



**Software Maintenance and Data Subscription Agreement**  
**for**  
**Business Manager™ software**  
**SmartMailer™ software**  
**AddressRight® Pro software**  
**PB First™ software**

Pitney Bowes offers two Service Plan levels of Software Maintenance with Business Manager: (1) Tier 1; and (2) Tier 2. The Service Plan level provided under this Agreement will be as indicated on the Sales/Lease Agreement. Features below are available under both Service Plan levels except those indicated by \* which are available only under the Tier 2 Service Plan.

## 1.0 Definitions

**PLEASE NOTE: Capitalized terms used in this Software Maintenance and Data Subscription Agreement are defined in this Software Maintenance and Data Subscription Agreement and shall not have the meaning ascribed to such terms in the Pitney Bowes Business Manager Software License Agreement. Furthermore, section references refer to Software Maintenance and Data Subscription Agreement and not the Pitney Bowes Business Manager Software License Agreement.**

“Agreement” means this Software Maintenance and Data Subscription Agreement. The terms “you”, “your” and “Customer” refer to the customer listed on page 1 of the Pitney Bowes Business Manager Software License Agreement. The terms “we”, “us”, “our” and “Pitney Bowes” refer to Pitney Bowes Inc. or one of its affiliates. “Software” means the Pitney Bowes proprietary software and any third-party proprietary software specifically listed in the Sales/Lease Agreement for which you have purchased maintenance from Pitney Bowes. “Database” means the Pitney Bowes proprietary database(s) and any third-party proprietary database(s) specifically listed in the Sales/Lease Agreement for which you have purchased data subscription from Pitney Bowes. “Software” and “Database” do not include, and no services or materials are provided under this Agreement with respect to, any other third-party software or database even if provided to you by Pitney Bowes. “Sales/Lease Agreement” means the agreement between Customer and Pitney Bowes relating to and pursuant to which Customer has agreed to pay for the Pitney Bowes and/or third-party proprietary software and/or database. “Software License Agreement” means the software license agreement between you and Pitney Bowes relating to the Software.

## 2.0 Scope of Services – Software Maintenance

Pitney Bowes will provide you with the following software maintenance support services for the Software:

- (a) A toll-free telephone number for technical assistance to you;
- (b) Maintenance Support as set forth in Section 2.0.1 of this Exhibit;
- (c) Distribution to you of updates from time to time as set forth in Section 2.0.2 of this Exhibit;
- (d) Data subscription as set forth in Section 2.1 of this Exhibit; and
- (e) \*on-site service as set forth in Section 2.0.1(c) and 2.0.1(e) of this Exhibit.

ALL SERVICES PROVIDED UNDER THIS AGREEMENT ARE SUBJECT TO ALL THE TERMS AND CONDITIONS OF THE SOFTWARE LICENSE AGREEMENT.

**2.0.1 Software Maintenance Support:** Pitney Bowes Customer Support is available at a toll-free Pitney Bowes customer support number and internet during normal operating hours, which are from 7 a.m. to 7 p.m. Central Time, Monday through Friday, excluding PBI-observed U.S. holidays, except as otherwise noted in the related SOW (“**Normal Operating Hours**”). You may request service by contacting Pitney Bowes by telephone or you may place a request via Pitney Bowes’ website [www.pb.com](http://www.pb.com).

- (a) During Maintenance Support, Pitney Bowes shall use commercially reasonable efforts to respond to issues identified by Licensee within a commercially reasonable time. The determination and classification of reported issues by Licensee shall be made by Pitney Bowes’s Customer Service Department (“**CSD**”). Pitney Bowes’s CSD shall evaluate and identify each issue and assign it an appropriate severity level. In the absence of unusual circumstances, issues with a greater severity level shall be treated with a higher priority level than those with a lesser severity level. Pitney Bowes currently classifies severity levels and responds as follows:

Severity Level 1: Primary functionality of the Pitney Bowes Software has been lost and there is no work-around. Until the severity level is reduced or the problem is resolved, Pitney Bowes CSD will work continuously during Normal Operating Hours (as defined below) to develop a plan to resolve the problem and, thereafter, will assign appropriate resources to implement plan. Pitney Bowes CSD will provide status updates to Licensee regularly, which shall be no less frequently than daily at end of day.

Severity Level 2: Same as Severity Level 1, except there is a reasonable work-around.

Severity Level 3: Use of the Pitney Bowes Software is impaired and there is a work-around. Until the severity level is reduced or the problem is resolved, Pitney Bowes CSD will work during Normal Operating Hours to develop a plan to resolve the problem and, thereafter, will assign appropriate resources to implement plan. Pitney Bowes CSD will provide status updates to Licensee no less frequently than weekly.

Severity Level 4: There is a minor problem with the Pitney Bowes Software. Pitney Bowes CSD will provide status updates to Licensee in accordance with a mutually agreed upon schedule.

Severity Level 5: Licensee has requested a new feature or modification of the Pitney Bowes Software. Pitney Bowes CDS will discuss the request with Licensee, inform Licensee if the request can be accommodated, with or without additional charge, and if it can, provide status updates to Licensee in accordance with a mutually agreed upon time schedule.

- (b) Maintenance Support shall be limited to telephone, Internet or electronic customer support response(s) at our sole discretion; and is contingent upon Licensee providing access, as requested by Pitney Bowes, for Internet and/or electronic remote support. Maintenance Support is provided under the condition that Licensee provides adequate information with respect to any malfunction in the Pitney Bowes Software.
- (c) \* On-site support shall be provided at U.S. locations only and upon written request of Licensee and the execution of, or in conjunction with, an additional agreement with Pitney Bowes. If Licensee requests on-site assistance, Licensee shall be billed for and pay appropriate time and travel-related expenses. If Pitney Bowes determines that error corrections must be performed on-site, the related services are billable to Licensee unless Licensee has elected coverage under a Tier 2 Service Plan.
- (d) If Licensee is provided with Internet and/or electronic customer support, it is Licensee's responsibility to determine the access allowed to its equipment. Pitney Bowes accepts no responsibility for any problems, loss or damage caused directly or indirectly by Pitney Bowes personnel or any other third parties when providing such service except to the extent directly caused by Pitney Bowes's, and not caused by Licensee's, negligence or willful misconduct.
- (e) \* We service your Software on-site at our sole discretion, Monday through Friday, 8 a.m. to 5 p.m. in your local U.S. time zone, excluding PBI-observed U.S. holidays. If we deem it necessary, a service engineer will be dispatched to arrive at Licensee location for on-site service, in most cases within eight- (8) normal business-day working hours after your initial contact with Pitney Bowes reporting the Software failure. If Licensee has elected coverage under a Tier 2 Service Plan there will be no hourly charges unless Pitney Bowes performs service outside those hours.
- (f) Professional services and training services, other than repair and maintenance services specifically referred to herein, are not covered by this Agreement.

## **2.0.2 Updates**

Software application updates are installable by Customer. If installation is required by Pitney Bowes, Pitney Bowes will install such updates at its then current rates. You must be fully current with installation of Updates provided by Pitney Bowes in order to be entitled to software maintenance services. "Update" for the purposes of software maintenance means a fix to previously reported "bug(s)", a technical upgrade and/or an esthetic change to the Software. An Update is intended to substantially correct a functional deviation between the Software as issued and the Software's User Manual and/or specifications, but does not introduce new functionality. An Update is typically indicated by a change within a version level of the Software -- e.g., version 1.2 would be an update of version 1.1.

Pitney Bowes will employ commercially reasonable efforts to provide Updates. Pitney Bowes may also make changes in the User Manual to correct or remove errors in documentation and to bring the User Manual into substantial compliance with the Software.

## **2.1 Data Subscription**

Pitney Bowes will distribute to you Database updates to the Databases, such as carrier rating structure files. Updates will be distributed as such updates are made available by Pitney Bowes from time to time. Data subscription services and Database updates or carrier services do not apply to software that is carrier rate specific and which Pitney Bowes maintains. Database updates are installable by you. If installation is required by Pitney Bowes, Pitney Bowes will install such Database updates at its then current rates. You are entitled to only one (1) copy of each update. Replacement updates may be provided by Pitney Bowes, in its sole discretion; if such a replacement update is provided, you will pay Pitney Bowes' then applicable service charge for such update. Pitney Bowes cannot and does not warrant the availability, accuracy or timely dissemination of non-Pitney Bowes originated source data incorporated in the Databases.

## **3.0 Exclusions**

Software maintenance is provided only if you: (a) use the Software and its related hardware in a manner authorized by this Agreement, for the ordinary purpose for which it is designed, and in accordance with Pitney Bowes' instructions; (b) use reasonable care in handling, operating and maintaining the Software and such hardware; and (c) operate the Software and such hardware under suitable temperature, humidity, line voltage and environmental conditions. Software maintenance excludes services and repairs that are necessary due to negligence, accident, misuse or abuse; use of the Software with any hardware, software, or databases other than those supplied by Pitney Bowes; use of the Software on any equipment or with any system other than that provided by Pitney Bowes or which Pitney Bowes has otherwise indicated in writing is acceptable for use with the Software; use of the Software with any system with respect to which Pitney Bowes has indicated it will no longer provide support; failure to use the most current Update available from Pitney Bowes or most current data specified in the User Manual; damage in transit; virus contamination; loss of data; external forces; loss of electrical power or power fluctuation; operator error; casualty (such as fire, flood or other natural causes) or sabotage; or alterations, modifications, conversions, repair or attempted repair by anyone other than Pitney Bowes.

## **4.0 Term**

THE INITIAL TERM OF THIS AGREEMENT SHALL BE A TWELVE (12) MONTH PERIOD OR SUCH LONGER TERM AS MAY BE PROVIDED IN THE SALES/LEASE AGREEMENT AND SHALL BE AUTOMATICALLY RENEWED FOR SUCCESSIVE TWELVE (12) MONTH PERIODS, UNLESS PITNEY BOWES RECEIVES FROM CUSTOMER NOTICE OF TERMINATION AT LEAST SIXTY (60) DAYS BEFORE THE END OF THE INITIAL TERM OR THE THEN CURRENT RENEWAL TERM. Such notice must include your Customer account number and, if applicable, your lease number and be sent to Pitney Bowes, by certified mail, return receipt requested, at the following address: Pitney Bowes Inc., 2225 American Drive, Neenah, WI 54956. Pitney Bowes shall invoice Customer for each additional twelve (12) month period sixty (60) days before the termination of the then current term, at Pitney Bowes' rate then in effect, which amount shall be deemed due and payable to Pitney Bowes upon receipt of such invoice by Customer. Pitney Bowes reserves the right not to renew this Agreement for any reason.

### **5.0 Modification; Termination**

The termination by Pitney Bowes of the Software License Agreement shall automatically result in the termination of this Agreement. Pitney Bowes may, from time to time, change the services provided under this Agreement, modify the terms of this Agreement, or terminate such services or this Agreement, at Pitney Bowes' discretion, with notice to Customer. Pitney Bowes will advise you, in such notice, if it believes, in its sole judgment, that any such change or modification is material. If you receive notice that any such change or modification is material, you may terminate this Agreement by delivering to Pitney Bowes written notice of your desire to terminate within thirty (30) days after your receipt of such notice from Pitney Bowes. Any such termination by you shall be effective ten (10) business days after Pitney Bowes' receipt of your notice of termination. Your notice must include your Customer account number and, if applicable, your lease number and be sent to Pitney Bowes in the manner and to the address set forth in Section 4.0 above.

If Customer breaches this Agreement, the Sales/Lease Agreement or any other agreement with Pitney Bowes or one of its affiliates, Pitney Bowes may immediately terminate the services or this Agreement. If the services or this Agreement are terminated by Pitney Bowes or if Customer has terminated this Agreement as provided in this Section 5.0, Pitney Bowes' sole obligation shall be a pro rata refund of Customer's fee for the terminated services except if the termination is due to breach by Customer of the Software License Agreement. Except as provided in this Section 5.0, under no circumstances may you cancel or terminate this Agreement during the term; and you may only terminate for the successive period by providing timely notice of non-renewal as provided above.

### **6.0 Fees**

Software maintenance rate adjustments will be made only at renewal time. We reserve the right to cancel a renewal of this Agreement at any time and for any reason including, but not limited to, your refusal to pay any newly adjusted rates.

If any payment under this Agreement is not paid in full on or before its due date, you shall pay to us our then applicable administrative fee assessed on delinquent accounts and interest from its due date until paid in full, at the lesser of 1.5% per month or the maximum rate allowed by law and subject to the payment terms of the State's Master Contract with Pitney Bowes.

### **7.0 Warranty Disclaimer and Liability**

THE SERVICES, UPDATES, DATABASE UPDATES AND OTHER MATERIALS PROVIDED HEREUNDER ARE PROVIDED "AS IS"; AND PITNEY BOWES SPECIFICALLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER WARRANTY. Some states, including Mississippi, do not allow the disclaimer of implied warranties. Therefore, the above disclaimer may not apply to Licensee. Your sole remedy under this Agreement or with respect to such services, Updates, Database updates or other materials is, at Pitney Bowes' option, refund of amounts paid by you for software maintenance or data subscription, as may be applicable, during the current 12-month term of this Agreement, replacement of any defective media, or provision again by Pitney Bowes of such services, Updates, Database updates and other materials by Pitney Bowes.

IN NO EVENT WILL PITNEY BOWES BE LIABLE FOR ANY DAMAGES, INCLUDING ANY LOST PROFITS OR INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR OTHER DAMAGES, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. WITHOUT LIMITING THE FOREGOING, PITNEY BOWES' LIABILITY ARISING OUT OF CONTRACT, NEGLIGENCE, STRICT LIABILITY, IN TORT OR WARRANTY, OR OTHERWISE SHALL NOT EXCEED THE AMOUNTS PAID BY CUSTOMER FOR THE SOFTWARE MAINTENANCE AND DATA SUBSCRIPTION PROVIDED UNDER THIS AGREEMENT DURING THE PREVIOUS 24-MONTHS.

CARRIER RATE INFORMATION SUPPLIED TO YOU IS OBTAINED FROM CARRIERS OR OTHER SOURCES BELIEVED TO BE REASONABLY RELIABLE. HOWEVER, WITHOUT LIMITING ANYTHING ELSE IN THIS AGREEMENT, SUCH INFORMATION IS NOT WARRANTED TO BE ACCURATE, COMPLETE OR CORRECT; AND PITNEY BOWES SHALL HAVE NO LIABILITY FOR ANY DAMAGES YOU MAY INCUR AS A RESULT OF YOUR USE OR RELIANCE ON SUCH RATE INFORMATION.

**PURSUANT TO ARTICLE 4 SECTION 100 OF THE MISSISSIPPI STATE CONSTITUTION, THE STATE NEITHER INDEMNIFIES NOR WAIVES A POTENTIAL RIGHT OF RECOVERY.**

### **8.0 General**

**Transfer.** For your convenience, if you upgrade to a new release – i.e., major enhancements and/or new functionality of the Software - the software maintenance and data subscription provided hereunder will remain in effect for the new release (if it qualifies) at the then current fee for the new release less credit for fees previously paid hereunder for the period of time after such transfer.

**Assignment.** You may not assign this Agreement or any of your rights hereunder without our prior written consent.

**Governing Law.** This Agreement shall be interpreted in accordance with the laws of the State of Mississippi and the United States but without recourse to Mississippi's conflict of laws provisions. The application of the United Nations Convention of Contracts for the International Sale of Goods is expressly excluded. Any action brought hereunder shall be brought exclusively in the courts residing in the State of Mississippi.

**Force Majeure.** You and we shall be excused from any obligation under this Agreement to the extent and for so long as non-fulfillment of such obligation is due to fire, flood, storm, earthquake, epidemic, strike, civil war, riot, explosion or compliance with any law, order or decree of any court or government agency; provided that neither of you nor we shall be relieved of any obligation to make any payment provided in this Agreement at the time such payment is due.

**Authority.** Your signature is our assurance that you have the authority to enter into this Agreement. Our acceptance is signified when our authorized invoice is issued or by our acceptance of your payment.

**Entire Agreement.** This Agreement, the Sales/Lease Agreement and the Software License Agreement comprise the entire agreement between us with regard to the subject of this Agreement. No statements or prior understandings even if reduced to writing or other documents are effective if they are inconsistent with, or if they obligate us in any way beyond, what is written here. Any terms of any other document that add to, vary from, or conflict with these terms are hereby objected to. This Agreement may not be modified or amended in any way except in writing signed by duly authorized representatives of each of us or as otherwise provided herein.