the Contractor, the State will have a reasonable additional period of time, not to exceed 30 Days, to accept the corrected Deliverable.



#### **2.8.4 Acceptance of Deliverable(s)**

(a) The State's obligation to comply with any State Review Period is conditioned on the timely delivery of the Deliverable(s). The State Review Period will begin on the first Business Day following the State's receipt of the Deliverable(s). (b) The State may inspect the Deliverable to confirm that all components have been delivered without material deficiencies. If the State determines that the Deliverable or one of its components has material deficiencies, the State may reject the Deliverable without performing any further inspection or testing.

(c) The State will only approve a Deliverable after confirming that it conforms to and performs according to its specifications without material deficiency. The State may, in its discretion, conditionally approve a Deliverable that contains material deficiencies if the State elects to permit the Contractor to correct those deficiencies post-approval. The Contractor remains responsible for working diligently to correct, within a reasonable time at the Contractor's expense, all deficiencies in the Deliverable that remain outstanding at the time of State approval.

(d) If, after three opportunities the Contractor is unable to correct all deficiencies preventing Final Acceptance, the State may: (i) demand that the Contractor cure the failure and give the Contractor additional time to do so at the sole expense of the Contractor; (ii) keep the Contract in force and perform, either itself or through other parties, whatever the Contractor has failed to do, and recover the difference between the cost to cure the deficiency and the Contract price plus an additional amount equal to 10% of the State's cost to cure the deficiency provided the State can furnish proof of the general expenses; or (iii) fully or partially terminate the Contract for default by giving notice to the Contractor provided the Contractor is unable to cure the breach. Notwithstanding the foregoing, the State cannot use, as a basis for exercising its termination rights under this Section, deficiencies discovered in a repeat State Review Period that could reasonably have been discovered during a prior State Review Period.

#### **2.8.5 Process for Approval of Deliverable(s)**

Process for Approval of Services See Master Contract Agreement section 2.7

#### **2.8.7 Final Acceptance**

Unless otherwise stated in the Statement of Work, "Final Acceptance" of a Deliverable occurs when that Deliverable has been accepted by the State following the applicable State Review Period.

#### **2.9 Reserved**

#### **2.10 Reserved**

#### **2.11 Confidentiality**

##### **2.11.1 Confidential Information**

As used in this Section, "Confidential Information" means all information of the parties, except information that is:

- (a) disclosable under the Michigan Freedom Of Information Act (FOIA);
- (b) now available or becomes available to the public without breach of this Contract;
- (c) released in writing by the disclosing party;



(d) obtained from a third party or parties having no obligation of confidentiality with respect to such information;

(e) publicly disclosed pursuant to federal or state law; or

(f) independently developed by the receiving party without reference to Confidential Information of the furnishing party.

### **2.11.2 Protection and Destruction of Confidential Information**

(a) Each party must use the same care to prevent unauthorized disclosure of Confidential Information as it uses to prevent disclosure of its own information of a similar nature, but in no event less than a reasonable degree of care. Neither the Contractor nor the State will: (i) make any use of the Confidential Information of the other except as contemplated by this Contract; (ii) acquire any interest or license in or assert any lien against the Confidential Information of the other; or (iii) if requested to do so, refuse for any reason to promptly return the other party's Confidential Information.

(b) Each party will limit disclosure of the other party's Confidential Information to employees, agents, and Subcontractors who must have access to fulfill the purposes of this Contract. Disclosure to, and use by, a Subcontractor is permissible where: (i) use of a Subcontractor is authorized under this Contract; (ii) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the Subcontractor's scope of responsibility; and (iii) Contractor obligates the Subcontractor in a written contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor and of any Subcontractor having access to the State's Confidential Information may be required to execute a separate agreement to be bound by the confidentiality requirements of this Section.

(c) Upon termination of the Contract, Contractor must promptly return the State's Confidential Information or certify to the State that Contractor has destroyed all of the State's Confidential Information.

### **2.11.3 Exclusions**

The provisions of Section 2.11, Confidentiality, will not apply where the receiving party is required by law to disclose the other party's Confidential Information, provided that the receiving party: (i) promptly provides the furnishing party with notice of the legal request; and (ii) assists the furnishing party in resisting or limiting the scope of the disclosure as reasonably requested by the furnishing party.

### **2.11.4 No Obligation to Disclose**

Nothing contained in Section 2.11, Confidentiality, will be construed as obligating a party to disclose any particular Confidential Information to the other party.

### **2.11.5 Security Breach Notification**

If Contractor breaches this Section, it must (i) promptly cure any deficiencies in Contractor's internal security controls; and (ii) comply with any applicable federal and state laws and regulations pertaining to unauthorized disclosures. Contractor and the State will cooperate to mitigate, to the extent practicable, the effects of any breach, intrusion, or unauthorized access, use, or disclosure. Contractor must notify the State of any unauthorized use or disclosure of Confidential Information, whether suspected or actual, within 10 days of becoming aware of the use or disclosure or a shorter time period as is reasonable under



the circumstances. The State may require Contractor to purchase credit monitoring services for any individuals affected by the breach.

## **2.12 Records and Inspections**

### **2.12.1 Inspection of Work Performed**

The State's authorized representatives, at reasonable times and with 10 days prior written (ok) notice, have the right to enter the Contractor's premises or any other places where work is being performed in relation to this Contract. The representatives may inspect, monitor, or evaluate the work being performed, to the extent the access will not reasonably interfere with or jeopardize the safety or operation of Contractor's systems or facilities. The Contractor must provide reasonable assistance for the State's representatives during inspections.

### **2.12.2 Retention of Records**

(a) The Contractor must retain all financial and accounting records related to this Contract for a period of seven years after the Contractor performs any work under this Contract (Audit Period).

(b) If an audit, litigation, or other action involving the Contractor's records is initiated before the end of the Audit Period, the Contractor must retain the records until all issues arising out of the audit, litigation, or other action are resolved or until the end of the Audit Period, whichever is later.

### **2.12.3 Examination of Records**

The State, upon 10 days notice to the Contractor, may examine and copy any of the Contractor's records that relate to this Contract. The State does not have the right to review any information deemed confidential by the Contractor if access would require the information to become publicly available. This requirement also applies to the records of any parent, affiliate, or subsidiary organization of the Contractor, or any Subcontractor that performs services in connection with this Contract.

### **2.12.4 Audit Resolution**

If necessary, the Contractor and the State will meet to review any audit report promptly after its issuance. The Contractor must respond to each report in writing within 30 days after receiving the report, unless the report specifies a shorter response time. The Contractor and the State must develop, agree upon, and monitor an action plan to promptly address and resolve any deficiencies, concerns, or recommendations in the report.

### **2.12.5 Errors**

(a) If an audit reveals any financial errors in the records provided to the State, the amount in error must be reflected as a credit or debit on the next invoice and subsequent invoices until the amount is paid or refunded in full. However, a credit or debit may not be carried forward for more than four invoices or beyond the termination of the Contract. If a balance remains after four invoices, the remaining amount will be due as a payment or refund within 45 days of the last invoice on which the balance appeared or upon termination of the Contract, whichever is earlier. (b) In addition to other available remedies, if the difference between the State's actual payment and the correct invoice amount, as determined by an audit, is greater than 10%, the Contractor must pay all reasonable audit costs.



## 2.13 Warranties

### 2.13.1 Warranties and Representations

The Contractor represents and warrants:

(a) It is capable of fulfilling and will fulfill all of its obligations under this Contract. The performance of all obligations under this Contract must be provided in a timely, professional, and workmanlike manner and must meet the performance and operational standards required under this Contract.

(b) The Contract appendices, attachments, and exhibits identify the equipment, software, and services necessary for the Deliverable(s) to comply with the Contract's requirements.

(c) It is the lawful owner or licensee of any Deliverable licensed or sold to the State by Contractor or developed by the Contractor for this Contract, and Contractor has all of the rights necessary to convey to the State the ownership rights or licensed use, as applicable, of any Deliverable(s). None of the Deliverable(s) provided by Contractor to the State, nor their use by the State, will knowingly infringe (AG) the patent, trademark, copyright, trade secret, or other proprietary rights of any third party.

(d) If the Contractor procures any equipment, software, or other Deliverable(s) for the State (including equipment, software, and other Deliverable(s) manufactured, re-marketed or otherwise sold by the Contractor or under the Contractor's name), then the Contractor must assign or otherwise transfer to the State or its designees, or afford the State the benefits of, any manufacturer's warranty for the Deliverable(s).

(e) The Contract signatory has the authority to enter into this Contract on behalf of the Contractor.

(f) It is qualified and registered to transact business in all locations where required.

(g) Neither the Contractor nor any affiliates, nor any employee of either, has, will have, or will acquire, any interest that would conflict in any manner with the Contractor's performance of its duties and responsibilities to the State or otherwise create an appearance of impropriety with respect to the award or performance of this Contract. The Contractor must notify the State about the nature of any conflict or appearance of impropriety within two days of learning about it.

(h) Neither the Contractor nor any affiliates, nor any employee of either, has accepted or will accept anything of value based on an understanding that the actions of the Contractor, its affiliates, or its employees on behalf of the State would be influenced. The Contractor must not attempt to influence any State employee by the direct or indirect offer of anything of value.

(i) Neither the Contractor nor any affiliates, nor any employee of either, has paid or agreed to pay any person, other than bona fide employees and consultants working solely for the Contractor or the affiliate, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract.

(j) The Contractor arrived at its proposed prices independently, without communication or agreement with any other bidder for the purpose of restricting competition. The Contractor did not knowingly disclose its quoted prices for this Contract to any other bidder before the award of the



Contract. The Contractor made no attempt to induce any other person or entity to submit or not submit a proposal for the purpose of restricting competition.

(k) All financial statements, reports, and other information furnished by the Contractor to the State in connection with the award of this Contract fairly and accurately represent the Contractor's business, properties, financial condition, and results of operations as of the respective dates covered by the financial statements, reports, or other information. There has been no material adverse change in the Contractor's business, properties, financial condition, or results of operation.

(l) All written information furnished to the State by or for the Contractor in connection with the award of this Contract is true, accurate, and complete, and contains no false statement of material fact nor omits any material fact that would make the submitted information misleading.

(m) It will immediately notify DTMB-Procurement if any of the certifications, representations, or disclosures made in the Contractor's original bid response change after the Contract is awarded.

#### **2.13.2 Warranty of Merchantability**

The Deliverable(s) provided by the Contractor must be merchantable.

#### **2.13.3 Warranty of Fitness for a Particular Purpose**

The Deliverable(s) provided by the Contractor must be fit for the purpose(s) identified in this Contract.

#### **2.13.4 Warranty of Title**

The Contractor must convey good title to any Deliverable(s) provided to the State. All Deliverable(s) provided by the Contractor must be delivered free from any security interest, lien, or encumbrance of which the State, at the time of contracting, has no knowledge. Deliverable(s) provided by the Contractor must be delivered free of any rightful claim of infringement by any third person.

#### **2.13.5 Equipment Warranty**

Warranty for products ordered under this Contract will be governed by the State of Arizona contract ADSPO11-00000411-7

#### **2.13.6 New Deliverable(s) (as discussed – to be reviewed by state)**

Unless specifically requested in writing by the State, the Contractor must provide new Deliverable(s) where the Contractor knows or has the ability to select between new or like-new equipment that is assembled from new or serviceable used parts that are like new in performance. The Contractor may use like-new Equipment for loaner equipment.

#### **2.13.7 Prohibited Products**

Shipping of salvage, distressed, outdated, or discontinued goods to any State agency will be considered a material default by the Contractor. The brand and product number offered for all items will remain consistent for the term of the Contract, unless DTMB-Procurement has approved a change order under Section 2.3.4, Contract Changes.

#### **2.13.8 Consequences For Breach**

In addition to any remedies available in law, if the Contractor breaches any of the warranties contained in this Section 2.13, Warranties, the breach may be considered a material default.



## **2.14 Insurance**

### **2.14.1 Liability Insurance**

See State of Arizona contract ADSPO11-00000411-7 for insurance levels.

### **2.14.2 Subcontractor Insurance Coverage**

Except where the State has approved a subcontract with other insurance provisions, the Contractor must require any Subcontractor to purchase and maintain the insurance coverage required in Section 2.14.1, Liability Insurance. Alternatively, the Contractor may include a Subcontractor under the Contractor's insurance on the coverage required in that Section. The failure of a Subcontractor to comply with insurance requirements does not limit the Contractor's liability or responsibility.

### **2.14.3 Certificates of Insurance and Other Requirements**

Before the Contract is signed, and not more than 20 days after the insurance expiration date every year thereafter, the Contractor must provide evidence that the State and its agents, officers, and employees are listed as additional insureds under each commercial general liability and commercial automobile liability policy. The Contractor must provide DTMB-Procurement with all applicable certificates of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in Section 2.14.1, Liability Insurance. Each certificate must be on the standard "accord" form or equivalent and **MUST CONTAIN THE APPLICABLE CONTRACT OR PURCHASE ORDER NUMBER**. Each certificate must be prepared and submitted by the insurer and must contain a provision indicating that the coverage afforded will not be cancelled without 30 days prior notice, except for 10 days for nonpayment of premium, to the Director of DTMB-Procurement. The notice to the Director of DTMB-Procurement must include the applicable Contract or Purchase Order number.

## **2.15 Indemnification**

### **2.15.1 General Indemnification**

The Contractor must indemnify, defend, and hold the State harmless from liability, including all claims and losses, and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties), accruing or resulting to any person, firm, or corporation that may be injured or damaged by the Contractor in the performance of this Contract and that are attributable to the negligence or tortious acts of the Contractor, any of its subcontractors, or by anyone else for whose acts any of them may be liable.

### **2.15.2 Code Indemnification**

To the extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State from any claim, loss, or expense arising from Contractor's breach of the No Surreptitious Code Warranty.



### **2.15.3 Employee Indemnification**

In any claims against the State, its departments, agencies, commissions, officers, employees, and agents, by any employee of the Contractor or any of its subcontractors, the indemnification obligation will not be limited in any way by the amount or type of damages, compensation, or benefits payable by or for the Contractor or any of its subcontractors under worker's disability compensation acts, disability benefit acts, or other employee benefit acts. This indemnification clause is intended to be comprehensive. Any overlap in provisions, or the fact that greater specificity is provided as to some categories of risk, is not intended to limit the scope of indemnification under any other provisions.

### **2.15.4 Patent/Copyright Infringement Indemnification**

(a) The Contractor must indemnify and hold the State harmless from liability, including all claims and losses, and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest, and penalties) resulting from any action threatened or brought against the State to the extent that the action is based on a claim that any piece of equipment, software, commodity, or service supplied by the Contractor or its subcontractors, or its operation, use, or reproduction, infringes any United States patent, copyright, trademark or trade secret of any person or entity.

(b) If, in the State's or the Contractor's opinion, any piece of equipment, software, commodity or service supplied by the Contractor or its subcontractors, or its operation, use, or reproduction, is likely to become the subject of an infringement claim, the Contractor must, at its expense: (i) procure for the State the right to continue using the equipment, software, commodity or service or, if this option is not reasonably available to the Contractor; (ii) replace or modify to the State's satisfaction the same with equipment, software, commodity or service of equivalent function and performance so that it becomes non-infringing, or, if this option is not reasonably available to Contractor; (iii) accept its return by the State with appropriate credits to the State against the Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.

(c) Notwithstanding the foregoing, the Contractor has no obligation to indemnify or defend the State for, or to pay any costs, damages or attorneys' fees related to, any infringement claim based upon: (i) equipment, software, commodity or service developed based on written specifications of the State; (ii) use of the equipment, software, or commodity in a configuration other than implemented or approved by the Contractor, including any modification of the same by the State; or (iii) the combination, operation, or use of the equipment, software, or commodity with equipment, software, or commodities not supplied by the Contractor under this Contract.

### **2.15.5 Continuing Obligation**

The Contractor's duty to indemnify under Section 2.15, Indemnification, continues in full force and effect, notwithstanding the expiration or early cancellation of the Contract, with respect to any claims based on facts or conditions that occurred before expiration or cancellation.

### **2.15.6 Indemnification Procedures**

These procedures apply to all indemnity obligations:



(a) After the State receives notice of an action or proceeding involving a claim for which it will seek indemnification, the State must promptly notify the Contractor of the claim and take, or assist the Contractor in taking, any reasonable action to avoid a default judgment against the Contractor. Failure to notify the Contractor does not relieve the Contractor of its indemnification obligations except to the extent that the Contractor can prove damages attributable to the notification failure. Within 10 days following receipt of notice from the State relating to any claim, the Contractor must notify the State whether the Contractor agrees to assume control of the defense and settlement of that claim (a "Notice of Election"). After notifying the Contractor of a claim and before the State receives the Contractor's Notice of Election, the State is entitled to defend against the claim, at the Contractor's expense, and the Contractor will be responsible for any reasonable costs, including attorney fees, incurred by the State in defending against the claim during that period.

(b) If the Contractor delivers a Notice of Election relating to any claim: (i) the State is entitled to participate in the defense of the claim and to employ counsel at its own expense to assist in handling the claim and to monitor and advise the State about the status and progress of the defense; (ii) the Contractor must, at the request of the State, demonstrate the Contractor's financial ability to carry out its defense and indemnity obligations under this Contract; (iii) the Contractor must periodically advise the State about the status and progress of the defense and must obtain prior approval of the State before entering into any settlement of the claim or ceasing to defend against the claim; and (iv) to the extent that any principles of Michigan governmental or public law may be involved or challenged, the State has the right, at its own expense, to control the defense of that portion of the claim. The State may retain control of the defense and settlement of a claim by notifying the Contractor within 10 days after the State's receipt of the Contractor's information requested by the State under clause (ii) of this paragraph, if the State determines that the Contractor has failed to demonstrate to the reasonable satisfaction of the State the Contractor's financial ability to carry out its defense and indemnity obligations under this Section. Any litigation activity on behalf of the State, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. In the event the insurer's attorney represents the State under this Section, the insurer's attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

(c) If the Contractor does not deliver a Notice of Election relating to any claim of which it is notified, the State may defend the claim in a manner it deems appropriate, at the cost and expense of the Contractor. If it is determined that the claim was one against which the Contractor was required to indemnify the State, upon request of the State, the Contractor must promptly reimburse the State for all reasonable costs and expenses.

#### **2.15.7 Limitation of Liability**

Neither the Contractor nor the State is liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability does not apply to claims for infringement of United States patent, copyright, trademark or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of this Contract calling for liquidated damages; or to court costs or attorneys' fees awarded by a court in addition to damages after litigation based on this Contract.



## **2.16 Termination by the State**

### **2.16.1 Notice and Right to Cure**

If the Contractor breaches the Contract, and the State, in its sole discretion, determines that the breach is curable, the State will provide the Contractor notice of the breach and a period of at least 30 days to cure the breach. The State does not need to provide notice or an opportunity to cure for successive or repeated breaches or if the State determines, in its sole discretion, that a breach poses a serious and imminent threat to the health or safety of any person or the imminent loss, damage, or destruction of any real or tangible personal property.

### **2.16.2 Termination for Cause**

(a) The State may fully or partially terminate this Contract for cause by notifying the Contractor if the Contractor: (i) breaches any of its material duties or obligations (including a Chronic Failure to meet any SLA); or (ii) fails to cure a breach within the time period specified in a notice of breach provided by the State.

(b) The Contractor must pay all reasonable costs incurred by the State in terminating this Contract for cause, including administrative costs, reasonable attorneys' fees and court costs, and any reasonable additional costs the State incurs to procure the Deliverable(s) from other sources. Re-procurement costs are not consequential, indirect, or incidental damages, and cannot be excluded by any other terms otherwise included in this Contract, provided the costs are not in excess of 50% more than the prices for the Deliverable(s).

(c) If the State partially terminates this Contract for cause, any charges payable to the Contractor will be equitably adjusted to reflect those Deliverable(s) that are terminated. The State must pay for all Deliverable(s) for which Final Acceptance has been granted before the termination date. Any services or related provisions of this Contract that are terminated for cause must cease on the effective date of the termination.

(d) If the State terminates this Contract for cause and it is determined, for any reason, that the Contractor was not in breach of the Contract, the termination will be deemed to have been a termination under Section 2.16.3, Termination for Convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in that Section.

### **2.16.3 Termination for Convenience**

The State may fully or partially terminate this Contract for its convenience if the State determines that a termination is in the State's best interest. Reasons for the termination are within the sole discretion of the State and may include: (a) the State no longer needs the Deliverable(s) specified in this Contract; (b) a relocation of office, program changes, or changes in laws, rules, or regulations make the Deliverable(s) no longer practical or feasible for the State; (c) unacceptable prices for Contract changes; or (d) falsification or misrepresentation, by inclusion or non-inclusion, of information material to a response to any RFP issued by the State. The State may terminate this Contract for its convenience by giving Contractor notice at least 30 days before the date of termination. If the State chooses to terminate this Contract in part, any charges payable to the Contractor must be equitably adjusted to reflect those Deliverable(s) that are



terminated. Any underlying leases to this Contract will remain in full force and effect throughout the stated lease term of such lease agreement, is subject to termination provisions stipulated within such lease.

**2.16.4 Termination for Non-Appropriation**

(a) If this Contract extends for more than one fiscal year, continuation of this Contract is subject to the appropriation or availability of funds. If sufficient funds to enable the State to continue payment are not appropriated or otherwise made available, the State must fully or partially terminate this Contract at the end of the last period for which funds have been appropriated or otherwise made available. The State must give the Contractor notice at least 30 days before the date of termination, unless the State receives notice of the non-appropriation or unavailability less than 30 days before the end of the last period for which funds have been appropriated or otherwise made available.

(b) If funding for this Contract is reduced by law, or funds to pay the Contractor for the Deliverable(s) are not appropriated or are otherwise unavailable, the State may, upon 30 days notice to the Contractor, change the Deliverable(s) in the manner and for the periods of time the State may elect. The charges payable under this Contract will be equitably adjusted to reflect any Deliverable(s) not provided because of the reduction.

(c) If the State fully or partially terminates this Contract for non-appropriation, the State must pay the Contractor for all work-in-progress performed through the effective date of the termination to the extent funds are available.

**2.16.5 Termination for Criminal Conviction**

The State may terminate this Contract immediately and without further liability or penalty if the Contractor, an officer of the Contractor, or an owner of a 25% or greater share of the Contractor is convicted of a criminal offense related to a State, public, or private Contract or subcontract.

**2.16.6 Termination for Approvals Rescinded**

The State may terminate this Contract if any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services under Constitution 1963, Article 11, § 5, and Civil Service Rule 7-1. In that case, the State will pay the Contractor for all work-in-progress performed through the effective date of the termination. The Contract may be fully or partially terminated and will be effective as of the date stated in the written notice.

**2.16.7 Rights and Obligations upon Termination**

- (a) If the State terminates this Contract for any reason, the Contractor must:
- (i) stop all work as specified in the notice of termination;
  - (ii) take any action that may be necessary, or that the State may direct, to preserve and protect Deliverable(s) or other State property in the Contractor's possession;
  - (iii) return all materials and property provided directly or indirectly to the Contractor by any entity, agent, or employee of the State;
  - (iv) to the maximum practical extent, take any action to mitigate and limit potential damages, including terminating or limiting subcontracts and outstanding orders for materials and supplies resulting from the terminated Contract; and



(v) take all appropriate action to secure and maintain State information confidentially in accordance with Section 2.11, Confidentiality.

(b) If the State terminates this Contract under Section 2.16.3, Termination for Convenience, the State must pay the Contractor all charges due for Deliverable(s) provided before the date of termination and, if applicable, as a separate item of payment, for work-in-progress, based on a percentage of completion determined by the State. All completed or partially completed Deliverable(s) prepared by the Contractor, at the option of the State, become the State's property, and the Contractor is entitled to receive equitable compensation for those Deliverable(s). Regardless of the basis for the termination, the State is not obligated to pay or otherwise compensate the Contractor for any lost expected future profits, costs, or expenses incurred with respect to Deliverable(s) not actually completed.

(c) If the State terminates this Contract for any reason, the State may assume, at its option, any subcontracts and agreements for Deliverable(s) provided under this Contract, and may pursue completion of the Deliverable(s) by replacement contract or as the State deems expedient.

#### **2.16.8 Reservation of Rights**

In the event of any full or partial termination of this Contract, each party reserves all rights or remedies otherwise available to the party.

#### **2.16.9 Contractor Transition Responsibilities**

If this Contract terminates under Section 2.16, Termination by the State, the Contractor must make reasonable efforts to transition the performance of the work, including all applicable equipment, services, software, and leases, to the State or a third party designated by the State within a reasonable period of time that does not exceed 90 days from the date of termination. The Contractor must provide any required reports and documentation.

#### **2.16.10 Transition Payments**

If the transition responsibilities outlined in Section 2.16.9, Contractor Transition Responsibilities, arise based on a termination of this Contract, reimbursement will be governed by the provisions of Section 2.16, Termination by the State. If the transition results from expiration, the Contractor will be reimbursed for all reasonable transition costs (i.e., costs incurred after the expiration within the time period in Section 2.16.9 that result from transition operations) at the Contract rates. The Contractor must prepare an accurate accounting from which the State and the Contractor may reconcile all outstanding accounts.

### **2.17 Termination by the Contractor**

#### **2.17.1 Termination**

If the State breaches the Contract and the Contractor, in its sole discretion, determines that the breach is curable, then the Contractor will provide the State with notice of the breach and a time period (not less than 30 days) to cure the breach.

The Contractor may terminate this Contract if the State: (a) materially breaches its obligation to pay the Contractor undisputed amounts due; (b) breaches its other obligations to an extent that makes it impossible or commercially impractical for the Contractor to complete the Deliverable(s); or (c) does not



cure the breach within the time period specified in a notice of breach. The Contractor must discharge its obligations under Section 2.20, Dispute Resolution, before it terminates the Contract.

**2.18 Stop Work**

**2.18.1 Reserved**

**2.18.2 Reserved**

**2.18.3 Reserved**

**2.19 Reserved**

**2.20 Dispute Resolution**

**2.20.1 General**

(a) The Contractor must submit any claim related to this Contract to the State under Section 2.3.6, Notices, together with all supporting documentation for the claim.

(b) The representatives of the Contractor and the State must meet as often as the parties reasonably deem necessary to gather and furnish to each other all information related to the claim.

(c) During the course of negotiations, each party will honor all reasonable requests made by the other for non-privileged information reasonably related to the claim.

**2.20.2 Informal Dispute Resolution**

(a) If, after a reasonable time following submission of a claim under Section 2.20.1, General, the parties are unable to resolve the claim, the parties must meet with the Director of DTMB-Procurement, or his or her designee, for the purpose of attempting to resolve the dispute without the need for formal legal proceedings.

(b) Within 60 calendar days of the meeting with the Director of DTMB-Procurement, or such other time as agreed to by the parties, the Director of DTMB-Procurement will issue a written recommendation regarding settlement of the claim. The Contractor must notify DTMB-Procurement within 21 days after the recommendation is issued whether the Contractor accepts or rejects the recommendation. Acceptance by the Contractor constitutes the final resolution of the claim addressed in the recommendation, and the Contractor may not assert that claim in any future litigation or other proceeding between the parties.

(c) The recommendation of the Director of DTMB-Procurement is not admissible in any future litigation or other proceeding between the parties. The conduct and statements made during the course of negotiations or dispute resolution under Section 2.20, Dispute Resolution, are subject to Michigan Rule of Evidence 408 and are not admissible in any future litigation or other proceeding between the parties.

(d) This section will not be construed to prohibit either party from instituting formal proceedings to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors, or under Section 2.20.3, Injunctive Relief.

(e) DTMB-Procurement will not mediate disputes between the Contractor and any other entity, except State agencies, concerning responsibility for performance of work.



### **2.20.3 Injunctive Relief**

A claim between the State and the Contractor is not subject to the provisions of Section 2.20.2, Informal Dispute Resolution, where a party makes a good faith determination that a breach of the Contract by the other party will result in damages so immediate, so large or severe, and so incapable of adequate redress that a temporary restraining order or other injunctive relief is the only adequate remedy.

### **2.20.4 Continued Performance**

Each party will continue performing its obligations under the Contract while a claim is being resolved, except to the extent the claim precludes performance and without limiting either party's right to terminate the Contract as provided in Section 2.16, Termination by the State or Section 2.17, Termination by the Contractor. A claim involving payment does not preclude performance.

## **2.21 Disclosure Responsibilities**

### **2.21.1 Disclosure of Litigation (subject to state review)**

(a) Within 30 days after receiving notice of any material litigation, investigation, arbitration, or other proceeding (collectively, "Proceeding") that arises during the term of this Contract, the Contractor must disclose the following to the Contract Administrator:

- (i) A criminal Proceeding involving the Contractor (or any Subcontractor) or any of its officers or directors;
- (ii) A parole or probation Proceeding;
- (iii) A Proceeding involving the Contractor (or any Subcontractor) or any of its officers or directors under the Sarbanes-Oxley Act; and
- (iv) A civil Proceeding to which the Contractor (or, if the Contractor is aware, any Subcontractor) is a party, and which involves (A) a claim that might reasonably be expected to adversely affect the viability or financial stability of the Contractor or any Subcontractor; or (B) a claim or written allegation of fraud against the Contractor (or, if the Contractor is aware, any Subcontractor) by a governmental or public entity arising out of the Contractor's business dealings with governmental or public entities.

(b) Information provided to the State from the Contractor's publicly filed documents will satisfy the requirements of this Section.

(c) If any Proceeding that is disclosed to the State or of which the State otherwise becomes aware, during the term of this Contract, would cause a reasonable party to be concerned about: (i) the ability of the Contractor (or a Subcontractor) to continue to perform this Contract; or (ii) whether the Contractor (or a Subcontractor) is engaged in conduct that is similar in nature to the conduct alleged in the Proceeding and would constitute a breach of this Contract or a violation of federal or state law, regulations, or public policy, then the Contractor must provide the State all requested reasonable assurances that the Contractor and its Subcontractors will be able to continue to perform this Contract.

### **2.21.2 Other Disclosures**

The Contractor must notify DTMB-Procurement within 30 days of:

- (a) becoming aware that a change in the Contractor's ownership or officers has occurred or is certain to occur; or
- (b) any changes to company affiliations.



### **2.21.3 Call Center Disclosure**

The Contractor and all Subcontractors involved in the performance of this Contract providing call or contact center services to the State must disclose the location of its call or contact center services to inbound callers. Failure to disclose this information is a material breach of this Contract.

## **2.22 Extended Purchasing**

### **2.22.1 Extended Purchasing Program**

The Agreement will be extended to MiDEAL members. MiDEAL members include local units of government, school districts, universities, community colleges, and nonprofit hospitals. A current list of MiDEAL members is available at [www.michigan.gov/mideal](http://www.michigan.gov/mideal).

If extended, the Contractor must supply all goods and services at the established Agreement prices and terms. The State reserves the right to negotiate additional discounts based on any increased volume generated by such extensions.

The Contractor must submit invoices to, and receive payment from, extended purchasing program members on a direct and individual basis.”

### **2.22.2 State Administrative Fee**

The Contractor must collect an administrative fee on all sales transacted under this Contract, and remit the fee within 30 days after the end of each quarter. The administrative fee equals one (1) percent of the total quarterly sales reported net of any returns or credits.

The Contractor must pay the administrative fee by check payable to the State of Michigan. The Contractor must identify the check as an "Administrative Fee" and include the following information with the payment: the applicable Contract Number, the total quarterly sales by volume and dollar amount, and the quarter covered.

The Contractor must send the check to the following address:

Department of Technology, Management and Budget  
Financial Services – Cashier Unit  
Lewis Cass Building  
320 South Walnut St.  
P.O. Box 30681  
Lansing, MI 48909

### **2.22.3 Reserved**

## **2.23 Laws**



### **2.23.1 Governing Law**

This Contract is governed by, and construed according to, the substantive laws of the State of Michigan without regard to any Michigan choice of law rules that would apply the substantive law of another jurisdiction to the extent not inconsistent with or preempted by federal law.

### **2.23.2 Compliance with Laws**

The Contractor must comply with all applicable federal, state, and local laws and ordinances in providing the Deliverable(s).

### **2.23.3 Jurisdiction**

Any dispute arising from this Contract must be resolved in the State of Michigan. With respect to any claim between the parties, the Contractor consents to venue in Ingham County, Michigan, and irrevocably waives any objections to this venue that it may have, such as lack of personal jurisdiction or *forum non conveniens*. The Contractor must appoint agents in the State of Michigan to receive service of process.

### **2.23.4 Nondiscrimination**

In the performance of this Contract, the Contractor agrees not to discriminate against any employee or applicant for employment, with respect to his or her hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, marital status, or physical or mental disability. The Contractor further agrees that every subcontract entered into for the performance of this Contract will contain a provision requiring non-discrimination in employment, as specified here, binding upon each Subcontractor. This covenant is required under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.*, and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, and any breach of this provision may be regarded as a material breach of the Contract.

### **2.23.5 E-Verify**

Section 291 of the fiscal year 2013 Omnibus Budget, PA 200 of 2012, requires verification that all new employees of the Contractor and all new employees of any approved Subcontractor, working under this Contract, are legally present to work in the United States. All Contractors shall perform this verification using the E-verify system (<http://www.uscis.gov/portal/site/uscis>). The Contractor's signature on the Contract is the Contractor's certification that verification has and will be performed.

### **2.23.6 Unfair Labor Practices**

Under 1980 PA 278, MCL 423.321, *et seq.*, the State must not award a Contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled under MCL 423.322. This information is compiled by the United States National Labor Relations Board. A Contractor of the State, in relation to the Contract, must not enter into a contract with a Subcontractor, manufacturer, or supplier whose name appears in this register. Under MCL 423.324, the State may void any Contract if, after award of the Contract, the name of the Contractor as an employer or the name of the Subcontractor, manufacturer or supplier of the Contractor appears in the register.



### **2.23.7 Environmental Provision**

For the purposes of this section, "Hazardous Materials" include asbestos, ACBMs, PCBs, petroleum products, construction materials including paint thinners, solvents, gasoline, oil, and any other material the manufacture, use, treatment, storage, transportation or disposal of which is regulated by the federal, state, or local laws governing the protection of the public health, natural resources, or the environment:

(a) The Contractor must use, handle, store, dispose of, process, transport, and transfer any Hazardous Material according to all federal, State, and local laws. The State must immediately advise the Contractor of the presence of any known Hazardous Material at the work site. If the Contractor encounters material reasonably believed to be Hazardous Material that may present a substantial danger, the Contractor must: (i) immediately stop all affected work; (ii) notify the State in accordance with Section 2.3.6, Notices; (iii) notify any entities required by law; and (iv) take appropriate health and safety precautions.

(b) The State may issue a Stop Work Order if the material is a Hazardous Material that may present a substantial danger and the Hazardous Material was not brought to the site by the Contractor, or does not wholly or partially result from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Materials. The State may remove the Hazardous Material, render it harmless, or terminate the affected work for the State's convenience.

(c) If the Hazardous Material was brought to the site by the Contractor, or wholly or partially results from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Material, or from any other act or omission within the control of the Contractor, the Contractor must bear its proportionate share of the delay and costs involved in cleaning up the site and removing and rendering harmless the Hazardous Material according to applicable laws.

### **2.23.8 Freedom of Information**

This Contract and all information submitted to the State by the Contractor is subject to the Michigan Freedom of Information Act (FOIA), 1976 PA 442, MCL 15.231, *et seq.*

### **2.23.9 Workplace Safety and Discriminatory Harassment**

In performing Services for the State, the Contractor and any Subcontractor must comply with all applicable state and federal laws.

### **2.23.10 Prevailing Wage-Deleted- Not Applicable**

### **2.23.11 Abusive Labor Practices**

The Contractor may not furnish any Deliverable(s) that were produced fully or partially by forced labor, convict labor, forced or indentured child labor, or indentured servitude.

"Forced or indentured child labor" means all work or service (1) exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or (2) performed by any person under the age of 18 under a contract the enforcement of which can be accomplished by process or penalties.



## **2.24 General Provisions**

### **2.24.1 Bankruptcy and Insolvency**

The State may, without prejudice to any other right or remedy, fully or partially terminate this Contract and, at its option, take possession of the work-in-progress and finish the work-in-progress by whatever method the State deems appropriate if:

- (a) the Contractor files for bankruptcy protection;
- (b) an involuntary petition is filed against the Contractor and not dismissed within 30 days;
- (c) the Contractor becomes insolvent or a receiver is appointed due to the Contractor's insolvency;
- (d) the Contractor makes a general assignment for the benefit of creditors; or
- (e) the Contractor or its affiliates are unable to provide reasonable assurances that the Contractor or its affiliates can provide the Deliverable(s) under this Contract.

Contractor will place appropriate notices or labels on the work-in-progress to indicate ownership by the State. To the extent reasonably possible, work-in-progress must be stored separately from other stock and marked conspicuously with labels indicating State ownership.

### **2.24.2 Media Releases**

News releases (including promotional literature and commercial advertisements) pertaining to the RFP and this Contract or the project to which it relates will not be made without prior approval by the State, and only in accordance with the instructions from the State.

### **2.24.3 Contract Distribution**

DTMB-Procurement retains the sole right of Contract distribution to all State agencies and local units of government unless other arrangements are authorized by DTMB-Procurement.

### **2.24.4 Permits**

Contractor must obtain and pay any associated costs for all required governmental permits, licenses, and approvals for the delivery, installation, and performance of the Contract.

### **2.24.5 Website Incorporation**

The State is not bound by any content on the Contractor's website unless incorporated directly into this Contract.

### **2.24.6 Future Bidding Preclusion**

Contractor acknowledges that, to the extent the Contract involves the creation, research, investigation or generation of a future RFP, it may be precluded from bidding on the subsequent RFP. The State reserves the right to disqualify any bidder if the State determines that the bidder has used its position (whether as an incumbent Contractor, or as a Contractor hired to assist with the RFP development, or as a Vendor offering free assistance) to gain a competitive advantage on the RFP

**2.24.7 Antitrust Assignment**

The Contractor assigns to the State any claim for overcharges resulting from state or federal antitrust violations to the extent that those violations concern materials or services supplied by third parties toward fulfillment of the Contract.

**2.24.8 Disaster Recovery**

Contractor and the State recognize that the State provides essential services in times of natural or man-made disasters. Therefore, except as mandated by federal disaster response requirements, Contractor personnel dedicated to providing Deliverable(s) under this Contract will provide the State with priority service for repair and work around in the event of a natural or man-made disaster.

**2.24.9 Legal Effect**

The State is not liable for costs incurred by the Contractor or for payment(s) under this Contract until the Contractor has received an authorized Purchase Order, some form of purchase order or P-card authorization.

**2.24.10 Entire Agreement**

This Contract constitutes the entire agreement between the parties and supersedes all prior agreements, whether written or oral, with respect to the subject matter. All attachments referenced in this Contract are incorporated in their entirety and form part of this Contract.

**2.24.11 Order of Precedence**

Any inconsistency in the terms associated with this Contract will be resolved by giving precedence to the terms in the following descending order:

- (a) Mandatory sections (2.1.1, Contract Term, 2.24.9, Legal Effect, 2.2.2, Payment Deadlines, 2.14, Insurance, 2.15, Indemnification, 2.16, Termination, 2.23, Governing Law, 2.15.7, Limitation of Liability);
- (b) All sections from Article 2 - Terms and Conditions, not listed in subsection (a) (c) Any attachment to the Contract documents;
- (c) Any Purchase Order, Direct Voucher, or Procurement Card Order issued under the Contract;
- (d) Bidder Responses contained in any of the RFP documents;
- (e) the WSCA/NASPO Mailing Equipment, Supplies, and Maintenance Master Price Agreement No. ADSPO011-00000411-7 including all related terms and conditions.

**2.24.12 Headings**

The captions and section headings used in this Contract are for convenience only and may not be used to interpret the scope and intent of this Contract.

**2.24.13 Form, Function and Utility**

If this Contract is for statewide use, but the Deliverable(s) does not meet the form, function, and utility required by a State agency, that agency may, subject to State purchasing policies, procure the Deliverable(s) from another source.

**2.24.14 Reformation and Severability**

Each provision of the Contract is severable from all other provisions of the Contract. If any provision of this Contract is held unenforceable, then the Contract will be modified to reflect the parties' original intent. All remaining provisions of the Contract remain in full force and effect.

**2.24.15 Approval**

Unless otherwise provided in this Contract, approval(s) must be in writing and must not be unreasonably withheld or delayed.

**2.24.16 No Waiver of Default**

Failure by a party to insist upon strict adherence to any term of the Contract does not waive that party's right to later insist upon strict adherence to that term, or any other term, of the Contract.

**2.24.17 Survival**

The provisions of this Contract that impose continuing obligations, including warranties, indemnification, and confidentiality, will survive the expiration or termination of this Contract.

**2.24.18 PCI Data Security Standard**

- (a) Contractors that process, transmit or store credit/debit cardholder data, must adhere to the Payment Card Industry (PCI) Data Security Standards. The Contractor is responsible for the security of cardholder data in its possession. The data may only be used to assist the State or for other uses specifically authorized by law.
- (b) The Contractor must notify the CCI (within 72 hours of discovery) of any breaches in security where cardholder data has been compromised. In that event, the Contractor must provide full cooperation to the Visa, MasterCard, Discover and state Acquirer representative(s), and/or a PCI approved third party to conduct a thorough security review. The Contractor must make the forensic report available within two weeks of completion. The review must validate compliance with the current PCI Data Security Standards for protecting cardholder data.
- (c) The Contractor must properly dispose of cardholder data, in compliance with DTMB policy, when it is no longer needed. The Contractor must continue to treat cardholder data as confidential upon contract termination.
- (d) The Contractor must provide the CCI with an annual Attestation of Compliance (AOC) or a Report on Compliance (ROC) showing the contractor is in compliance with the PCI Data Security Standards. The Contractor must notify the CCI of all failures to comply with the PCI Data Security Standard.

Pitney Bowes Inc.

WSCA/NASPO ADSPO11-00000411-7

Authorized End User License Agreements (“EULA”) / Software Licenses

**Pitney Bowes MAILING, FOLDING / INSERTING, ADDRESSING, PACKAGE TRACKING / SHIPPING**

**EQUIPMENT PRODUCTS:**

**1) BM EULA SMA Accounting for Mailing Machines Business Manager Products**

*This agreement is used for Postage Accounting Products that provide end users the ability to accurately account for all postage processed through their mailing systems. These solutions eliminate time and error issues associated with manually tracking postage costs to agencies via an automated postage accounting solution.*

**2) PBDS SLMA January 2010: Sendsuite / Ascent Products**

*This agreement is used for Distribution Solutions Products that provide end users the ability to rate, ship and track letters, parcels and packages from carriers like USPS, UPS, FedEx etc. These solutions provide the agencies postage and carrier cost savings by comparing different carrier rates that are based on size, weight and delivery dates.*

**3) PBDS SLMA January 2010: Arrival Package Tracking Products**

*This agreement is used for Mail Tracking Software Products that allows end users to track First-Class and Standard-Class mail and view online reports that show where such mail is in the mail stream and when it's been delivered. These solutions allow agencies to track all mail put into the USPS mail stream from point of mailing to point of delivery.*

**4) Sendsuite Live Software License / Maintenance Agreement: Sendsuite Live Products**

*This agreement is used for high volume integrated shipping systems that process outgoing packages and parcels.*

**5) Eula-addressright pro US- 06-15-07 click wrap license i0069016, Smartmailer clickwrap eula, and PB first master software license agreement-- form c0021240: Addressing Products**

*This agreement is used for High Volume Tabletop Inserters when combined with Address Cleansing Software Products that allows end users to cleanse address databases to ensure the correct delivery address is assigned, and can also provide the agencies USPS postal discount savings for qualified pieces mailed.*

**DMT PRODUCTS Include High Volume Console Inserting or Sorting Solutions:**

**DMT Inserters Production Category - no products in this category require software license**

**DIRECT CONNECT software is embedded in and is a perpetual license granted when equipment purchased.**

**IntelliLink Software may be required in certain cases.**

**DMT Folder Inserters Production Category - all DMT software is imbedded in the hardware / RD License agreement DC Verify and DF Works require New Master Software License Agreement.**

**DMT Software License& Subscription Category - any DMT product codes beginning with RD, SL or SR the software licenses are imbedded in the hardware**

**(Imbedded) Software License Maintenance Agreement ((010046) rev 06 30**

**Master Software License Agreement may apply. Reseller agreement DPV LACS license may apply for certain types of sorters.**

**DMT Presorting Equipment Category - software licenses required / SD-SR-SI License agreement**

**(Imbedded) Software License Maintenance Agreement (010046) rev 06.30**

**Reseller Agreement DPV LACS license may apply for certain types of sorters.**

**Your Business Information**

Customer PO #	Date Prepared		
Customer Name	Tax ID # (FEIN/TIN)		
Billing Address: Street	City	State	ZIP+4
Contact Name	Contact Phone #	Billing ID #	
Installation Address (if different from billing address): Street City		State	ZIP+4
Fiscal Period (from – to)		Delivery CAN #	
Please note any special billing requirements here		Location ID#	

**Your Business Needs**

Item	Description	Program ID	Fee
<b>Total Fees:</b>			

**Postage By Phone® Information**

<b>Postage Account Statements will be sent to:</b>		<b>Initial Postage to be provided by:</b>	
Customer Name:	Check Number:	Check Date:	
Billing Address (if different from billing above): Street	Reserve Account \$:	Purchase Power®\$:	
City State ZIP+4	Master Postage Account Number To Be Assigned:		
Billing Contact Name:	Postage By Phone Reset Charge:	\$_____/ea. if applicable	

**Your Payment Plan**

<b>Initial Term</b>	<b>Quarterly Fee*</b>	<input type="checkbox"/> <b>Soft-Guard® Subscription</b>	<b>Tax Exempt</b>
		Annual Fee:	( ) State ( ) County ( ) City ( ) Tax Exempt Certificate Attached ( ) Tax Exempt Certificate Not Required

*\*Plus applicable taxes which will be applied at time of billing*

**Your Signature**

By your signature below, you agree to be bound by this Postage Meter Rental Agreement (this "Rental"). This Rental is made and entered into pursuant to your State's/Entity's Participating Addendum, which is made in connection with the WSCA/NASPO Contract # ADSP011-00000411-7 ("Agreements"), all of which are available at [www.pb.com/states](http://www.pb.com/states). The terms and conditions of the Agreements govern this transaction, and in the event of any inconsistency with this Rental, the Agreements will supersede this Rental.

Customer Signature	Date	State's/Entity's Participating Addendum #
Print Name	Title	Email Address

**Sales Information**

Rep Name	Rep#	District #
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# WSCA/NASPO ADSP011-0000411-7 POSTAGE METER RENTAL TERMS AND CONDITIONS

## 1. DEFINITIONS

As used in this Agreement, the following terms mean:

**"Agreement"** – the Order, the State Participating Addendum, the WSCA/NASPO Master Agreement ADSP011-0000411-7, these terms and conditions, and any attached exhibits.

**"Bank"** - The Pitney Bowes Bank, Inc.

**"Consumable Supplies"** - ink, printheads, belts, ink rollers, sealer and moistener brushes, bulbs, felts, sponges, and similar items.

**"Initial Term"** - the rental period listed on the Order.

**"IntelliLink® Control Center"** or **"Meter"** - any postage meter supplied by PBI under the Order, including (i) in the case of a Connect+™ mailing system, the postal security device, the application platform, the system controller and the print engine and (ii) in the case of all other mailing systems, the postal security device, the user interface or keyboard and display and the print engine.

**"IntelliLink® Subscription"** – IntelliLink® Control Center (Meter) rental.

**"NASPO"** - National Association of State Procurement Officials

**"Order"** - the cover page to this Agreement.

**"PBGFS"** - Pitney Bowes Global Financial Services LLC.

**"PBI"**, **"We"**, **"Our"** or **"Us"** - Pitney Bowes Inc.

**"State Participating Addendum"** – The addendum to the WSCA Master Agreement entered into by the State for which the customer is an eligible entity and Pitney Bowes Inc.

**"WSCA"** - Western States Contracting Alliance.

**"WSCA Master Agreement"** or **"WSCA ADSP011-0000411-7"** – WSCA Cooperative Agreement for Mailing Equipment and Maintenance led by the State of Arizona.

**"You"** or **"Your"** - the person identified on the Order who is renting a Meter or purchasing services.

## 2. INTELLILINK® SUBSCRIPTION (METER RENTAL)

### 2.1 Fees

- We will invoice you the IntelliLink® Subscription fees listed on the Order.
- After the Initial Term, we may increase the IntelliLink® Subscription fees in accordance with the WSCA Master Agreement.
- When you receive notice of an increase, you may terminate this Agreement as of the date the increase becomes effective.
- If you do not pay the fees when due or you do not comply with the Agreement, we may disable the IntelliLink® Control Center, terminate the Agreement, retake the Meter, and collect from you all fees due for the remainder of the Initial Term.
- You are responsible for paying any taxes on the Meter and services, including sales and use tax, unless a valid tax exemption certification acceptable to the applicable taxing authority is provided.

### 2.2 Postage

- To obtain postage for your Meter, you must contact our POSTAGE BY PHONE® data center.
- You may transfer funds to the Bank for deposit into a Postage By Phone® Reserve Account which you maintain at the Bank ("your Reserve Account") or you may transfer funds to the United States Postal Service ("USPS") through a lockbox bank ("Lockbox Bank"). See section U1 for details.
- If you participate in any PBI, PBGFS, or Bank postage advance programs (such as Purchase Power), we will advance payment on your behalf to USPS, subject to repayment by you under the terms of the postage advance program and billed separately from your IntelliLink® Subscription fees.
- If you purchase postage through a Lockbox Bank, the USPS is responsible for refunds of unused postage and those refunds will be made in accordance with then current USPS regulations.

### 2.3 Terms of Use; Federal Regulations

- You may use the Meter solely for the purpose of processing your mail, provided that you are authorized by the USPS to use the Meter, and that you comply with (i) this Agreement, (ii) any user documentation and (iii) all USPS regulations.
- You agree to use the Meter only for business or commercial purposes, and not for personal, family, or household purposes.
- You agree to use only attachments or printing devices authorized by us.
- You must receive our written consent before moving the Meter to a different location.
- Federal regulations require that we own the Meter.
- Tampering with or misusing the Meter is a violation of federal law.

- Activities of the USPS including the payment of refunds for postage by the USPS to customers will be made in accordance with the current Domestic Mail Manual.
- If the Meter is used in any unlawful scheme, or is not used for any consecutive 12 month period, or if you take the Meter or allow the Meter to be taken outside the United States without proper written permission of USPS Headquarters, or if you otherwise fail to abide by the postal regulations and this Agreement regarding care and use of the Meter, then this Agreement and any related Meter rental may be revoked. You acknowledge that any use of this Meter that fraudulently deprives the USPS of revenue can cause you to be subject to civil and criminal penalties applicable to fraud and/or false claims against the United States. The submission of a false or fraudulent statement can result in imprisonment of up to 5 years and fines of up to \$10,000 (18 U.S.C. 1001) and a civil penalty of up to \$5,000 plus an assessment of twice the amount falsely claimed (3 U.S.C. 3802). The mailing of matter bearing a fraudulent postage meter imprint is an example of a violation of these statutes.
- You are responsible for immediately reporting (within 72 hours or less) the theft or loss of the Meter to Us. Failure to comply with this notification provision in a timely manner may result in the denial of refund of any funds remaining on the Meter at the time of loss or theft.
- You understand that the rules and regulations regarding the use of this Meter as documented in the Domestic Mail Manual may be updated from time to time by the USPS and it is your obligation to comply with any rules and regulations regarding its use.

### 2.4 Care and Risk of Loss

- You agree to take proper care of the Meter(s).
- You assume all risk of loss or damage to the Meter while you have possession.
- Upon ending this Agreement, you agree to deliver the Meter to us in good condition except for normal wear.

### 2.5 Rate Updates and Soft-Guard® Program

- Your Meter may require periodic rate information updates that you can obtain under our Soft-Guard® program.
- The Soft-Guard® Subscription, we will provide up to 6 rate updates during each 12 month period following the date of installation.
- We will provide rate updates only if required due to a postal or carrier change in rate, service, Zip Code or zone change.
- Your Soft-Guard® Subscription does not cover any change in rates due to custom rate changes, new classes of carrier service, or a change in Zip Code or zone due to equipment relocation.
- You can also renew the Soft-Guard® Subscription by contacting the Customer Care Center at 1-800-228-1071 (M-F 8:30am - 5:30pm CST).

### 2.6 Repair or Replacement

- If the Meter malfunctions or fails due to reasons other than your negligence or accident, usage which exceeds our recommendations, virus contamination or loss of data, misuse, external forces, loss or fluctuation of power, fire, flood, or other natural causes, service by anyone other than us, or the use of third party supplies (such as third party ink) resulting in damage to our Meter, we will repair or replace the Meter.
- REPAIR OR REPLACEMENT IS YOUR SOLE REMEDY.

### 2.7 LIMITATION OF LIABILITY

See – WSCA Master Price Agreement

### 2.8 Collection of Information

- You authorize us to access and download information from your Meter and we may disclose this information to the USPS or other governmental entity.
- We will not share with any third parties (except the USPS or other governmental entity) individually identifiable information that we obtain about you in this manner unless required to by law or court order.
- We may elect to share aggregate data about our customers' postage usage with third parties.

## 3. VALUE BASED SERVICES

Value Based Services include services such as USPS® e-Return Receipt and USPS® Confirmation Services.

### 3.1 Fees

- (a) Any fees charged by the USPS for any Value Based Service you purchase is payable by you in the same way that you pay for postage.
- (b) The USPS is solely responsible for its services.
- (c) We are not responsible for any malfunctions of any part of the communication link connecting the IntelliLink® Control Center with the USPS data system.

3.2 THE VALUE BASED SERVICES PROVIDED BY THE USPS ARE PROVIDED WITHOUT ANY WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING THE WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. WE ARE NOT LIABLE FOR ANY DAMAGES YOU MAY INCUR BY REASON OF YOUR USE OF THE VALUE BASED SERVICES PROVIDED BY THE USPS, INCLUDING INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES.

3.3 Ending the Value Based Services. We have the right to terminate the Value Based Services if the USPS discontinues offering the service or you breach your obligations under this Agreement and fail to cure the breach within thirty (30) days after you have been notified of it in writing.

**4. EMBEDDED SOFTWARE**

4.1 Our Equipment may contain embedded software. You agree that: (i) PBI and its licensors own the copyrights and other intellectual property in and to the embedded software; (ii) you are licensed only to use the embedded software with our Equipment in which the embedded software resides; (iii) you will not copy, modify, de-compile, or otherwise

attempt to unbundle, reverse engineer or create derivative works of the embedded software, except as permitted by applicable law; (iv) you will not distribute or otherwise disclose the embedded software (or any portion thereof) to any other person; and (v) you may not export the embedded software in contravention of applicable export control laws. The embedded software contains third party software, which, notwithstanding the above, is subject to any terms that may accompany such third party software.

**5. INTERNET ACCESS POINT**

5.1 The Connect+™ Series Equipment may use an internet access point (e.g., wireless router) provided by us. You may only use this access point for connectivity between the Connect+™ Series Equipment and the internet and for no other purpose. You agree to pay all costs associated with use of the access point in violation of this restriction.

**6. ENDING THIS AGREEMENT.**

- 6.1 Your right to use the Meter, or Value Based Services is limited in duration to the Initial Term and to any subsequent extensions of the Initial Term.
- 6.2 After the Initial Term, you or we may cancel this Agreement, in whole or in part, upon 30 days prior written notice.
- 6.3 We reserve the right to recover or disable the Meter and terminate this use at any time if in violation of the terms of use under the Federal Regulations.
- 6.4 After cancellation or termination of this Agreement, you must return the Meter to us in the same condition as you received it, reasonable wear and tear excepted.

**U1. UNITED STATES POSTAL SERVICE ACKNOWLEDGMENT OF DEPOSIT**

U1.1 In connection with your use of a Postage Evidencing System as defined in the Code of Federal Regulations ("CFR"), you may transfer funds to the USPS through a lockbox bank (the "Lockbox Bank") for the purpose of prepayment of postage on Postage Evidencing Systems, generating evidence of postage, both PC Postage and meters (a "Deposit"), or you may transfer funds to the Bank for deposit into a Postage By Phone® Reserve Account ("your Reserve Account") which you maintain at the Bank. U1.2 To the extent you deposit funds in advance of the use of any evidence of postage, you may, from time to time, make Deposits in the Lockbox Bank account identified as "United States Postal Service CMRS-PB" or make deposits in your Reserve Account, in either case through electronic means, including Automated Clearinghouse Transfers. The USPS may, at its discretion, designate itself or a successor as recipient of Deposits made by you to the Lockbox Bank account described above. U1.3 Any deposit made by you in your Reserve Account is subject to the Postage By Phone® Reserve Account – Agreement and Disclosure Statement governing your Reserve Account. U1.4 Any Deposit made by you in the Lockbox Bank account shall be credited by the USPS only for the payment of evidence of postage. Such Deposits may be commingled with Deposits of other customers. You shall not receive or be entitled to any interest or other income earned on such Deposits. U1.5 The USPS will provide a refund to you for the remaining account balances of Deposits held by the USPS. These refunds are provided in accordance with the rules and regulations governing deposit of funds for evidence of postage, published in the CFR. U1.6 The Lockbox Bank, which shall collect funds on behalf of the USPS, shall provide PBI, on each business day, information as to the amount of each Deposit made to the USPS by you, so that PBI can update its records. U1.7 PBI may deposit funds on your behalf. The USPS will make no advances of funds to you. Any relationship concerning advances of funds is between you and PBI, PBGFS and/or the Bank. U1.8 You acknowledge that the terms of this Acknowledgement may be changed, modified, or revoked by the USPS, with appropriate notice. U1.9 Postal Regulations governing the deposit of funds are published in the CFR or its successor. You acknowledge that you shall be subject to all applicable rules, regulations, and orders of the USPS, including future changes to such rules, regulations, and orders, and such additional terms and conditions as may be determined in accordance with applicable law. The USPS rules, regulations, and orders shall prevail in the event of any conflict with any other terms and conditions applicable to any Deposit.

United States Postal Service  
**ACKNOWLEDGMENT OF DEPOSIT**

The Pitney Bowes Bank, Inc.  
**PURCHASE POWER TERMS AND CONDITIONS**

**P1 PURCHASE POWER<sup>SM</sup> CREDIT LINE**

P1.1 General. (a) In order to participate in the Program, you must provide the information described in Section P1.8. (b) If you subscribe to the EasyPermitPostage® service, you may use the Purchase Power credit line to pay for permit postage and associated USPS fees. (c) The Purchase Power credit line is a product of The Pitney Bowes Bank, Inc. (the "Bank") and is not available to individuals for personal, family, or household purposes. P1.2

Account Charges. (a) Your Purchase Power Account (the "Account") will be charged for the amount of postage, products, and services requested and the related fees, if applicable. (b) Unless prohibited by law, you agree to pay the fees and charges of which the Bank has given you notice, including, without limitation, the fees and charges relating to: (i) transaction fees, if applicable; (ii) your failure to pay in a timely manner; (iii) your exceeding your credit line; and (iv) fees attributable to the return of any checks that you give to the Bank as payment of the Account. P1.3 Billing, Payments, and Collection. (a) You will receive a billing statement for each billing cycle in which you have activity on the Account. The Bank reserves the right to deliver any statement electronically to the email address that is then on file for the Company. (b) Payments are due by the due date shown on your billing statement. (c) You may pay the entire balance due or a portion of the balance, provided that you pay at least the minimum payment shown on the statement. In the event of a partial payment, you will be responsible for the unpaid balance. P1.4 Deferred Payment Terms. (a) By using the Program, you agree that whenever there is an unpaid balance outstanding on the Account which is not paid in full by the due date shown on your billing statement, the Bank will charge you, and you will pay, interest on the unpaid balance of the Account from time to time, for each day from the date the transaction is posted to the Account until the date the unpaid balance is paid in full, at a variable rate equal to the Annual Percentage Rate applicable to the Account from time to time. (b) (i) The Annual Percentage Rate applicable to the Account will be: the greater of (a) 22% and (b) the sum of the highest "Prime Rate" published in the "Money Rates" section of The Wall Street Journal on the last business day of the month and the margin set forth below (the sum of the margin and the Prime Rate is herein called the "Floating Rate"). (ii) The Annual Percentage Rate will be adjusted on a monthly basis based on any fluctuation in the Floating Rate, if applicable. (iii) Any change in the Annual Percentage Rate based on the calculation described in this section will become effective on the first day of your next billing cycle. (iv) The margin which will be added to the Prime Rate to determine the Floating Rate will be 14.75% (using the Prime Rate in effect as of March 31, 2010, the daily periodic rate would be .049315% and the corresponding annual percentage rate would be 18.00%). (v) The Account balance that is subject to a finance charge each day will include (a) outstanding balances, minus any payments and credits received by the Bank on the Account that day, and (b) unpaid interest, fees, and other charges on the Account. (vi) The Bank will charge a minimum finance charge of \$1.00 in any billing cycle if the finance charge as calculated above is less than \$1.00. (vii) Each payment that you make will be applied to reduce the outstanding balance of the Account and replenish your available credit line. (viii) The Bank may refuse to extend further credit if the amount of a requested charge plus your existing balance exceeds your credit. P1.5 Account Cancellation and Suspension. (a) The Bank may at any time close or suspend the Account, and may refuse to allow further charges to the Account. (b) Cancellation or suspension will not affect your obligation to pay any amounts you owe. P1.6 Amendments; Electronic Delivery; Termination. (a) The Bank can amend any of the provisions and terms related to the Program at any time by written notice to you or by electronic notice via the email address that is then on file for the Company. You are consenting to electronic delivery of any amendments to the Program terms. (b) Each time you use the Program, you are signifying your acceptance of the terms and provisions then in effect. (c) An amendment becomes effective on the date stated in the notice and will apply to any outstanding balance on the Account. (d) The Bank may terminate the Program at any time and will notify you in the event of any termination. (e) Any outstanding obligation will survive termination of the Program. P1.7 Governing Law. The Program and any advances are governed by and construed in accordance with the laws of the State of Utah and applicable federal law. P1.8 USA PATRIOT Act. (a) Federal law requires financial institutions to obtain, verify and record information that identifies each person who opens an account. (b) The Bank asks that you provide identifying information, including your address and taxpayer identification number. (c) The Bank may also ask for additional identifying information, where appropriate, including asking that your representative who is opening the Account provide his/her name, address, date of birth, driver's license and/or other documents and information that will allow the Bank to identify him/her.

**LEASING/RENTAL PROGRAMS SUMMARY AND USE – STATE OF MICHIGAN**

Pitney Bowes Global Financial Services LLC offers a variety of equipment leasing and rental programs to enable your agency to acquire the equipment it needs with the innovative financing solution that works best for you.

In accordance with the Participating Addendum with the State of Michigan ("State"), the lease to purchase agreement herein defined as Option A has not been approved for use by agencies, facilities and departments of the State. However, the lease to purchase agreement "Option A" may be offered to political subdivisions of the State where their regulations permit.

**TERM RENTAL (INSTALLMENT PURCHASE)-Option A**

***State agencies, facilities and departments; Non-profits and non-State or Local agencies cannot utilize this program***

This program provides a 36, 48 or 60 Month Lease and is available only to city and county agencies, such as public school districts, municipal hospitals, police and fire departments. Due to the tax exempt status of the Lessee, rates are much lower than standard Fair Market Value Lease rates. Title to the Equipment passes up front and at the end of the lease term, you own the equipment (excluding meter). Sales Tax will be charged, if required under Your State Statute.

**STATE & LOCAL Rental - Option B**

This program provides you with 36, 48 or 60 Month Rental. At the end of the rental period, you may purchase the equipment at the end of the Rental for its then Fair Market Value, or you can enter into a new Rental term or return the equipment. ***This Fair Market Rental Agreement cannot be used for Production Equipment Categories (Production Ink Jet Envelope Addressing System, Production Tabbers, Inserter Production, Production Folder-Inserter, Pre-Sorting Equipment) awarded under ADSP011-00000411-7 to Pitney Bowes Inc.*** Sales Tax will be charged, if required under Your State Statute.

**STATE & LOCAL FAIR MARKET VALUE LEASE - Option C**

This program provides you with a 36, 48 or 60 Month lease term with the option to purchase the equipment at the end of the lease for its then Fair Market Value, or you can continue leasing the equipment based on its Fair Market Value, or return the equipment. Sales Tax will be charged, if required under Your State Statute.

Example of lease payments based on a \$10,000.00 equipment price:

<b>MONTHLY LEASE RATES</b>			
<b>Term</b>	<b>Option A</b>	<b>Option B</b>	<b>Option C</b>
<b>36</b>	<b>.0323</b>	<b>.0377</b>	<b>.0342</b>
<b>48</b>	<b>.0252</b>	<b>.0309</b>	<b>.0277</b>
<b>60</b>	<b>.0210</b>	<b>.0270</b>	<b>.0237</b>

<b>MONTHLY LEASE PAYMENT BASED ON \$10,000 TRANSACTION</b>			
<b>Term</b>	<b>Option A</b>	<b>Option B</b>	<b>Option C</b>
<b>36</b>	<b>\$323.00</b>	<b>\$377.00</b>	<b>\$342.00</b>
<b>48</b>	<b>\$252.00</b>	<b>\$309.00</b>	<b>\$277.00</b>
<b>60</b>	<b>\$210.00</b>	<b>\$270.00</b>	<b>\$237.00</b>

Pitney Bowes Global Financial Services LLC will serve as a sub-contractor under ADSP011-00000411-7 and will be the Lessor under this Term Rental (Installment Purchase) Lease Terms and Condition Agreement. PBGFS does not warrant, service or otherwise support the equipment. Those services are provided by Pitney Bowes Inc. (PBI). Due to federal regulations, only PBI can own an Intellilink Control Center or Meter. ***State of Michigan agencies, facilities and departments cannot utilize this financing option. Political subdivisions of the State may utilize this financing option, excluding the terms and conditions of Section 2.16.3 "Termination for Convenience" within the State Participating Addendum Attachment A.***

The Pricing Plan for the WSCA/NASPO Term Rental (Installment Purchase) Lease Terms and Conditions is as follows:

**Monthly Billing:**

<u>Term:</u>	<u>Lease Rate:</u>
36	.0323
48	.0252
60	.0210

**L1. DEFINITIONS**

L1.1 The following terms mean:

- "Agreement" - the Order, your State's Participating Addendum, the WSCA/NASPO Master Agreement ADSP011-00000411-7, these terms and conditions, and any attached exhibits.
- "Bank" - The Pitney Bowes Bank, Inc.
- "Consumable Supplies" - ink, ink rollers, printheads, toner and drum cartridges, ribbons and similar items. Product-specific consumable supplies are identified in the product operator guide.
- "Covered Equipment" - the equipment rented or sold to you from PBGFS or PBI that is covered by the SLA as stated on the Order. Covered Equipment does not include any IntelliLink® Control Center or Meter, or any standalone software.
- "Delivery Date" - the date the Equipment or other item is delivered to your location.
- "Effective Date" - the date the Order is received by us.
- "Equipment" - the equipment listed on the Order, excluding any IntelliLink Control Center or Meter, and any standalone software.
- "Initial Term" - the lease period listed on the Order
- "Install Date" - the date the Equipment or other item is installed at your location.
- "IntelliLink Control Center" or "Meter" - any postage meter supplied by PBI under the Order, including (i) in the case of a Connect+™ mailing system, the postal security device, the application platform, the system controller and the print engine and (ii) in the case of all other mailing systems, the postal security device, the user interface or keyboard and display and the print engine.
- "Lease" - the Order and this WSCA/NASPO Term Rental (Installment Purchase) Lease Terms and Conditions.
- "Maintenance Service" - the maintenance service for the Covered Equipment selected by you on the Order, excluding software maintenance.
- "Master Agreement" - WSCA/NASPO Master Agreement ADSP011-00000411-7 Mail Room Equipment, Services and Support contract administered by the State of Arizona and shall consist of: the solicitation as amended, any requests for clarifications and/or best and final offers, the proposal submitted by us, our responses to any requests for clarifications and/or our best and final offer.
- "Order" - the executed agreement between the applicable Pitney Bowes company and you for the Equipment.
- "PBGFS" - Pitney Bowes Global Financial Services LLC.
- "PBI" - Pitney Bowes Inc.
- "Pitney Bowes" - PBGFS and its subsidiaries, and PBI.
- "Postage Meter Rental Agreement" - an agreement governing the use and rental of an Intellilink Control Center or Meter you enter into with us.
- "SLA" - the Service Level Agreement.
- "SLMA" - a Software License and Maintenance Agreement you enter into with us
- "SOW" - a Statement of Work you enter into with us.
- "State Participating Addendum" the bilateral agreement executed by us and your participating state incorporating the Master Agreement.
- "We," "Our," or "Us" - the Pitney Bowes company with whom you've entered into the Order.

"WSCA/NASPO" - Western States Contracting Alliance and the National Association of State Procurement Officials  
 "You," "Your," "Lessee," or "Customer" - the entity identified on the Order.

**L2. AGREEMENT**

- L2.1 You will make each Monthly Payment by the due date shown on our invoice.
- L2.2 **You may not cancel this Agreement for any reason except as expressly set forth in Section L10 below. All payment obligations are unconditional.**
- L2.3 If you do not pay the fees when due or you do not comply with the Agreement and fail to cure the same within thirty (30) days of receipt of written notice thereof, we may disable the IntelliLink® Control Center, terminate the Agreement, retake the Equipment and Meter, and collect from you all fees due for the remainder of the Initial Term, or if after the Initial Term, all fees then due, plus interest at the lesser of 18% per year or the maximum allowed by law and attorneys' fees.
- L2.4 You authorize us to file a Uniform Commercial Code financing statement naming you as debtor/lessee with respect to the Equipment..

**L3. PAYMENT TERMS AND OBLIGATIONS**

- L3.1 We will invoice you in arrears each month for all payments on the Order (each, a "Monthly Payment"), except as provided in any SOW attached to this Agreement.
- L3.2 Your Monthly Payment may include a one-time origination fee, amounts carried over from a previous unexpired lease, and other costs.
- L3.3 If you request, your IntelliLink® Control Center/Meter Rental fees, Service Level Agreement fees, and Soft-Guard® payments ("PBI Payments") will be included with your Monthly Payment and begin with the start of the Term. Your Monthly Payment will increase if your PBI Payments increase.
- L3.4 Your obligations, including your obligation to pay the Monthly Payments due in any fiscal year during the term of this Agreement, shall constitute a current expense for such fiscal year and shall not constitute indebtedness within the meaning of the constitution and laws of the state in which you are located. Nothing herein shall constitute a pledge by you of any taxes or other moneys (other than moneys lawfully appropriated from time to time by or for your benefit for this Agreement) to the payment of any Total Payment due under this Agreement.

**L4. EQUIPMENT OWNERSHIP**

- L4.1 PBI owns any IntelliLink® Control Center or Meter. Title to the Equipment shall pass to you upon installation. However, you and we agree that title shall automatically revert to us in the event of default, or termination due to your non-appropriation under Section 10.

**L5. TERM**

- L5.1 This Agreement shall commence on the date of delivery and shall continue until the earlier of (i) termination at our option upon the occurrence of an event of default, or (ii) the occurrence of an event of a non-appropriation under Section 10, or (iii) the expiration of the Term and your payment of all Monthly Payments and other sums due and your fulfillment of all other obligations under this Agreement.

**L6. SURRENDER OF EQUIPMENT**

L6.1 If you default, or terminate this Agreement by non-appropriation under Section 10, you, at your expense, shall return all Equipment by delivering it to us in the same condition as when delivered to you, reasonable wear and tear excepted, to such place or on board such carrier, packed for shipping, as we may specify. Until the Equipment is returned as required above, all terms of this Agreement remain in effect including, without limitation, your obligations to make payments relating to your continued use of the Equipment and to insure the Equipment.

## L7. WARRANTY AND LIMITATION OF LIABILITY

L7.1 PBGFS AND THE BANK MAKE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR FREEDOM FROM INTERFERENCE OR INFRINGEMENT.

L7.2 PBI provides you with the warranty as provided in the Master Agreement and as follows:

- (a) PBI warrants that the Equipment will be free from defects in material and workmanship and will perform according to the equipment user guide for a period of one year (360) days from the date of acceptance (the "Warranty Period").
- (b) PBI warrants that the Maintenance Service provided will be performed in a professional and workmanlike manner.
- (c) Your remedy in the event of any warranty claim is as provided within the Master Agreement.
- (d) A "defect" does not include the failure of rates within a rate update to conform to published rates.
- (e) There is no warranty for Equipment requiring repair or replacement because of your negligence, usage which exceeds PBI's recommendations, damage in transit, virus contamination or loss of data, misuse, external forces, loss or fluctuation of power, fire, flood, or other natural causes, or service by anyone other than PBI. There is no warranty for Equipment arising from the use of third party supplies (such as ink) that results in: (i) damage to PBI Equipment; (ii) poor indicia, text, or image print quality; (iii) indicia readability failures; or (iv) a failure to print indicia, text, or images.
- (f) The print engine(s), print engine components, structural components and printed circuit board assemblies supplied with the PBI Equipment may be reclaimed, reconditioned or remanufactured. Any such item is warranted to perform according to the same standards as the equivalent new item.
- (g) The warranty does not cover Consumable Supplies.

L7.3 PBGFS AND THE BANK ARE NOT LIABLE FOR ANY LOSS, DAMAGE (INCLUDING INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES), OR EXPENSE CAUSED DIRECTLY OR INDIRECTLY BY THE EQUIPMENT, AND PBI WILL HAVE ONLY SUCH LIABILITY AS SET FORTH IN THE MASTER AGREEMENT.

## L8. EQUIPMENT OBLIGATIONS

L8.1 Condition and Repairs. You will keep the Equipment free from liens and encumbrances and in good repair, condition, and working order.

L8.2 Inspection. We may inspect the Equipment and any related maintenance records.

L8.3 Location. You may not move the Equipment from the location specified on the Order without our prior written consent which will not be unreasonably withheld.

## L9. RISK OF LOSS

L9.1 You bear the entire risk of loss to the Equipment from the Delivery Date by PBI until the end of the Term (including any extensions), regardless of cause, ordinary wear and tear excepted ("Loss").

L9.2 No Loss will relieve you of any of your obligations under this Agreement. You must immediately notify us in writing of the occurrence of any Loss.

L9.3 You will keep the Equipment insured against Loss for its full replacement value under a comprehensive policy of insurance or other arrangement with an insurer of your choice, provided that it is reasonably satisfactory to us ("Insurance"). YOU MUST CALL US AT 1-800-243-9506 AND PROVIDE US WITH EVIDENCE OF INSURANCE.

## L10. NON-APPROPRIATION

L10. See Section 2.16.4 – Termination for Non- Appropriations within the State Participating Addendum Attachment A

## L11. REPRESENTATIONS

L11.1 You hereby represent and warrant that (a) you are a state or political subdivision thereof within the meaning of Section 103(c) of the Internal Revenue Code of 1986, as amended (the "Code"); and (b) you have the power and authority under applicable law to enter into this Agreement and you have been duly authorized to execute and deliver this Agreement and carry out your obligations hereunder. You acknowledge that a portion of each Monthly Payment you shall pay includes interest and that this Agreement

is entered into based on the assumption that the interest portion of each Monthly Payment is not includible in gross income of the owner thereof for Federal income tax purposes under Section 103(a) of the Code. You shall, at all times, do and perform all acts and things necessary and within your control in order to assure that such interest component shall be so excluded. If any interest is determined not to be excludible from gross income, your Monthly Payment shall be adjusted in an amount sufficient to maintain our original after tax yield utilizing our consolidated marginal tax rate, which adjusted Monthly Payments you agree to pay as provided in this Agreement, subject to Section L10. The rate at which the interest portion of Monthly Payments is calculated is not intended to exceed the maximum rate or amount of interest permitted by applicable law. If such interest portion exceeds such maximum, then at our option, if permitted by law, the interest portion will be reduced to the legally permitted maximum amount of interest, and any excess will be used to reduce the principal amount of your obligation or be refunded to you. You shall not do (or cause to be done) any act which will cause, or by omission of any act allow, this Agreement to be an "arbitrage bond" within the meaning of Section 148(a) of the Code or a "private activity bond" within the meaning of Section 141(a) of the Code. At the time of your execution of this Agreement, you shall provide us with a properly prepared and executed copy of the appropriate US Treasury Form 8038-G or 8038-GC and you appoint us as your agent for the purpose of maintaining a registration system as required by Section 149(a) of the Code. This Section shall survive the termination of this Agreement.

## L12. MISCELLANEOUS

L12.1 If more than one customer is named in this Agreement, liability is joint and several.

L12.2 YOU MAY NOT ASSIGN OR SUBLET THE EQUIPMENT OR THIS AGREEMENT WITHOUT OUR PRIOR WRITTEN CONSENT, WHICH CONSENT WILL NOT BE UNREASONABLY WITHHELD.

L12.3 We may sell, assign, or transfer all or any part of this Agreement or the Equipment. Any sale, assignment, or transfer will not affect your rights or obligations under this Agreement.

L12.4 If there is a conflict between any of the terms and conditions in this Agreement, your State's Participating Addendum and the Master Agreement ADSPO11-00000411, this Agreement shall prevail.

L12.5 This Agreement is being offered to any purchasing entity who is authorized to file a 8038-G and/or 8028-GC and such form must be included provided when placing an order.

L12.6 All applicable taxes required to be collected by us will be shown on the invoice.

L12.7 Any IntelliLink-Control Center or Meter rented under this Agreement is subject to the applicable USPS regulations and meter terms and conditions as may be provided by PBI.

L12.8 Our Equipment may contain embedded software. You agree: (i) that PBI and its licensors own the copyrights and other intellectual property in and to the embedded software; (ii) that you do not acquire any right, title or interest in or to the embedded software; (iii) only to use the embedded software with our Equipment in which the embedded software resides; (iv) that you may not copy the embedded software; (v) that you may neither modify nor create derivative works of the embedded software (vi) that you may neither distribute nor disclose the embedded software (or any portion thereof) to any other person; (vii) that you may not translate, de-compile, disassemble, or otherwise attempt to unbundle, reverse engineer or create derivative works of the embedded software, except as permitted by applicable law; and (viii) that you may not export the embedded software in contravention of applicable export control laws. The embedded software contains third party software. Notwithstanding the above, this section does not modify any terms that may accompany such third party software.

L 12.9 The Connect+ Series Equipment may use an internet access point (e.g., wireless router) provided by us. You may only use this access point for connectivity between the Connect+ Series Equipment and the internet and for no other purpose. You agree to pay all costs associated with use of the access point in violation of this restriction.

## OPTION B -- WSCA/NASPO FMV RENTAL TERMS AND CONDITIONS: - STATE OF MICHIGAN

Pitney Bowes Global Financial Services LLC (“PBGFS”) will serve as a sub-contractor under ADSP011-00000411-7 and will be the Lessor under this Fair Market Value Rental Terms and Condition Agreement. This Fair Market Rental Agreement cannot be used for Production Equipment Categories (Production Ink Jet Envelope Addressing System, Production Tabbers, Inserter Production, Production Folder-Inserter, Pre-Sorting Equipment) awarded under ADSP011-00000411-7 to Pitney Bowes Inc. PBGFS does not warrant, service or otherwise support the equipment. Those services are provided by Pitney Bowes Inc. (PBI). Due to federal regulations, only PBI can own an Intellilink Control Center or Meter.

The Pricing Plan for the WSCA/NASPO Fair Market Value Rental Terms and Conditions is as follows:

**Monthly Billing:**

<u>Term:</u>	<u>Rental Rate:</u>
36	.0377
48	.0309
60	.0270

Total Value of the Order multiplied by the applicable Monthly Rate Factor = Monthly Equipment Rental Payment, plus applicable monthly meter rental and value based service fees, plus the monthly cost of service maintenance for years 2 thru end of initial term, plus any applicable taxes.

For further clarification a 36 month rental based on a \$10,000 equipment order would equal a \$377.00 monthly equipment rental payment, plus applicable service maintenance for years 2 thru end of initial term, monthly meter rental and value based services fees would be added to the payment.

**L1. DEFINITIONS**

L1.1 The following terms mean:

“Agreement” - the Order, your State's Participating Addendum, the WSCA/NASPO Master Agreement ADSP011-00000411-7, these terms and conditions, and any attached exhibits.

“Bank” - The Pitney Bowes Bank, Inc.

“Consumable Supplies” - ink, ink rollers, printheads, toner and drum cartridges, ribbons and similar items. Product-specific consumable supplies are identified in the product operator guide.

“Covered Equipment” - the equipment rented or sold to you from PBGFS or PBI that is covered by the SLA as stated on the Order. Covered Equipment does not include any IntelliLink® Control Center or Meter, or any standalone software.

“Delivery Date” - the date the Equipment or other item is delivered to your location.

“Effective Date” - the date the Order is received by us.

“Equipment” - the equipment listed on the Order, excluding any IntelliLink Control Center or Meter, and any standalone software.

“Initial Term” - the lease period listed on the Order

“Install Date” - the date the Equipment or other item is installed at your location.

“IntelliLink Control Center” or “Meter” - any postage meter supplied by PBI under the Order, including (i) in the case of a Connect™ mailing system, the postal security device, the application platform, the system controller and the print engine and (ii) in the case of all other mailing systems, the postal security device, the user interface or keyboard and display and the print engine.

“Maintenance Service” - the maintenance service for the Covered Equipment selected by you on the Order, excluding software maintenance.

“Master Agreement” - WSCA/NASPO Master Agreement ADSP011-00000411-7 Mail Room Equipment, Services and Support contract administered by the State of Arizona and shall consist of: the solicitation as amended, any requests for clarifications and/or best and final offers, the proposal submitted by us, our responses to any requests for clarifications and/or our best and final offer.

“Order” - the executed agreement between the applicable Pitney Bowes company and you for the Equipment.

“PBGFS” - Pitney Bowes Global Financial Services LLC.

“PBI” - Pitney Bowes Inc.

“Pitney Bowes” - PBGFS and its subsidiaries, and PBI.

“Postage Meter Rental Agreement” - an agreement governing the use and rental of an IntelliLink Control Center or Meter you enter into with us.

“Rental” - the Order and this WSCA/NASPO FMV Rental Terms and Conditions.

“SLA” - the Service Level Agreement.

“SLMA” - a Software License and Maintenance Agreement you enter into with us

“SOW” - a Statement of Work you enter into with us.

“State Participating Addendum” the bilateral agreement executed by Us and your participating state incorporating the Master Agreement.

“We,” “Our,” or “Us” - the Pitney Bowes company with whom you've entered into the Order.

“WSCA/NASPO” - Western States Contracting Alliance and the National Association of State Procurement Officials

“You,” “Your,” “Lessee,” or “Customer” - the entity identified on the Order.

**L2. AGREEMENT**

L2.1 You are leasing the Equipment listed on the Order. You will make each Monthly Payment by the due date shown on our invoice.

L2.2 You may not cancel this Rental for any reason except as expressly set forth in Sections L10 and L11 below.

L2.3 If you do not pay the fees when due or you do not comply with the Agreement and fail to cure the same within thirty (30) days of receipt of written notice thereof, we may disable the IntelliLink® Control Center, terminate the Agreement, retake the Equipment and Meter, and collect from you all fees due for the remainder of the Initial Term, or if after the Initial Term, all fees then due, plus interest at the lesser of 18% per year or the maximum allowed by law and attorneys' fees.

L2.4 You authorize us to file a Uniform Commercial Code financing statement naming you as debtor/lessee with respect to the Equipment.

**L3. PAYMENT TERMS AND OBLIGATIONS**

L3.1 We will invoice you in arrears each month for all payments on the Order (each, a “Monthly Payment”), except as provided in any SOW attached to this Agreement.

L3.2 Your Monthly Payment may include a one-time origination fee, amounts carried over from a previous unexpired Rental, and other costs.

L3.3 If you request, your IntelliLink® Control Center/Meter Rental fees, Service Level Agreement fees, and Soft-Guard® payments (“PBI Payments”) will be included with your Monthly Payment and begin with the start of the Rental Term. Your Monthly Payment will increase if your PBI Payments increase.

**L4. EQUIPMENT OWNERSHIP**

L4.1 We own the Equipment. PBI owns any IntelliLink® Control Center or Meter. Except as stated in Section L6.1, you will not have the right to become the owner at the end of this Agreement.

**L5. RENTAL TERM**

L5.1 The Rental term is the number of months stated on the Order ("Rental Term").

## L6. END OF RENTAL OPTIONS

L6.1 During the 90 days prior to the end of your Rental, you may, if not in default, select one of the following options:

- (a) enter into a new Rental with us;
- (b) purchase the Equipment "as is, where is" for fair market value (not available to State agencies, departments and facilities); or
- (c) return the Equipment, IntelliLink Control Center and/or Meter in its original condition, reasonable wear and tear excepted. If you return the Equipment, IntelliLink Control Center and/or Meter, at our option you will either (i) properly pack them and insure them for their full replacement value (unless you are enrolled in the ValueMAX® program) and deliver them aboard a common carrier, freight prepaid, to a destination within the United States that we specify, or (ii) properly pack and return them in the return box and with the shipping label provided by us and, in either case, pay us our then applicable processing fee.

L6.2 If you do not select one of the options in Section L6.1, you shall be deemed to have agreed to enter into month to month extensions of the term of this Agreement. You may opt to cease the automatic extensions by providing us with written notice within 60 days (but no less than 30 days or such shorter period as may be contemplated by law) prior to the expiration of the then-current term of this Agreement. Upon cancellation, you agree to either return all items pursuant to Section L6.1(c) or purchase the Equipment (not available to State agencies, departments or facilities).

## L7. WARRANTY AND LIMITATION OF LIABILITY

L7.1 PBGFS AND THE BANK MAKE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR FREEDOM FROM INTERFERENCE OR INFRINGEMENT.

L7.2 PBI provides you with the warranty as provided in the State Participating Addendum, Master Agreement and as follows:

- (a) PBI warrants that the Equipment will be free from defects in material and workmanship and will perform according to the equipment user guide for a period of one year (360) days from the date of acceptance (the "Warranty Period").
- (b) PBI warrants that the Maintenance Service provided will be performed in a professional and workmanlike manner.
- (c) Your remedy in the event of any warranty claim is as provided within the State Participating Addendum and Master Agreement.
- (d) A "defect" does not include the failure of rates within a rate update to conform to published rates.
- (e) There is no warranty for Equipment requiring repair or replacement because of your negligence, usage which exceeds PBI's recommendations, damage in transit, virus contamination or loss of data, misuse, external forces, loss or fluctuation of power, fire, flood, or other natural causes, or service by anyone other than PBI. There is no warranty for Equipment arising from the use of third party supplies (such as ink) that results in: (i) damage to PBI Equipment; (ii) poor indicia, text, or image print quality; (iii) indicia readability failures; or (iv) a failure to print indicia, text, or images.
- (f) The print engine(s), print engine components, structural components and printed circuit board assemblies supplied with the PBI Equipment may be reclaimed, reconditioned or remanufactured. Any such item is warranted to perform according to the same standards as the equivalent new item.
- (g) The warranty does not cover Consumable Supplies.

L7.3 PBGFS AND THE BANK ARE NOT LIABLE FOR ANY LOSS, DAMAGE (INCLUDING INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES), OR EXPENSE CAUSED DIRECTLY OR INDIRECTLY BY THE EQUIPMENT, AND PBI WILL HAVE ONLY SUCH LIABILITY AS SET FORTH IN THE STATE PARTICIPATING ADDENDUM AND MASTER AGREEMENT.

## L8. EQUIPMENT OBLIGATIONS

L8.1 Condition and Repairs. You will keep the Equipment free from liens and encumbrances and in good repair, condition, and working order.

L8.2 Inspection. We may inspect the Equipment and any related maintenance records.

L8.3 Location. You may not move the Equipment from the location specified on the Order without our prior written consent which will not be unreasonably withheld.

## L9. RISK OF LOSS AND VALUEMAX® PROGRAM

### L9.1 Risk of Loss.

- (a) You bear the entire risk of loss to the Equipment from the date of delivery by PBI until the end of the Rental Term (including any

extensions), regardless of cause, ordinary wear and tear excepted ("Loss").

(b) No Loss will relieve you of any of your obligations under this Rental. You must immediately notify us in writing of the occurrence of any Loss.

(c) Unless you are a state agency or department you will keep the Equipment insured against Loss for its full replacement value under a comprehensive policy of insurance or other arrangement with an insurer of your choice, provided that it is reasonably satisfactory to us ("Insurance").

### L9.2 ValueMAX Program applicable to all non-state entities.

(a) If you do not provide evidence of insurance and have not enrolled in our own program (ValueMAX), we may include the Equipment in the ValueMAX program and charge you a fee, which we will include as an additional charge on your invoice.

(b) We will provide written notification reminding you of your insurance obligations described above in Section L9.1(c).

(c) If you do not respond with evidence of insurance within the time frame specified in the notification we may immediately include the Equipment in the ValueMAX program.

(d) If the Equipment is included in the ValueMAX program and any damage or destruction to the Equipment occurs (other than from your gross negligence or willful misconduct, which is not covered by ValueMAX), we will (unless you are in default) repair or replace the Equipment.

(e) If we are required to repair or replace the Equipment under the ValueMAX program and we fail to do so within 20 days of receiving your written notice of loss or damage, you may terminate this Rental.

(f) We are not liable to you if we terminate the ValueMAX program. By providing the ValueMAX program we are not offering or selling you insurance; accordingly, regulatory agencies have not reviewed this Rental, this program or its associated fees, nor are they overseeing our financial condition.

## L10. NON-APPROPRIATION

L10.1 See Section 2.16.4 – Termination for Non- Appropriations within the State Participating Addendum Attachment A

## L11. EARLY TERMINATION

L11.1 You further warrant that you intend to enter into this Rental for the entire Stated Term and you acknowledge that we have relied upon such represented intention when determining the applicable pricing plan. Cancelable Rentals – Cancel with three month penalty on rental payment per the Master Agreement.

## L12. MISCELLANEOUS

L12.1 If more than one lessee is named in this Rental, liability is joint and several.

L12.2 YOU MAY NOT ASSIGN OR SUBLET THE EQUIPMENT OR THIS RENTAL WITHOUT OUR PRIOR WRITTEN CONSENT, WHICH CONSENT WILL NOT BE UNREASONABLY WITHHELD.

L12.3 We may sell, assign, or transfer all or any part of this Rental or the Equipment. Any sale, assignment, or transfer will not affect your rights or obligations under this Agreement.

L12.4 All applicable taxes required to be collected by us will be shown on the invoice.

L12.5 If there is a conflict between any of the terms and conditions in this Agreement, your State's Participating Addendum and the Master Agreement ADSPO11-00000411-7, this Agreement shall prevail.

L12.6 Any IntelliLink-Control Center or Meter rented under this Agreement is subject to the applicable USPS regulations and meter terms and conditions as may be provided by PBI.

L12.7 Our Equipment may contain embedded software. You agree: (i) that PBI and its licensors own the copyrights and other intellectual property in and to the embedded software; (ii) that you do not acquire any right, title or interest in or to the embedded software; (iii) only to use the embedded software with our Equipment in which the embedded software resides; (iv) that you may not copy the embedded software; (v) that you may neither modify nor create derivative works of the embedded software (vi) that you may neither distribute nor disclose the embedded software (or any portion thereof) to any other person; (vii) that you may not translate, de-compile, disassemble, or otherwise attempt to unbundle, reverse engineer or create derivative works of the embedded software, except as permitted by applicable law; and (viii) that you may not export the embedded software in contravention of applicable export control laws. The embedded software contains third party software. Notwithstanding the above, this section does not modify any terms that may accompany such third party software.

L 12.8 The Connect+ Series Equipment may use an internet access point (e.g., wireless router) provided by us. You may only use this access point for connectivity between the Connect+ Series Equipment and the internet and for no other purpose. You agree to pay all costs associated with use of the access point in violation of this restriction.

Pitney Bowes Global Financial Services LLC will serve as a sub-contractor under ADSP011-00000411-7 and will be the Lessor under this Fair Market Value Lease Terms and Condition Agreement. PBGFS does not warrant, service or otherwise support the equipment. Those services are provided by Pitney Bowes Inc. (PBI). Due to federal regulations, only PBI can own an Intellilink Control Center or Meter.

**OPTION C -- WSCA/NASPO FAIR MARKET VALUE LEASE TERMS AND CONDITIONS: - STATE OF MICHIGAN**

The Pricing Plan for the WSCA/NASPO Fair Market Value Lease Terms and Conditions is as follows:

**Monthly Billing:**

<u>Term:</u>	<u>Lease Rate:</u>
36	.0342
48	.0277
60	.0237

**L1. DEFINITIONS**

L1.1 The following terms mean:

"Agreement" - the Order, your State's Participating Addendum, the WSCA/NASPO Master Agreement ADSP011-00000411-7, these terms and conditions, and any attached exhibits.

"Bank" - The Pitney Bowes Bank, Inc.

"Consumable Supplies" - ink, ink rollers, printheads, toner and drum cartridges, ribbons and similar items. Product-specific consumable supplies are identified in the product operator guide.

"Covered Equipment" - the equipment rented or sold to you from PBGFS or PBI that is covered by the SLA as stated on the Order. Covered Equipment does not include any IntelliLink® Control Center or Meter, or any standalone software.

"Delivery Date" - the date the Equipment or other item is delivered to your location.

"Effective Date" - the date the Order is received by us.

"Equipment" - the equipment listed on the Order, excluding any IntelliLink Control Center or Meter, and any standalone software.

"Initial Term" - the lease period listed on the Order

"Install Date" - the date the Equipment or other item is installed at your location.

"IntelliLink Control Center" or "Meter" - any postage meter supplied by PBI under the Order, including (i) in the case of a Connect+™ mailing system, the postal security device, the application platform, the system controller and the print engine and (ii) in the case of all other mailing systems, the postal security device, the user interface or keyboard and display and the print engine.

"Lease" - the Order and this WSCA/NASPO FMV Lease Terms and Conditions.

"Maintenance Service" - the maintenance service for the Covered Equipment selected by you on the Order, excluding software maintenance.

"Master Agreement" - WSCA/NASPO Master Agreement ADSP011-00000411-7 Mail Room Equipment, Services and Support contract administered by the State of Arizona and shall consist of: the solicitation as amended, any requests for clarifications and/or best and final offers, the proposal submitted by us, our responses to any requests for clarifications and/or our best and final offer.

"Order" - the executed agreement between the applicable Pitney Bowes company and you for the Equipment.

"PBGFS" - Pitney Bowes Global Financial Services LLC.

"PBI" - Pitney Bowes Inc.

"Pitney Bowes" - PBGFS and its subsidiaries, and PBI.

"Postage Meter Rental Agreement" - an agreement governing the use and rental of an Intellilink Control Center or Meter you enter into with us.

"SLA" - the Service Level Agreement.

"SLMA" - a Software License and Maintenance Agreement you enter into with us

"SOW" - a Statement of Work you enter into with us.

"State Participating Addendum" the bilateral agreement executed by us and your participating state incorporating the Master Agreement.

"We," "Our," or "Us" - the Pitney Bowes company with whom you've entered into the Order.

"WSCA/NASPO" - Western States Contracting Alliance and the National Association of State Procurement Officials

"You," "Your," "Lessee", or "Customer" - the entity identified on the Order.

**L2. AGREEMENT**

L2.1 You are leasing the Equipment listed on the Order. You will make each Monthly Payment by the due date shown on our invoice.

L2.2 **You may not cancel this Lease for any reason except as expressly set forth in Sections L10 and L11 below. All payment obligations are unconditional.**

L2.3 If you do not pay the fees when due or you do not comply with the Agreement and fail to cure the same within thirty (30) days of receipt of written notice thereof, we may disable the IntelliLink® Control Center, terminate the Agreement, retake the Equipment and Meter, and collect from you all fees due for the remainder of the Initial Term, or if after the Initial Term, all fees then due, plus interest at the lesser of 18% per year or the maximum allowed by law and attorneys' fees.

L2.4 You authorize us to file a Uniform Commercial Code financing statement naming you as debtor/lessee with respect to the Equipment.

**L3. PAYMENT TERMS AND OBLIGATIONS**

L3.1 We will invoice you in arrears each month for all payments on the Order (each, a "Monthly Payment"), except as provided in any SOW attached to this Agreement.

L3.2 Your Monthly Payment may include a one-time origination fee, amounts carried over from a previous unexpired lease, and other costs.

L3.3 If you request, your IntelliLink® Control Center/Meter Rental fees, Service Level Agreement fees, and Soft-Guard® payments ("PBI Payments") will be included with your Monthly Payment and begin with the start of the Lease Term. Your Monthly Payment will increase if your PBI Payments increase.

**L4. EQUIPMENT OWNERSHIP**

L4.1 We own the Equipment. PBI owns any IntelliLink® Control Center or Meter. Except as stated in Section L6.1, you will not have the right to become the owner at the end of this Agreement.

**L5. LEASE TERM**

L5.1 The Lease term is the number of months stated on the Order ("Lease Term").

**L6. END OF LEASE OPTIONS**

L6.1 During the 90 days prior to the end of your Lease, you may, if not in default, select one of the following options:

- enter into a new lease with us;
- purchase the Equipment "as is, where is" for fair market value (not available to State agencies, departments and facilities); or
- return the Equipment, IntelliLink Control Center and/or Meter in its original condition, reasonable wear and tear excepted. If you return the Equipment, IntelliLink Control Center and/or Meter, at our option you will either (i) properly pack them and insure them for their full replacement value (unless you are

enrolled in the ValueMAX® program) and deliver them aboard a common carrier, freight prepaid, to a destination within the United States that we specify, or (ii) properly pack and return them in the return box and with the shipping label provided by us and, in either case, pay us our then applicable processing fee.

L6.2 If you do not select one of the options in Section L6.1, you shall be deemed to have agreed to enter into successive month to month extensions of the term of this Agreement. You may opt to cease the automatic extensions by providing us with written notice within 60 days (but no less than 30 days or such shorter period as may be contemplated by law) prior to the expiration of the then-current term of this Agreement. Upon cancellation, you agree to either return all items pursuant to Section L6.1(c) or purchase the Equipment (not available to State agencies, departments and facilities).

#### L7. WARRANTY AND LIMITATION OF LIABILITY

L7.1 PBGFS AND THE BANK MAKE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR FREEDOM FROM INTERFERENCE OR INFRINGEMENT.

L7.2 PBI provides you with the warranty as provided in the State Participating Addendum, Master Agreement and as follows:

- (a) PBI warrants that the Equipment will be free from defects in material and workmanship and will perform according to the equipment user guide for a period of one year (360) days from the date of acceptance (the "Warranty Period").
- (b) PBI warrants that the Maintenance Service provided will be performed in a professional and workmanlike manner.
- (c) Your remedy in the event of any warranty claim is as provided within the State Participating Addendum and Master Agreement.
- (d) A "defect" does not include the failure of rates within a rate update to conform to published rates.
- (e) There is no warranty for Equipment requiring repair or replacement because of your negligence, usage which exceeds PBI's recommendations, damage in transit, virus contamination or loss of data, misuse, external forces, loss or fluctuation of power, fire, flood, or other natural causes, or service by anyone other than PBI. There is no warranty for Equipment arising from the use of third party supplies (such as ink) that results in: (i) damage to PBI Equipment; (ii) poor indicia, text, or image print quality; (iii) indicia readability failures; or (iv) a failure to print indicia, text, or images.
- (f) The print engine(s), print engine components, structural components and printed circuit board assemblies supplied with the PBI Equipment may be reclaimed, reconditioned or remanufactured. Any such item is warranted to perform according to the same standards as the equivalent new item.
- (g) The warranty does not cover Consumable Supplies.

L7.3 PBGFS AND THE BANK ARE NOT LIABLE FOR ANY LOSS, DAMAGE (INCLUDING INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES), OR EXPENSE CAUSED DIRECTLY OR INDIRECTLY BY THE EQUIPMENT, AND PBI WILL HAVE ONLY SUCH LIABILITY AS SET FORTH IN THE STATE PARTICIPATING ADDENDUM AND MASTER AGREEMENT.

#### L8. EQUIPMENT OBLIGATIONS

L8.1 Condition and Repairs. You will keep the Equipment free from liens and encumbrances and in good repair, condition, and working order.

L8.2 Inspection. We may inspect the Equipment and any related maintenance records.

L8.3 Location. You may not move the Equipment from the location specified on the Order without our prior written consent which will not be unreasonably withheld.

#### L9. RISK OF LOSS AND VALUEMAX® PROGRAM

**Because we own the equipment while you lease it from us, we need to make sure it is protected while it is in your possession. You can demonstrate to us that the equipment will be protected either by showing us that your insurance will cover the equipment or by enrolling in our fee-based ValueMAX program. The terms of that program are listed in Section L9.2.**

##### L9.1 Risk of Loss.

- (a) You bear the entire risk of loss to the Equipment from the Delivery Date by PBI until the end of the Lease Term (including any extensions), regardless of cause, ordinary wear and tear excepted ("Loss").
- (b) No Loss will relieve you of any of your obligations under this Lease. You must immediately notify us in writing of the occurrence of any Loss.
- (c) Unless you are a State agency, facility or department you will keep the Equipment insured against Loss for its full replacement

value under a comprehensive policy of insurance or other arrangement with an insurer of your choice, provided that it is reasonably satisfactory to us ("Insurance").

##### L9.2 ValueMAX Program, applicable to all non-state entities

- (a) If you do not provide evidence of insurance and have not enrolled in our own program (ValueMAX), we may include the Equipment in the ValueMAX program and charge you a fee, which we will include as an additional charge on your invoice.
- (b) We will provide written notification reminding you of your insurance obligations described above in Section L9.1(c).
- (c) If you do not respond with evidence of insurance within the time frame specified in the notification we may immediately include the Equipment in the ValueMAX program.
- (d) If the Equipment is included in the ValueMAX program and any damage or destruction to the Equipment occurs (other than from your gross negligence or willful misconduct, which is not covered by ValueMAX), we will (unless you are in default) repair or replace the Equipment.
- (e) If we are required to repair or replace the Equipment under the ValueMAX program and we fail to do so within 20 days of receiving your written notice of loss or damage, you may terminate this Lease.
- (f) We are not liable to you if we terminate the ValueMAX program. By providing the ValueMAX program we are not offering or selling you insurance; accordingly, regulatory agencies have not reviewed this Lease, this program or its associated fees, nor are they overseeing our financial condition.

#### L10. NON-APPROPRIATION

L10.1 See Section 2.16.4 – Termination for Non- Appropriations within the State Participating Addendum Attachment A

#### L11. EARLY TERMINATION

L11.1 You further warrant that you intend to enter into this Lease for the entire Stated Term and you acknowledge that we have relied upon such represented intention when determining the applicable pricing plan. If you cancel or terminate this Lease prior to expiration of the Stated Term (other than for non-appropriations), you shall pay a termination charge equal to the net present value of the monthly payments remaining through the completion of the term, discounted to present value at a rate of 6% per year.

#### L12. MISCELLANEOUS

L12.1 If more than one lessee is named in this Lease, liability is joint and several.

L12.2 YOU MAY NOT ASSIGN OR SUBLET THE EQUIPMENT OR THIS LEASE WITHOUT OUR PRIOR WRITTEN CONSENT, WHICH CONSENT WILL NOT BE UNREASONABLY WITHHELD.

L12.3 We may sell, assign, or transfer all or any part of this Lease or the Equipment. Any sale, assignment, or transfer will not affect your rights or obligations under this Agreement.

L12.4 All applicable taxes required to be collected by us will be shown on the invoice.

L12.5 If there is a conflict between any of the terms and conditions in this Agreement, your State's Participating Addendum and the Master Agreement ADSPO11-00000411-7, this Agreement shall prevail.

L12.6 Any IntelliLink-Control Center or Meter rented under this Agreement is subject to the applicable USPS regulations and meter terms and conditions as may be provided by PBI.

L12.7 Our Equipment may contain embedded software. You agree: (i) that PBI and its licensors own the copyrights and other intellectual property in and to the embedded software; (ii) that you do not acquire any right, title or interest in or to the embedded software; (iii) only to use the embedded software with our Equipment in which the embedded software resides; (iv) that you may not copy the embedded software; (v) that you may neither modify nor create derivative works of the embedded software (vi) that you may neither distribute nor disclose the embedded software (or any portion thereof) to any other person; (vii) that you may not translate, de-compile, disassemble, or otherwise attempt to unbundle, reverse engineer or create derivative works of the embedded software, except as permitted by applicable law; and (viii) that you may not export the embedded software in contravention of applicable export control laws. The embedded software contains third party software. Notwithstanding the above, this section does not modify any terms that may accompany such third party software.

L 12.8 The Connect+ Series Equipment may use an internet access point (e.g., wireless router) provided by us. You may only use this access point for connectivity between the Connect+ Series Equipment and the internet and for no other purpose. You agree to pay all costs associated with use of the access point in violation of this restriction.