

**Vendor Agreement #043012-PIT (Agreement)  
Between**

**PITNEY BOWES (Awarded Vendor)**

27 Waterview Drive  
Shelton, CT 06484

**AND**

**NATIONAL JOINT POWERS ALLIANCE® (NJPA)**

202 12th ST NE  
Staples, MN 56479

Whereas; NJPA issued an Request for Proposal #043012 (RFP) for the provision of POSTAGE METERS AND RELATED MAILING EQUIPMENT, SOFTWARE, ACCESSORIES AND SUPPLIES to NJPA and NJPA Members nationwide; and

Whereas; PITNEY BOWES responded to said RFP committing to the provision of POSTAGE METERS AND RELATED MAILING EQUIPMENT, SOFTWARE, ACCESSORIES AND SUPPLIES to NJPA and NJPA Members; and

Whereas; NJPA has awarded the contract proposed in the RFP, which is identified as NJPA contract 043012-PIT (the Contract), to Awarded Vendor, and

Whereas; NJPA and Awarded Vendor desire to further define their relationship under the Contract as contained herein.

Now therefore; In consideration of the mutual covenants contained herein, IT IS HEREBY AGREED BETWEEN THE PARTIES AS FOLLOWS:

The effective date of this Agreement shall be JUNE 19, 2012.

**ARTICLE 1. PURPOSE AND INTENT**

1.1 The purpose and intent of this Agreement is to:

1.1.1 Augment the terms and conditions of the Contract #043012-PIT originally identified in the RFP, the Awarded Vendor's responses and modifications contained in Form C of the Awarded Vendor's bid response (all of which are hereby incorporated into this Agreement by this reference) ,

1.1.2 Identify specific marketing and sales training responsibilities for both NJPA and Awarded Vendor, and

1.1.3 To finalize the administration fee to be paid by the Awarded Vendor to NJPA.

**ARTICLE 2. TERMS AND CONDITIONS**

2.1 NJPA and Awarded Vendor agree to the terms and conditions contained in RFP #043012, the Awarded Vendor's responses AND the exceptions to those terms and conditions identified in Form C of Awarded Vendor's bid response EXCEPT as identified herein:

No further exceptions made.

**ARTICLE 3. AWARDED VENDOR MARKETING RESPONSIBILITIES**

**3.1 Sales Force Training.**

3.1.1 Awarded Vendor will be responsible for the facilitation of training for Awarded Vendor's appropriate sales force members, appropriate vendor's manufacturers' sales forces and appropriate levels of management by NJPA with regard to the use and value of the Contract.

3.1.2 Awarded Vendor will be responsible for facilitation of training their appropriate sales force and appropriate levels of management by Awarded Vendor regarding internal matters relevant to the Contract including, but not limited to, order process, product delivery, and funds flow.

3.1.3 Awarded Vendor will be responsible for identifying and organizing follow-up training(s) on these subjects as needed.

3.1.4 Awarded Vendor agrees to facilitate the meeting of specific appropriate marketing individual(s) to meet and plan overall marketing goals and initiatives.

3.1.5 Awarded Vendor will be responsible to allow opportunities for NJPA staff to meet with appropriate management and appropriate sales level staff of Awarded Vendor at national and regional functions.

**3.2 Trade Shows.**

3.2.1 Awarded Vendor will strongly consider exhibiting at the following national trade shows environments in cooperation with NJPA:

AASA	American Association of School Administrators	February
NAEP	National Association of Education Procurement	March
I-ASBO	International Association of School Business Officials	September
NACO	National Association of Counties	July
NIGP	National Institute of Government Purchasing	August

Participation will generally be through a display booth setting where Awarded Vendor will be responsible for the provision of personnel, marketing material, and equipment for the purposes of promoting this contract at various defined trade shows. Awarded Vendor will be responsible for co-branding marketing material distributed at these shows in the name of Awarded Vendor and NJPA. Awarded Vendor may request waiver of participation in any trade show Awarded Vendor feels is inapplicable to their Contract.

3.2.2 Awarded Vendor will give strong consideration to attending and displaying at additional trade shows recommended by NJPA.

**3.3 Marketing Material.**

3.3.1 Awarded Vendor will be responsible for creating, and up-dating as needed, marketing material co-branded by both Awarded Vendor and NJPA in both print and electronic forms for disbursement through various appropriate channels, such as the NJPA Cooperative Purchasing catalog, or as agreed to by both parties. Any such marketing materials or any notification or description of the Contract distributed by NJPA to Members shall be approved in advance by Awarded Vendor.

3.3.2 Awarded Vendor shall be granted use of the NJPA trademarks, service marks, logos, name or any other proprietary description of NJPA, whether registered or unregistered, subject to NJPA's prior approval. In addition, Awarded Vendor shall be

entitled to inform, both orally and in printed form, any and all prospects that Awarded Vendor has a contractual benefit relationship with NJPA for the purposes of serving NJPA members.

3.3.3 NJPA membership listings provided as a result of the Contract and this Agreement shall be confidentially used by Awarded Vendor and not disseminated to its customers or the business community.

#### 3.4 Contract operations and delivery.

3.4.1 Awarded Vendor will be responsible for processing orders for contracted products and services requested from qualified and participating NJPA Members.

3.4.2 Awarded Vendor will be responsible for submitting calendar quarterly reports to NJPA showing the gross sales for each Participating NJPA Member or qualified Member sold during a quarterly time frame. (Article 6 - 6.1)

3.4.3 Awarded Vendor will be responsible to pay NJPA an administrative fee as defined herein.

3.4.4 Awarded Vendor will be responsible for maintaining current product/service and price lists with NJPA according to the terms and conditions of the Contract.

3.4.5 Awarded Vendor will be responsible for delivering technical assistance and education regarding the products/services purchased through the RFP and resulting Contract.

3.4.6 Awarded Vendor will be responsible for offering and promoting the Program and Contract to all current and qualified NJPA members.

### **ARTICLE 4. NJPA ADMINISTRATIVE/ MARKETING RESPONSIBILITIES**

#### 4.1 Sales Force Training.

4.1.1 NJPA will work with Awarded Vendor to identify the appropriate levels of management as well as the Awarded Vendor's sales force to be trained in the use and effectiveness of the Contract.

4.1.2 NJPA will provide personnel to train identified individuals in the use and effectiveness of the Contract in person on Awarded Vendor's site, or through webcast or webinar, where reasonable efficiencies of such training can be achieved.

4.1.3 NJPA will work with Awarded Vendor to identify ongoing training needs.

#### 4.2 Trade Shows.

4.2.1 NJPA will work with Awarded Vendor to identify appropriate trade show venues for the promotion of the Contract.

#### 4.3 Marketing Material.

4.3.1 NJPA will be responsible for assisting in the development of marketing brochures, as well as providing general support, retention, and assistance in the marketing of the program.

4.3.2 NJPA shall not use the trademarks, service marks, logo, name or any other proprietary description of Awarded Vendor, whether registered or unregistered, without Awarded Vendor's prior approval.

4.3.3 NJPA agrees to supply Awarded Vendor with access to NJPA Members through regular updates of its membership list and various communications. Awarded Vendor agrees that NJPA Members' list remain the property of NJPA and can only be used with prior permission of NJPA.

4.3.4 NJPA shall provide opportunity to participate in the NJPA catalog marketing program at no cost to Awarded Vendor.

4.3.5 NJPA agrees to promote the Awarded Vendor Contract as a new member benefit in NJPA publications.

#### 4.4 Contract Operations and Delivery.

4.4.1 NJPA will be responsible for receiving available leads and forwarding of those leads to Awarded Vendor for follow-up.

4.4.2 NJPA will be responsible for acting as a liaison as necessary between NJPA Members and Awarded Vendor to communicate the NJPA message and resolve any contract issues.

4.4.3 NJPA will receive, evaluate, process, and respond in a reasonably timely manner to requests from Awarded Vendor for changes in prices and products covered by this contract.

### ARTICLE 5. AUDITS

5.1 During the Term, Awarded Vendor will, upon not less than thirty (30) business days prior written request, make available to NJPA no more than once per calendar year, at Awarded Vendor's corporate offices, during normal business hours, the invoice reports and/or invoice documents from Awarded Vendor pertaining to all invoices sent by Awarded Vendor and payments made by NJPA members for all products purchased under this contract. NJPA may employ an independent auditor or NJPA may choose to conduct such audit on its own behalf. Awarded Vendor shall have the right to approve the independent auditor, which approval shall not be unreasonably withheld. Upon approval and after the auditor has executed an appropriate confidentiality agreement, Awarded Vendor will permit the auditor to review the relevant Awarded Vendor documents. NJPA shall be responsible for paying the auditor's fees. The parties will make every reasonable effort to fairly and equitably resolve discrepancies to the satisfaction of both parties.

### ARTICLE 6. FEES

6.1 Awarded Vendor will pay NJPA an administrative fee of 1% (One Percent) of the sales resulting from NJPA #043012-PIT net of returns and allowances to NJPA or NJPA Members during each calendar quarter. Said administrative fees are to be paid within thirty (30) days after the end of each calendar quarter and commencing on the effective date of this Agreement.

## ARTICLE 7. MISCELLANEOUS

7.1 Notices. Notices permitted or required to be given hereunder shall be deemed sufficient if delivered to the address identified herein, or any updated address for which proper notice of address change has been affected. Notices may be delivered by hand or through the use of a third party delivery service. The sender is responsible for the documentation of delivery for any notice.

7.2 Entire Agreement. The individuals signing this Agreement hereby represent that they are authorized on behalf of their respective organizations to execute this Agreement and the Agreement contains the entire understanding between the parties concerning the subject matter.

7.3 Severability/Conflict. In the event that any of the terms of this Agreement are in conflict with any rule, law, statutory provision or are otherwise unenforceable under the laws or regulations of any government or subdivision thereof, such terms shall be deemed stricken from this Contract, but such invalidity or unenforceability shall not invalidate any of the other terms of this Contract. This Contract shall continue in force, unless the invalidity or unenforceability of any such provisions hereof does substantial harm to, or where the invalid or unenforceable provisions compromise an integral part of, or are otherwise inseparable from the remainder of this Contract.

7.4 Waiver. Failure by either party to take action or assert any right hereunder shall not be deemed a waiver of such right in the event of the continuation or repetition of the circumstances giving rise to such right.

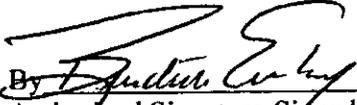
7.5 Relationship of Parties. This agreement is not a contract of employment. The relationship between NJPA and Awarded Vendor is one of independent contractors each free to exercise judgment and discretion with regard to the conduct of their respective businesses. The parties do not intend this agreement to create and this agreement is not to be construed as creating a partnership, joint venture, master-servant, principal-agent, or any other relationship. Except as provided elsewhere in this agreement, neither party may be held liable for acts of omission or commission of the other party and neither party is authorized or has the power to obligate or bind the other party by contract, agreement, warranty, representation or otherwise in any manner whatsoever except as may be expressly provided herein.

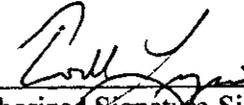
7.6 Indemnity: Each party agrees that it will be responsible for its own negligent acts and the result thereof to the extent authorized by law and shall not be responsible for the negligent acts of the other party and the results thereof. NJPA's liability shall be governed by the provisions of the Minnesota Tort Claims Act, Minnesota Statutes, Section §3.736, and other applicable law. Neither party shall be liable to the other for any incidental or consequential damages of any kind under this Agreement.

IN WITNESS WHEREOF, the parties have executed this Contract effective the day and year referenced below.

**PITNEY BOWES**

**NATIONAL JOINT POWERS ALLIANCE®**

By   
Authorized Signature-Signed

By   
Authorized Signature-Signed

By BONNETTE ELSBURY  
Authorized Signature-Printed

By Todd Lyscio  
Authorized Signature-Printed

Date 7/1/2012

Date 7/11/12

Notice Address:

Notice Address:

27 Waterview Drive  
Shelton, CT 06484

202 12th Street NE  
Staples, MN 56479

**Pitney Bowes**  
**Primary Contact Information**

Awarded Vendor Name Pitney Bowes

Address 27 Waterview Dr.  
Shelton, CT 06484

Phone 402-902-8210 Fax 203-4609145

Program Contact Name BURDETTE EISBURY

Contact's Title GOVT ACCOUNT MANAGER

Email BURDETTE.EISBURY@PB.COM

Web Site WWW.PB.COM

## LEASE TERMS AND CONDITIONS

This is a lease with Pitney Bowes Global Financial Services LLC (PBGFS), Pitney Bowes' leasing company. PBGFS provides leasing options to our customers. PBGFS does not warrant, service or otherwise support the equipment. Those services are provided by Pitney Bowes Inc. (PBI) as stated in the Pitney Bowes Terms. Due to federal regulations, only PBI can own an IntelliLink Control Center or Meter. Therefore, those items are rented to you, rather than leased. Unlike the other equipment you may lease from us, you cannot purchase an IntelliLink Control Center or Meter at the end of the Agreement.

### L1. DEFINITIONS

L1.1 All capitalized terms that are not defined in this document are defined in the "Definitions" section of the Pitney Bowes Terms.

### L2. AGREEMENT

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

L2.2 **You may not cancel this Lease for any reason. All payment obligations are unconditional.**

L2.3 Our remedies for your failure to pay on time or other defaults are set forth in the "Default and Remedies" section of the Pitney Bowes Terms.

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 advance each quarter for all payments on the Order (each, a "Quarterly Payment"), except as provided in any SOW attached to this Agreement.

L3.2 Your Quarterly 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 Quarterly Payment and begin with the start of the Lease Term. Your Quarterly 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 AND INTERIM USAGE PERIOD

L5.1 The Lease term is the number of months stated on the Order, plus any Interim Usage Period ("Lease Term"). The Interim Usage Period is the period between the date your Equipment is delivered and the first month of the subsequent calendar quarter.

L5.2 If you use the Equipment during the Interim Usage Period, you agree to pay the prorated portion of your Quarterly Payment.

### 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:

- (a) enter into a new lease with us;
- (b) purchase the Equipment "as is, where is" for fair market value; 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 successive 12-month annual extensions of the term of this Agreement. You may opt to cease the automatic extensions by providing us with written notice within 120 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.

### L7. WARRANTY AND LIMITATION OF LIABILITY

L7.1 WE (PBGFS) 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 (and we assign to you our rights in) the limited warranty in the Pitney Bowes Terms.

L7.3 WE ARE NOT LIABLE FOR ANY LOSS, DAMAGE (INCLUDING INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES), OR EXPENSE CAUSED DIRECTLY OR INDIRECTLY BY THE EQUIPMENT.

### 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.

### 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 date of shipment 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) 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.

#### L9.2 ValueMAX Program.

- (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. MISCELLANEOUS

L10.1 If more than one lessee is named in this Lease, liability is joint and several.

L10.2 You, and any principal, owner, officer or guarantor signing the Order or any documents executed in connection with this Lease, agree to furnish us financial information. Each of these persons authorizes us to obtain credit reports on them now and in the future.

L10.3 YOU MAY NOT ASSIGN OR SUBLET THE EQUIPMENT OR THIS LEASE WITHOUT OUR PRIOR WRITTEN CONSENT, WHICH CONSENT WILL NOT BE UNREASONABLY WITHHELD.

L10.4 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.

**GENERAL TERMS**

The following provisions apply to any transaction you enter into with Pitney Bowes. Other provisions in the Pitney Bowes Terms may also apply, depending on your transaction. Please read these provisions carefully as they constitute part of your agreement with Pitney Bowes.

**G1. HOW TO CONTACT US**

- G1.1 To obtain Maintenance Service, please either:
- (a) place a request for service on PBI's website at [www.pb.com](http://www.pb.com), under Customer Support; or
  - (b) call PBI's toll-free response center (the "Customer Care Center") at 1-800-522-0020 (Monday - Friday, 8am - 8pm ET, excluding PBI-observed holidays).
- G1.2 In the event you wish to cancel your Meter rental or you do not wish to renew your Maintenance Service after the Initial Term, please send written notice by mail to: Pitney Bowes Inc., 2225 American Drive, Neenah, WI 54956. (See Section S4.3 for details).
- G1.3 To cancel your Soft-Guard® Subscription, please contact us at 1-800-228-1071 (Monday - Friday, 8:30am - 5:30pm CT, excluding PBI-observed holidays).

**G2. DEFINITIONS**

The following terms mean:

- "Agreement"** - the Order, any applicable terms and conditions referred to in the Order 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 leased, 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 Service Term"** - the twelve (12) months immediately following the start of the Lease, or longer as provided 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 the Lease terms and conditions attached to the Order.
- "Lease Term"** - shall have the meaning stated in the Lease.
- "Maintenance Service"** - the maintenance service tier for the Covered Equipment selected by you on the Order, excluding software maintenance.
- "Normal Working Hours"** - 8 a.m. - 5 p.m., Monday - Friday, excluding PBI-observed holidays, in the time zone where the Equipment or other items are located.
- "Order"** - the executed agreement between the applicable Pitney Bowes company and you for the equipment covered by the Order.
- "PBGFS"** - Pitney Bowes Global Financial Services LLC.
- "PBI"** - Pitney Bowes Inc.
- "PBI Equipment"** - PBI-branded equipment.
- "Pitney Bowes"** - PBI, PBGFS and their respective subsidiaries.
- "Shipment Date"** - the date the Equipment leaves our facility or our agent's facility for delivery to you.
- "SLA"** - the Service Level Agreement.
- "SOW"** - a Statement of Work you enter into with us.
- "Third Party Equipment"** - equipment manufactured by a party other than us.
- "We," "Our,"** or **"Us"** - the Pitney Bowes company with whom you've entered into the Order.
- "You," "Your,"** or **"Customer"** - the entity identified on the Order.

**G3. WARRANTY**

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- G3.1 (a) PBI warrants that the PBI Equipment will be free from defects in material and workmanship and will perform according to the equipment user guide for a period of ninety (90) days from the Install Date (the "Warranty Period").
- (b) PBI warrants that the Maintenance Service provided will be performed in a professional and workmanlike manner.
- (c) **As your sole remedy in the event of a warranty claim, we will either repair or replace the Equipment or, in the case of defective Maintenance Service, reperform the Maintenance Service.**
- (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.

**G3.2 EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, WE (ON BEHALF OF OURSELF AND OUR SUPPLIERS) MAKE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE EQUIPMENT OR SERVICES PROVIDED.**

**G3.3 THIRD PARTY EQUIPMENT.** PBI MAKES NO REPRESENTATION OR WARRANTY AS TO ANY THIRD PARTY EQUIPMENT. PBI AGREES TO PASS THROUGH TO YOU ALL THIRD PARTY EQUIPMENT WARRANTIES TO THE EXTENT SUCH WARRANTIES ARE TRANSFERABLE.

**G4. LIMITATION OF LIABILITY**

- G4.1 PBI'S TOTAL LIABILITY (INCLUDING ANY LIABILITY OF ITS SUPPLIERS) IS LIMITED TO THE FEES PAID BY YOU TO PBI FOR THE APPLICABLE EQUIPMENT OR SERVICES IN THE 12 MONTHS BEFORE THE EVENT THAT GIVES RISE TO THE CLAIM, EXCEPT FOR THE LIQUIDATED DAMAGES THAT MAY BE APPLICABLE TO SLA TIER 3 (SEE SECTION S2.3 OF THE SLA).
- G4.2 NEITHER PBI NOR ITS SUPPLIERS IS LIABLE FOR ANY DAMAGE YOU MAY INCUR BY REASON OF YOUR MISUSE OR NEGLIGENT USE OF THE EQUIPMENT, OR YOUR NEGLIGENT ACTS OR OMISSIONS.
- G4.3 NEITHER PBI NOR ITS SUPPLIERS IS LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES OF ANY NATURE WHATSOEVER, INCLUDING COMMERCIAL LOSS, OR LOST PROFITS, DATA, OR GOODWILL, FOR ANY MATTER RELATING TO THIS AGREEMENT.

**G5. DEFAULT AND REMEDIES**

- G5.1 **Default.** You are in immediate default if you do not make any payment when due, you breach any other obligation under this Agreement, you become insolvent or file for bankruptcy, or are in default under any agreement with PBI or PBGFS.
- G5.2 **Remedies.** Upon your default, we may:
- (a) cancel this Agreement and any other agreements PBGFS or PBI has with you;
  - (b) require immediate payment of all payments due under a Lease(s) or other agreements, whether accrued or due in the future;
  - (c) disable the IntelliLink Control Center or Meter;
  - (d) require you to return the Equipment and IntelliLink Control Center or Meter;
  - (e) if you do not return the Equipment and IntelliLink Control Center or Meter, require you to make immediate payment of an amount equal to the remaining value of the Equipment, IntelliLink Control Center or Meter at the end of the Lease Term, as determined by us;
  - (f) charge you a late charge for each month that your payment is late;
  - (g) charge you interest on any late payment from its due date until paid in full at the lesser of 18% per year or the maximum rate allowed by law;
  - (h) charge you a check return fee for payments made by you with insufficient funds;
  - (i) reasonably attempt to mitigate our damages and costs in the event of your default, although you acknowledge that we are not obligated to do so; and
  - (j) pursue any other remedy, including repossessing the Equipment without notice to you. By repossessing the Equipment, IntelliLink Control Center or Meter, we are not waiving our right to collect the balance due.
- G5.3 **Enforcing Our Rights.** You agree to pay all our costs, including attorneys' fees, in enforcing our rights under the Agreement with you.
- G5.4 **Suspension of Services.** PBI reserves the right to suspend any services during any period in which your account is more than thirty (30) days past due.

**G6. TAXES**

- G6.1 You agree to pay Pitney Bowes for all charges and taxes (other than taxes on or measured by net income), calculated as set forth below, related to the Lease or based on or measured by the lease transaction, payments under the Lease, the Equipment or Equipment location, the Meter or Meter location or services provided in connection with the lease transaction, including but not limited to sales/use and property type taxes. Pitney Bowes will determine the value of the Equipment, the value of the Meter and the amount of such taxes to be charged to you. Such determinations will reflect a reasonable value of the Equipment or of the Meter or the actual taxes and depreciation thereon. The taxes and depreciation to be charged on the Equipment and the Meter may reflect certain average tax rates, different depreciation schedules or some other calculation. You agree to pay a processing, billing and tracking fee and administrative charge to be determined by Pitney Bowes which may not bear a relationship to the tax charged or services performed, but

such fee and charge shall in no event exceed in the aggregate \$35 for each year for each Lease schedule.

**G7. EMBEDDED SOFTWARE**

- G7.1 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.

**G8. INTERNET ACCESS POINT**

- G8.1 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.

**G.9. MISCELLANEOUS**

- G9.1 **Force Majeure.** We are not responsible for any delay or failure to perform resulting from causes beyond our control.
- G9.2 **Assignment.** You may not assign this Agreement without our prior written consent, which consent shall not be unreasonably withheld. Any purported assignment is void.
- G9.3 **No Right to Setoff.** Payments are not subject to setoff or reduction.
- G9.4 **Legal Action.** ANY LEGAL ACTION YOU FILE AGAINST US MUST BE STARTED WITHIN ONE (1) YEAR AFTER THE EVENT GIVING RISE TO YOUR CLAIM. YOU WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION ARISING OUT OF THIS AGREEMENT.
- G9.5 **Merger; Amendment; Severability.** The Agreement incorporates all of the terms agreed by both parties and can only be changed by written agreement. You may use a purchase order to offer to obtain Equipment or services but you agree that none of the provisions of your purchase order will add to, modify or supersede these provisions unless we expressly agree in writing. If one or more provisions of this Agreement are deemed to be invalid or unenforceable, the remaining provisions will not be affected.
- G9.6 **Survival.** Our respective rights and obligations under Section G4 (Limitation of Liability), G5 (Default and Remedies) and G6 (Taxes) survive termination of the Agreement.
- G9.7 **Choice of Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Delaware without regard to its conflicts of laws principles.

**SERVICE LEVEL AGREEMENT (SLA)**

The following provisions describe the Service Level Agreement ("SLA") tiers that PBI offers on Covered Equipment (excluding software). The SLA tier you select will be listed on the Order. A separate Software License and Maintenance Agreement ("SMA") covers software maintenance and will be attached to the Order if you are acquiring software.

**S1. DEFINITIONS**

All capitalized terms that are not defined in these provisions are defined in the "Definitions" section of the General Terms.

**S2. SERVICE LEVEL TIERS**

The following describes the three SLA tiers offered by PBI for the Covered Equipment.

- S2.1 Tier 1
- (a) **General.** Under Tier 1, PBI will provide at its option either repair or replacement services for the Covered Equipment during the Initial Service Term or any

Renewal Service Term (as defined in Section S4.2) (the "Maintenance Service Term"). You are also entitled to two preventative maintenance service calls per calendar year. PB will notify you when preventative maintenance is due or preventative maintenance service calls may be made at your initiation.

- (b) **Obtaining Service.** You can obtain service online or by telephone as set forth in the "How to Contact Us" section of the General Terms.
- (c) **Replacement Service.**
  - (i) If PBI determines that replacement is necessary, PBI will, at no additional cost, promptly ship new,

reconditioned, or remanufactured equipment of the same or a functionally equivalent model to replace the affected Covered Equipment.

(ii) Within five (5) days of receiving the replacement equipment, you must pack the Covered Equipment to be replaced in the shipping carton that contained the replacement equipment, place the pre-paid return address label on the carton, and return it to PBI.

(iii) You are responsible for the return of Covered Equipment until PBI receives it.

(d) Repair Service.

(i) If PBI determines that repair service is necessary, PBI may provide repair by remote access, diagnostics and coordinated remote service, or by on-site repair service.

(ii) Repair service is provided only for damage resulting from normal wear and tear. Repair service may include the use of new, reconditioned, or remanufactured parts and assemblies.

(iii) PBI will provide parts or assemblies for discontinued equipment (or equipment not marketed as new) only if available.

(iv) If PBI deems it necessary, PBI will dispatch a service technician to arrive at your location for on-site service. You will not incur hourly charges unless service is performed outside Normal Working Hours, which will be done only with your consent.

S2.2 Tier 2

(a) If you select Tier 2, we will provide the following support:

(i) All coverage provided under Tier 1, PLUS:

(ii) Ongoing Equipment Training Services. PBI will provide the following training. PBI will schedule the training at a time convenient for you and PBI. Training will include an overview for the operator(s) on how to use the Covered Equipment. The number of training sessions that are included during each twelve (12) month period during the Maintenance Service Term are as follows:

(1) Mail finishing products (which includes Meters and scales) - up to six (6) training sessions;

(2) Mail finishing accounting software solutions - up to four (4) training sessions;

(3) Mail creation hardware products (which includes tabletop folders, tabletop inserters, and address printers) - up to four (4) training sessions; and

(4) Distribution solutions hardware products - up to four (4) training sessions.

(iii) Additional Covered Items. PBI will provide printheads for Meters or Covered Equipment without additional charge.

S2.3 Tier 3

(a) If you select Tier 3, PBI will provide the following support:

(i) All coverage provided under Tier 1 and Tier 2, PLUS:

(ii) Preventive Maintenance Services.

(1) PBI will perform maintenance on the Covered Equipment at regular intervals.

(iii) Response Time Commitment.

(1) If PBI determines that on-site service is necessary, PBI will use commercially reasonable efforts to have a service technician on-site within four (4) hours (during Normal Working Hours only) of PBI's receipt of the call at the Customer Care Center (the "Response Time Commitment").

(2) The Response Time Commitment relates solely to the arrival of a technician at your location; it is not a guaranteed resolution of the problem within the four (4) hour time period, nor does it guarantee that

all parts necessary to make a repair will be on-site within this time frame.

(3) The Response Time Commitment does not apply to Service designated as service by replacement, software maintenance, preventive maintenance, operator training, or other services not essential to repair the Covered Equipment. These services will be scheduled in advance.

(4) If the Covered Equipment is moved from its original location, PBI may remove the Response Time Commitment. If this happens, you will receive a refund equal to the difference between the cost of the Response Time Commitment and the cost of maintenance coverage without this obligation.

(iv) Liquidated Damages for Failure to Meet Response Time.

(1) PBI agrees that if it does not meet the Response Time Commitment, PBI will provide you with a credit equal to six (6) months of the cost of the premium of the Response Time Commitment.

(2) You must use a credit request form in order to request a credit. You may obtain a credit form from your service technician or by calling the Customer Care Center. The credits are limited to credits for two (2) failures to meet the Response Time Commitment in any twelve (12) month period during the Maintenance Service Term. **The remedies described in this Section are your sole remedy for PBI's failure to meet the Response Time Commitment.**

S2.4 Connect+ Advantage

(a) If you select Connect+ Advantage, PBI will provide the following support:

(i) All coverage provided under Tier 2 PLUS:

(ii) If you select Tier 3 in addition to Connect+ Advantage, coverage provided under Tier 3.

(b) Connect+ Advantage is only available for items listed with a # next to the description.

S3. FEES

S3.1 You will pay the fees for the Initial Service Term, and any Renewal Service Term(s). These fees are incorporated into your payment cycle (e.g., Quarterly Payment for leased equipment).

S3.2 Late Fees. Our remedies for your failure to pay on time are set forth in the "Default; Remedies" section of the General Terms.

S3.3 Fees for Services Not Covered by this SLA. If the service technician provides service for repairs caused by one of the conditions listed in Section S6.1(a)(ii), PBI will charge you for the service at PBI's current hourly rates and for any required parts.

S4. MAINTENANCE SERVICE

S4.1 Term. PBI will provide you with Maintenance Service for the Initial Service Term and any Renewal Service Terms.

S4.2 RENEWAL SERVICE TERM(S). MAINTENANCE SERVICE AUTOMATICALLY RENEWS FOR CONSECUTIVE ONE (1) YEAR TERMS (EACH, A "RENEWAL SERVICE TERM"), UNLESS:

(a) YOU TERMINATE MAINTENANCE SERVICE AS SPECIFIED IN SECTION S4.3 AT LEAST SIXTY (60) DAYS PRIOR TO THE RENEWAL OF THE TERM; OR

(b) YOUR LEASE EXPIRES OR IS TERMINATED (IN WHICH CASE, THE MAINTENANCE SERVICE TERM WILL TERMINATE ON THE SAME DAY AS THE LEASE); OR

(c) THE RENEWAL IS PROHIBITED BY APPLICABLE LAW.

S4.3 Ending Your Maintenance Service.

(a) If you do not wish to renew Maintenance Service, you must deliver a written notice (including your account number) (the "Termination Notice") by Certified Mail™ to the address listed in the "How to Contact Us" section of the General Terms. Your Termination Notice must include your customer account number and lease

number (if applicable), and is effective ten (10) business days after PBI receives it.

- (b) PBI reserves the right not to renew your SLA at any time and for any reason.

**S4.4** Maintenance Service Changes.

- (a) PBI may modify its Maintenance Service by giving written notice to you (a "Maintenance Change Notice"), which will state whether the change is material.
- (b) After receiving a Maintenance Change Notice, if the change is material, you may terminate Maintenance Service as described in Section S4.3 above.

**S5. WARRANTIES; LIMITATION OF LIABILITY**

**S5.1** The warranty for the Equipment and services as well as PBI's Limitation of Liability are set forth in the applicable section of the General Terms.

**S6. ADDITIONAL MAINTENANCE TERMS**

**S6.1** These terms apply to all Maintenance Service tiers:

- (a) Limitations. Maintenance Service does not include:
  - (i) software maintenance and/or updates; and
  - (ii) services and repairs that are made necessary due to:
    - (A) negligence or accident, damage in transit, virus contamination and loss of data;
    - (B) use of Covered Equipment in a manner not authorized by this SLA or the Equipment user guide;
    - (C) natural causes such as fire or flood as well as other causes outside of PBI's control;
    - (D) use of Covered Equipment in an environment with unsuitable humidity and/or line voltage;
    - (E) loss of electrical power, power fluctuation, operator error;
    - (F) sabotage, repair or attempted repair by anyone other than PBI;

- (G) the use of third party supplies (such as ink), hardware, or software resulting in: (i) damage to the Equipment; (ii) poor indicia, text, or image print quality; (iii) indicia readability failures; or (iv) a failure to print indicia, text, or images;

- (H) failure to use applicable software updates; or
- (I) use of Covered Equipment with any system for which PBI has advised it will no longer provide support or has advised is no longer compatible.

- (b) Additional Exclusions. Unless covered under one of the above maintenance tiers, Maintenance Service excludes the supply of rate program software for electronic scales and weighing systems, software maintenance and/or updates and consumable supplies for all levels of service, including printheads for Meters and IntelliLink Control Centers.

- (c) Replacement Equipment.

- (i) If you replace any of your Covered Equipment during the Maintenance Service Term, and the replacement Equipment qualifies for maintenance services, PBI will automatically enroll you for maintenance coverage on the new Equipment at PBI's then current annual rates.
- (ii) If you acquire an attachment, or add a unit, to your Covered Equipment, PBI will provide coverage for any qualifying attachment or unit and adjust your rate accordingly.
- (iii) If you choose not to continue coverage on the replacement Equipment, attachment or unit, you may cancel Maintenance Service with respect to the item within thirty (30) days of the date of your initial invoice for the item from PBI. If you cancel, any further maintenance or repair services on the Equipment, attachment or unit will be subject to PBI's current rates.

**EQUIPMENT AND POSTAGE METER RENTAL TERMS AND CONDITIONS**

The following provisions apply whenever you acquire an IntelliLink® Control Center or Meter from Pitney Bowes. Other terms may also apply, depending on the transaction.

**R1. DEFINITIONS**

All capitalized terms that are not defined in these provisions are defined in the "Definitions" section of the General Terms.

**R2. EQUIPMENT RENTAL AND INTELLILINK® SUBSCRIPTION (METER RENTAL)**

**R2.1** Fees.

- (a) If you are not leasing the Equipment and paying for it in your lease payment to PBGFS, we will invoice you the Equipment rental ("rental") and IntelliLink Subscription fees listed on the Order.
- (b) After the Initial Term, we may increase the rental and IntelliLink Subscription fees upon 30 days' prior written notice.
- (c) When you receive notice of an increase, you may terminate your rental only as of the date the increase becomes effective.

**R2.2** Postage.

- (a) To obtain postage for your Meter, you must contact our Postage By Phone® data center.
- (b) You may transfer funds to the Bank for deposit into a Postage By Phone® Reserve Account that 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 the "USPS Acknowledgment of Deposit" section of the General Terms for more information.
- (c) After the Initial Term, we may increase postage refill fees upon 30 days prior written notice.
- (d) If you participate in any PBI, PBGFS, or Bank postage advance programs (such as Purchase Power®), we will advance payment on your behalf to the USPS, subject to repayment by you under the terms of the postage

advance program and billed separately from your IntelliLink Subscription fees.

**R2.3** Meter Repair or Replacement.

- (a) If the Meter malfunctions or fails due to reasons other than your negligence or accident, usage which exceeds our recommendations, damage in transit, 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 the Meter, we will repair or replace the Meter.

**R2.4** Terms of Use; Federal Regulations.

- (a) 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.
- (b) You agree to use the Equipment and Meter only for business or commercial purposes, and not for personal, family, or household purposes.
- (c) You agree to use only attachments or printing devices authorized by us.
- (d) You must receive our written consent before moving the Equipment or Meter to a different location.
- (e) Federal regulations require that we own the Meter.
- (f) Tampering with or misusing the Meter is a violation of federal law.
- (g) 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.
- (h) 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.

- (i) 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.
- (j) 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.

R2.5 Rate Updates and Soft-Guard® Program.

- (a) Your Meter or Equipment may require periodic rate information updates that you can obtain under our Soft-Guard program, or you will receive individual rate updates as a separate charge.
- (b) If you have purchased a Soft-Guard Subscription, we will provide up to 6 rate updates during each 12 month period following the date of installation of the Equipment.
- (c) We will provide rate updates only if required due to a postal or carrier change in rate, service, ZIP Code™ or zone change.
- (d) 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.
- (e) If your Soft-Guard Subscription has expired, or if you have received the maximum number of rate updates

**UNITED STATES POSTAL SERVICE ACKNOWLEDGMENT OF DEPOSIT**

UI.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.

UI.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.

UI.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.

UI.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.

under your Soft-Guard Subscription, you will be billed for any additional rate update you request.

- (f) You can also renew the Soft-Guard Subscription by contacting PBI online or by telephone at the address and numbers set forth in the "How to Contact Us" section of the General Terms.

R2.6 Warranty.

- (a) The warranty for the Equipment and services is set forth in the "Warranty" section of the General Terms.

R2.7 Limitation of Liability.

- (a) PBI's limitation of liability is set forth in the "Limitation of Liability" section of the General Terms.

R2.8 Collection of Information.

- (a) You authorize us to access and download information from your Meter. We may disclose this information to the USPS or other authorized governmental entity.
- (b) 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.
- (c) We may elect to share aggregate data about our customers' postage usage with third parties.

R2.9 IntelliLink® Control Center/Meter Care and Risk of Loss.

- (a) You agree to take proper care of the IntelliLink Control Center and/or Meter(s) as stated in this Agreement and any user documentation.
- (b) You assume all risk of loss or damage to the IntelliLink Control Center and/or Meter(s) while you have possession.

**R3. VALUE BASED SERVICES**

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

R3.1 Fees.

- (a) Any fees charged by the USPS for any Value Based Service you purchase are 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.

R3.2 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.

UI.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.

UI.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.

UI.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.

UI.8 You acknowledge that the terms of this Acknowledgement may be changed, modified, or revoked by the USPS, with appropriate notice.

UI.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.

## PURCHASE POWER® TERMS AND CONDITIONS

The following provisions apply when you first enroll in the Purchase Power Program (the "Program"). Additionally, you will receive from us a set of more specific provisions within twenty (20) days of the date of this Agreement that will be more specifically tailored to your Purchase Power Account (the "Account") and will apply to your ongoing participation in the Program.

**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.

## PRESORTXTRA™ PROGRAM TERMS AND CONDITIONS

The following provisions apply when you enroll in the Pitney Bowes PresortXtra Program and apply only to the services provided under the PresortXtra Program.

### X1. PBI'S RESPONSIBILITIES

Depending on the service(s) you have selected on your PresortXtra qualification form, we will pick up your metered First-Class™ letters ("Letters"), First-Class flats ("Flats"), or both ("Program Mail"), provided to us and prepared by you in accordance with additional terms and conditions provided to you when you enroll in the PresortXtra Program ("Additional Terms and Conditions"). We will pick up your Letters and/or Flats at your designated location(s) and in accordance with the schedule we may mutually agree upon from time to time. We will sort this mail at one of our facilities. For Letters only, we will apply a United States Postal Service® ("USPS") "Move Update" process to your mail. We will deliver the mail to the USPS for final delivery. We will perform this service under this Agreement in accordance with accepted mail processing industry standards. EXCEPT AS OTHERWISE PROVIDED HEREIN, WE MAKE NO OTHER WARRANTIES, EXPRESS OR IMPLIED.

### X2. CUSTOMER'S RESPONSIBILITIES

**X2.1 Letters.** As of the date of this Agreement: for Letters, you will meter your Program Mail at the USPS rates set forth in the Additional Terms and Conditions. NO REPRESENTATION IS MADE AS TO THE AMOUNT OF YOUR MAIL THAT WILL QUALIFY FOR PRESORT MAILING RATES, AND YOU WILL BE RESPONSIBLE FOR METERING YOUR PROGRAM MAIL IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT REGARDLESS OF THE AMOUNT OF YOUR PROGRAM MAIL THAT QUALIFIES OR DOES NOT QUALIFY FOR PRESORT RATES. YOU HEREBY ASSIGN ANY AND ALL OF YOUR RIGHTS TO RECEIVE ANY POSTAGE REFUNDS OR REBATES BASED ON THE AMOUNT OF YOUR MAIL THAT QUALIFIES FOR ANY ADDITIONAL PRESORT MAILING RATES TO PBI (OR ITS SUBSIDIARIES) AND ALL SUCH REFUNDS OR REBATES WILL BECOME THE PROPERTY OF AND BE RETAINED BY PBI (OR ITS SUBSIDIARIES).

**X2.2 Flats.** You will prepare and process your Flats as described in the Additional Terms and Conditions. You are responsible for metering all Flats that meet the criteria detailed in the Additional Terms

and Conditions at the current USPS 3 digit First-Class flat rate. You agree that we will invoice you through your Purchase Power Credit Line at the rate set forth in the Additional Terms and Conditions. We will bill you for the difference between the USPS regular flat rate and the 3 digit USPS First-Class flat rate for any Flats that do not comply with the requirements outlined in the Additional Terms and Conditions.

X2.3 General. You will have your Program Mail ready for pickup at your designated locations and in accordance with the schedule we mutually agree upon from time to time. You agree that time is of the essence with respect to each of your obligations for which time is a factor. You will ensure that your Program Mail complies with all applicable laws, rules and regulations, including but not limited to, all USPS regulations, and you will promptly execute any and all documents required by the USPS. You will ensure that your mail comp

lies with the requirements set forth in the Additional Terms and Conditions.

### **X3. GENERAL TERMS**

X3.1 Indemnification. In the event that we are subjected to any loss, expense, damage or liability due to your acts or omissions, including but not limited to any claims by any third parties, or fines or assessments imposed by the USPS or other governmental entities, you will indemnify and hold us harmless from such loss, expense, damage or liability, including our reasonable attorney's fees.

X3.2 Termination. We may discontinue providing the PresortXtra Program service upon one (1) business day's notice in the event you breach any of your obligations hereunder, including, but not limited to, those set forth in the Additional Terms and Conditions, and fail to cure such breach within ten (10) business days of written notice from us advising you of the nature of such breach. Either party may terminate with or without cause upon thirty (30) days' prior written notice, provided that you remain responsible for paying any outstanding invoice(s) after such discontinuation.

X3.3 Modification; Amendment. If the USPS adopts any new postal regulations, procedures, rates or incentives, we may modify or terminate this program upon fifteen (15) days prior written notice to you.

X3.4 Right to Subcontract. We may subcontract certain of our rights and/or responsibilities hereunder to third parties without your prior consent.

## LEASE TERMS AND CONDITIONS

This is a lease with Pitney Bowes Global Financial Services LLC (PBGFS), Pitney Bowes' leasing company. PBGFS provides leasing options to our customers. PBGFS does not warrant, service or otherwise support the equipment. Those services are provided by Pitney Bowes Inc. (PBI) as stated in the Pitney Bowes Terms. Due to federal regulations, only PBI can own an IntelliLink® Control Center or Meter. Therefore, those items are rented to you, rather than leased. Unlike the other equipment you may lease from us, you cannot purchase an IntelliLink Control Center or Meter at the end of the Agreement.

### L1. DEFINITIONS

L1.1 All capitalized terms that are not defined in this document are defined in the "Definitions" section of the Pitney Bowes Terms.

### L2. AGREEMENT

L2.1 You are leasing the Equipment listed on the Order. You will make each Quarterly 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 Our remedies for your failure to pay on time or other defaults are set forth in the "Default and Remedies" section of the Pitney Bowes Terms.

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 quarter for all payments on the Order (each, a "Quarterly Payment"), except as provided in any SOW attached to this Agreement.

L3.2 Your Quarterly 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 Quarterly Payment and begin with the start of the Lease Term. Your Quarterly 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:

- (a) enter into a new lease with us;
- (b) purchase the Equipment "as is, where is" for fair market value; 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 successive 12-month annual extensions of the term of this Agreement. You may opt to cease the automatic extensions by providing us with written notice within 120 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.

### L7. WARRANTY AND LIMITATION OF LIABILITY

L7.1 WE (PBGFS) 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 (and we assign to you our rights in) the limited warranty in the Pitney Bowes Terms.

L7.3 WE ARE NOT LIABLE FOR ANY LOSS, DAMAGE (INCLUDING INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES), OR EXPENSE CAUSED DIRECTLY OR INDIRECTLY BY THE EQUIPMENT.

### 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.

### 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 date of shipment 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) 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.

#### L9.2 ValueMAX Program.

- (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 You warrant that you have funds available to pay all payments until the end of your current fiscal period, and shall use your best efforts to obtain funds to pay all payments in each subsequent fiscal period through the end of your Lease Term. If your appropriation request to your legislative body, or funding authority ("Governing Body") for funds to pay the payments is denied, you may terminate this Lease on the last day of the fiscal period for which funds have been appropriated, upon (i) submission of documentation reasonably satisfactory to us evidencing the Governing Body's denial of an appropriation sufficient to continue this Lease for the next succeeding fiscal period, and (ii) satisfaction of all charges and obligations under this Lease incurred through the end of the fiscal period for which funds have been appropriated, including the return of the Equipment at your expense.

### 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. The foregoing paragraph shall supercede Section G5.2(b) of the Pitney Bowes Terms.

### 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.

**GENERAL TERMS**

The following provisions apply to any transaction you enter into with Pitney Bowes. Other provisions in the Pitney Bowes Terms may also apply, depending on your transaction. Please read these provisions carefully as they constitute part of your agreement with Pitney Bowes.

**G1. HOW TO CONTACT US**

- G1.1 To obtain Maintenance Service, please either:
- (a) place a request for service on PBI's website at [www.pb.com](http://www.pb.com), under Customer Support; or
  - (b) call PBI's toll-free response center (the "Customer Care Center") at 1-800-522-0020 (Monday - Friday, 8am - 8pm ET, excluding PBI-observed holidays).
- G1.2 In the event you wish to cancel your Meter rental or you do not wish to renew your Maintenance Service after the Initial Term, please send written notice by mail to: Pitney Bowes Inc., 2225 American Drive, Neenah, WI 54956. (See Section S4.3 for details).
- G1.3 To cancel your Soft-Guard® Subscription, please contact us at 1-800-228-1071 (Monday - Friday, 8:30am - 5:30pm CT, excluding PBI-observed holidays).

**G2. DEFINITIONS**

The following terms mean:

- "Agreement"** - the Order, any applicable terms and conditions referred to in the Order 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 leased, 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 Service Term"** - the twelve (12) months immediately following the start of the Lease, or longer as provided 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 the Lease terms and conditions attached to the Order.
- "Lease Term"** - shall have the meaning stated in the Lease.
- "Maintenance Service"** - the maintenance service tier for the Covered Equipment selected by you on the Order, excluding software maintenance.
- "Normal Working Hours"** - 8 a.m. - 5 p.m., Monday - Friday, excluding PBI-observed holidays, in the time zone where the Equipment or other items are located.
- "Order"** - the executed agreement between the applicable Pitney Bowes company and you for the equipment covered by the Order.
- "PBGFS"** - Pitney Bowes Global Financial Services LLC.
- "PBI"** - Pitney Bowes Inc.
- "PBI Equipment"** - PBI-branded equipment.
- "Pitney Bowes"** - PBI, PBGFS and their respective subsidiaries.
- "Shipment Date"** - the date the Equipment leaves our facility or our agent's facility for delivery to you.
- "SLA"** - the Service Level Agreement.
- "SOW"** - a Statement of Work you enter into with us.
- "Third Party Equipment"** - equipment manufactured by a party other than us.
- "We," "Our,"** or **"Us"** - the Pitney Bowes company with whom you've entered into the Order.
- "You," "Your,"** or **"Customer"** - the entity identified on the Order.

**G3. WARRANTY**

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- G3.1 (a) PBI warrants that the PBI Equipment will be free from defects in material and workmanship and will perform according to the equipment user guide for a period of ninety (90) days from the Install Date (the "Warranty Period").
- (b) PBI warrants that the Maintenance Service provided will be performed in a professional and workmanlike manner.
- (c) **As your sole remedy in the event of a warranty claim, we will either repair or replace the Equipment or, in the case of defective Maintenance Service, reperform the Maintenance Service.**
- (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.

**G3.2 EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, WE (ON BEHALF OF OURSELF AND OUR SUPPLIERS) MAKE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE EQUIPMENT OR SERVICES PROVIDED.**

**G3.3 THIRD PARTY EQUIPMENT.** PBI MAKES NO REPRESENTATION OR WARRANTY AS TO ANY THIRD PARTY EQUIPMENT. PBI AGREES TO PASS THROUGH TO YOU ALL THIRD PARTY EQUIPMENT WARRANTIES TO THE EXTENT SUCH WARRANTIES ARE TRANSFERABLE.

**G4. LIMITATION OF LIABILITY**

- G4.1 PBI'S TOTAL LIABILITY (INCLUDING ANY LIABILITY OF ITS SUPPLIERS) IS LIMITED TO THE FEES PAID BY YOU TO PBI FOR THE APPLICABLE EQUIPMENT OR SERVICES IN THE 12 MONTHS BEFORE THE EVENT THAT GIVES RISE TO THE CLAIM, EXCEPT FOR THE LIQUIDATED DAMAGES THAT MAY BE APPLICABLE TO SLA TIER 3 (SEE SECTION S2.3 OF THE SLA).
- G4.2 NEITHER PBI NOR ITS SUPPLIERS IS LIABLE FOR ANY DAMAGE YOU MAY INCUR BY REASON OF YOUR MISUSE OR NEGLIGENT USE OF THE EQUIPMENT, OR YOUR NEGLIGENT ACTS OR OMISSIONS.
- G4.3 NEITHER PBI NOR ITS SUPPLIERS IS LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES OF ANY NATURE WHATSOEVER, INCLUDING COMMERCIAL LOSS, OR LOST PROFITS, DATA, OR GOODWILL, FOR ANY MATTER RELATING TO THIS AGREEMENT.

**G5. DEFAULT AND REMEDIES**

- G5.1 **Default.** You are in immediate default if you do not make any payment when due, you breach any other obligation under this Agreement, you become insolvent or file for bankruptcy, or are in default under any agreement with PBI or PBGFS.
- G5.2 **Remedies.** Upon your default, we may:
- (a) cancel this Agreement and any other agreements PBGFS or PBI has with you;
  - (b) require immediate payment of all payments due under a Lease(s) or other agreements, whether accrued or due in the future;
  - (c) disable the IntelliLink Control Center or Meter;
  - (d) require you to return the Equipment and IntelliLink Control Center or Meter;
  - (e) if you do not return the Equipment and IntelliLink Control Center or Meter, require you to make immediate payment of an amount equal to the remaining value of the Equipment, IntelliLink Control Center or Meter at the end of the Lease Term, as determined by us;
  - (f) charge you a late charge for each month that your payment is late;
  - (g) charge you interest on any late payment from its due date until paid in full at the lesser of 18% per year or the maximum rate allowed by law;
  - (h) charge you a check return fee for payments made by you with insufficient funds;
  - (i) reasonably attempt to mitigate our damages and costs in the event of your default, although you acknowledge that we are not obligated to do so; and
  - (j) pursue any other remedy, including repossessing the Equipment without notice to you. By repossessing the Equipment, IntelliLink Control Center or Meter, we are not waiving our right to collect the balance due.
- G5.3 **Enforcing Our Rights.** You agree to pay all our costs, including attorneys' fees, in enforcing our rights under the Agreement with you.
- G5.4 **Suspension of Services.** PBI reserves the right to suspend any services during any period in which your account is more than thirty (30) days past due.

**G6. TAXES**

- G6.1 You agree to pay Pitney Bowes for all charges and taxes (other than taxes on or measured by net income), calculated as set forth below, related to the Lease or based on or measured by the lease transaction, payments under the Lease, the Equipment or Equipment location, the Meter or Meter location or services provided in connection with the lease transaction, including but not limited to sales/use and property type taxes. Pitney Bowes will determine the value of the Equipment, the value of the Meter and the amount of such taxes to be charged to you. Such determinations will reflect a reasonable value of the Equipment or of the Meter or the actual taxes and depreciation thereon. The taxes and depreciation to be charged on the Equipment and the Meter may reflect certain average tax rates, different depreciation schedules or some other calculation. You agree to pay a processing, billing and tracking fee and administrative charge to be determined by Pitney Bowes which may not bear a relationship to the tax charged or services performed, but

such fee and charge shall in no event exceed in the aggregate \$35 for each year for each Lease schedule.

**G7. EMBEDDED SOFTWARE**

- G7.1 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.

**G8. INTERNET ACCESS POINT**

- G8.1 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.

**G.9. MISCELLANEOUS**

- G9.1 **Force Majeure.** We are not responsible for any delay or failure to perform resulting from causes beyond our control.
- G9.2 **Assignment.** You may not assign this Agreement without our prior written consent, which consent shall not be unreasonably withheld. Any purported assignment is void.
- G9.3 **No Right to Setoff.** Payments are not subject to setoff or reduction.
- G9.4 **Legal Action.** ANY LEGAL ACTION YOU FILE AGAINST US MUST BE STARTED WITHIN ONE (1) YEAR AFTER THE EVENT GIVING RISE TO YOUR CLAIM. YOU WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION ARISING OUT OF THIS AGREEMENT.
- G9.5 **Merger; Amendment; Severability.** The Agreement incorporates all of the terms agreed by both parties and can only be changed by written agreement. You may use a purchase order to offer to obtain Equipment or services but you agree that none of the provisions of your purchase order will add to, modify or supersede these provisions unless we expressly agree in writing. If one or more provisions of this Agreement are deemed to be invalid or unenforceable, the remaining provisions will not be affected.
- G9.6 **Survival.** Our respective rights and obligations under Section G4 (Limitation of Liability), G5 (Default and Remedies) and G6 (Taxes) survive termination of the Agreement.
- G9.7 **Choice of Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Delaware without regard to its conflicts of laws principles.

**SERVICE LEVEL AGREEMENT (SLA)**

The following provisions describe the Service Level Agreement ("SLA") tiers that PBI offers on Covered Equipment (excluding software). The SLA tier you select will be listed on the Order. A separate Software License and Maintenance Agreement ("SMA") covers software maintenance and will be attached to the Order if you are acquiring software.

**S1. DEFINITIONS**

All capitalized terms that are not defined in these provisions are defined in the "Definitions" section of the General Terms.

**S2. SERVICE LEVEL TIERS**

The following describes the three SLA tiers offered by PBI for the Covered Equipment.

- S2.1 Tier 1
- (a) **General.** Under Tier 1, PBI will provide at its option either repair or replacement services for the Covered Equipment during the Initial Service Term or any

Renewal Service Term (as defined in Section S4.2) (the "Maintenance Service Term"). You are also entitled to two preventative maintenance service calls per calendar year. PB will notify you when preventative maintenance is due or preventative maintenance service calls may be made at your initiation.

- (b) **Obtaining Service.** You can obtain service online or by telephone as set forth in the "How to Contact Us" section of the General Terms.
- (c) **Replacement Service.**
  - (i) If PBI determines that replacement is necessary, PBI will, at no additional cost, promptly ship new,

reconditioned, or remanufactured equipment of the same or a functionally equivalent model to replace the affected Covered Equipment.

(ii) Within five (5) days of receiving the replacement equipment, you must pack the Covered Equipment to be replaced in the shipping carton that contained the replacement equipment, place the pre-paid return address label on the carton, and return it to PBI.

(iii) You are responsible for the return of Covered Equipment until PBI receives it.

(d) Repair Service.

(i) If PBI determines that repair service is necessary, PBI may provide repair by remote access, diagnostics and coordinated remote service, or by on-site repair service.

(ii) Repair service is provided only for damage resulting from normal wear and tear. Repair service may include the use of new, reconditioned, or remanufactured parts and assemblies.

(iii) PBI will provide parts or assemblies for discontinued equipment (or equipment not marketed as new) only if available.

(iv) If PBI deems it necessary, PBI will dispatch a service technician to arrive at your location for on-site service. You will not incur hourly charges unless service is performed outside Normal Working Hours, which will be done only with your consent.

S2.2 Tier 2

(a) If you select Tier 2, we will provide the following support:

(i) All coverage provided under Tier 1, PLUS:

(ii) Ongoing Equipment Training Services. PBI will provide the following training. PBI will schedule the training at a time convenient for you and PBI. Training will include an overview for the operator(s) on how to use the Covered Equipment. The number of training sessions that are included during each twelve (12) month period during the Maintenance Service Term are as follows:

(1) Mail finishing products (which includes Meters and scales) - up to six (6) training sessions;

(2) Mail finishing accounting software solutions - up to four (4) training sessions;

(3) Mail creation hardware products (which includes tabletop folders, tabletop inserters, and address printers) - up to four (4) training sessions; and

(4) Distribution solutions hardware products - up to four (4) training sessions.

(iii) Additional Covered Items. PBI will provide printheads for Meters or Covered Equipment without additional charge.

S2.3 Tier 3

(a) If you select Tier 3, PBI will provide the following support:

(i) All coverage provided under Tier 1 and Tier 2, PLUS:

(ii) Preventive Maintenance Services.

(1) PBI will perform maintenance on the Covered Equipment at regular intervals.

(iii) Response Time Commitment.

(1) If PBI determines that on-site service is necessary, PBI will use commercially reasonable efforts to have a service technician on-site within four (4) hours (during Normal Working Hours only) of PBI's receipt of the call at the Customer Care Center (the "Response Time Commitment").

(2) The Response Time Commitment relates solely to the arrival of a technician at your location; it is not a guaranteed resolution of the problem within the four (4) hour time period, nor does it guarantee that

all parts necessary to make a repair will be on-site within this time frame.

(3) The Response Time Commitment does not apply to Service designated as service by replacement, software maintenance, preventive maintenance, operator training, or other services not essential to repair the Covered Equipment. These services will be scheduled in advance.

(4) If the Covered Equipment is moved from its original location, PBI may remove the Response Time Commitment. If this happens, you will receive a refund equal to the difference between the cost of the Response Time Commitment and the cost of maintenance coverage without this obligation.

(iv) Liquidated Damages for Failure to Meet Response Time.

(1) PBI agrees that if it does not meet the Response Time Commitment, PBI will provide you with a credit equal to six (6) months of the cost of the premium of the Response Time Commitment.

(2) You must use a credit request form in order to request a credit. You may obtain a credit form from your service technician or by calling the Customer Care Center. The credits are limited to credits for two (2) failures to meet the Response Time Commitment in any twelve (12) month period during the Maintenance Service Term. **The remedies described in this Section are your sole remedy for PBI's failure to meet the Response Time Commitment.**

S2.4 Connect+ Advantage

(a) If you select Connect+ Advantage, PBI will provide the following support:

(i) All coverage provided under Tier 2 PLUS:

(ii) If you select Tier 3 in addition to Connect+ Advantage, coverage provided under Tier 3.

(b) Connect+ Advantage is only available for items listed with a # next to the description.

S3. FEES

S3.1 You will pay the fees for the Initial Service Term, and any Renewal Service Term(s). These fees are incorporated into your payment cycle (e.g., Quarterly Payment for leased equipment).

S3.2 Late Fees. Our remedies for your failure to pay on time are set forth in the "Default; Remedies" section of the General Terms.

S3.3 Fees for Services Not Covered by this SLA. If the service technician provides service for repairs caused by one of the conditions listed in Section S6.1(a)(ii), PBI will charge you for the service at PBI's current hourly rates and for any required parts.

S4. MAINTENANCE SERVICE

S4.1 Term. PBI will provide you with Maintenance Service for the Initial Service Term and any Renewal Service Terms.

S4.2 RENEWAL SERVICE TERM(S). MAINTENANCE SERVICE AUTOMATICALLY RENEWS FOR CONSECUTIVE ONE (1) YEAR TERMS (EACH, A "RENEWAL SERVICE TERM"), UNLESS:

(a) YOU TERMINATE MAINTENANCE SERVICE AS SPECIFIED IN SECTION S4.3 AT LEAST SIXTY (60) DAYS PRIOR TO THE RENEWAL OF THE TERM; OR

(b) YOUR LEASE EXPIRES OR IS TERMINATED (IN WHICH CASE, THE MAINTENANCE SERVICE TERM WILL TERMINATE ON THE SAME DAY AS THE LEASE); OR

(c) THE RENEWAL IS PROHIBITED BY APPLICABLE LAW.

S4.3 Ending Your Maintenance Service.

(a) If you do not wish to renew Maintenance Service, you must deliver a written notice (including your account number) (the "Termination Notice") by Certified Mail™ to the address listed in the "How to Contact Us" section of the General Terms. Your Termination Notice must include your customer account number and lease

number (if applicable), and is effective ten (10) business days after PBI receives it.

- (b) PBI reserves the right not to renew your SLA at any time and for any reason.

**S4.4** Maintenance Service Changes.

- (a) PBI may modify its Maintenance Service by giving written notice to you (a "Maintenance Change Notice"), which will state whether the change is material.
- (b) After receiving a Maintenance Change Notice, if the change is material, you may terminate Maintenance Service as described in Section S4.3 above.

**S5. WARRANTIES; LIMITATION OF LIABILITY**

**S5.1** The warranty for the Equipment and services as well as PBI's Limitation of Liability are set forth in the applicable section of the General Terms.

**S6. ADDITIONAL MAINTENANCE TERMS**

**S6.1** These terms apply to all Maintenance Service tiers:

- (a) Limitations. Maintenance Service does not include:
  - (i) software maintenance and/or updates; and
  - (ii) services and repairs that are made necessary due to:
    - (A) negligence or accident, damage in transit, virus contamination and loss of data;
    - (B) use of Covered Equipment in a manner not authorized by this SLA or the Equipment user guide;
    - (C) natural causes such as fire or flood as well as other causes outside of PBI's control;
    - (D) use of Covered Equipment in an environment with unsuitable humidity and/or line voltage;
    - (E) loss of electrical power, power fluctuation, operator error;
    - (F) sabotage, repair or attempted repair by anyone other than PBI;

- (G) the use of third party supplies (such as ink), hardware, or software resulting in: (i) damage to the Equipment; (ii) poor indicia, text, or image print quality; (iii) indicia readability failures; or (iv) a failure to print indicia, text, or images;
- (H) failure to use applicable software updates; or
- (I) use of Covered Equipment with any system for which PBI has advised it will no longer provide support or has advised is no longer compatible.

- (b) Additional Exclusions. Unless covered under one of the above maintenance tiers, Maintenance Service excludes the supply of rate program software for electronic scales and weighing systems, software maintenance and/or updates and consumable supplies for all levels of service, including printheads for Meters and IntelliLink Control Centers.

(c) Replacement Equipment.

- (i) If you replace any of your Covered Equipment during the Maintenance Service Term, and the replacement Equipment qualifies for maintenance services, PBI will automatically enroll you for maintenance coverage on the new Equipment at PBI's then current annual rates.
- (ii) If you acquire an attachment, or add a unit, to your Covered Equipment, PBI will provide coverage for any qualifying attachment or unit and adjust your rate accordingly.
- (iii) If you choose not to continue coverage on the replacement Equipment, attachment or unit, you may cancel Maintenance Service with respect to the item within thirty (30) days of the date of your initial invoice for the item from PBI. If you cancel, any further maintenance or repair services on the Equipment, attachment or unit will be subject to PBI's current rates.

**EQUIPMENT AND POSTAGE METER RENTAL TERMS AND CONDITIONS**

The following provisions apply whenever you acquire an IntelliLink® Control Center or Meter from Pitney Bowes. Other terms may also apply, depending on the transaction.

**R1. DEFINITIONS**

All capitalized terms that are not defined in these provisions are defined in the "Definitions" section of the General Terms.

**R2. EQUIPMENT RENTAL AND INTELLILINK® SUBSCRIPTION (METER RENTAL)**

**R2.1** Fees.

- (a) If you are not leasing the Equipment and paying for it in your lease payment to PBGFS, we will invoice you the Equipment rental ("rental") and IntelliLink Subscription fees listed on the Order.
- (b) After the Initial Term, we may increase the rental and IntelliLink Subscription fees upon 30 days' prior written notice.
- (c) When you receive notice of an increase, you may terminate your rental only as of the date the increase becomes effective.

**R2.2** Postage.

- (a) To obtain postage for your Meter, you must contact our Postage By Phone® data center.
- (b) You may transfer funds to the Bank for deposit into a Postage By Phone® Reserve Account that 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 the "USPS Acknowledgment of Deposit" section of the General Terms for more information.
- (c) After the Initial Term, we may increase postage refill fees upon 30 days prior written notice.
- (d) If you participate in any PBI, PBGFS, or Bank postage advance programs (such as Purchase Power®), we will advance payment on your behalf to the USPS, subject to repayment by you under the terms of the postage

advance program and billed separately from your IntelliLink Subscription fees.

**R2.3** Meter Repair or Replacement.

- (a) If the Meter malfunctions or fails due to reasons other than your negligence or accident, usage which exceeds our recommendations, damage in transit, 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 the Meter, we will repair or replace the Meter.

**R2.4** Terms of Use; Federal Regulations.

- (a) 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.
- (b) You agree to use the Equipment and Meter only for business or commercial purposes, and not for personal, family, or household purposes.
- (c) You agree to use only attachments or printing devices authorized by us.
- (d) You must receive our written consent before moving the Equipment or Meter to a different location.
- (e) Federal regulations require that we own the Meter.
- (f) Tampering with or misusing the Meter is a violation of federal law.
- (g) 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.
- (h) 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.

- (i) 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.
- (j) 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.

R2.5 Rate Updates and Soft-Guard® Program.

- (a) Your Meter or Equipment may require periodic rate information updates that you can obtain under our Soft-Guard program, or you will receive individual rate updates as a separate charge.
- (b) If you have purchased a Soft-Guard Subscription, we will provide up to 6 rate updates during each 12 month period following the date of installation of the Equipment.
- (c) We will provide rate updates only if required due to a postal or carrier change in rate, service, ZIP Code™ or zone change.
- (d) 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.
- (e) If your Soft-Guard Subscription has expired, or if you have received the maximum number of rate updates

**UNITED STATES POSTAL SERVICE ACKNOWLEDGMENT OF DEPOSIT**

UI.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.

UI.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.

UI.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.

UI.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.

under your Soft-Guard Subscription, you will be billed for any additional rate update you request.

- (f) You can also renew the Soft-Guard Subscription by contacting PBI online or by telephone at the address and numbers set forth in the "How to Contact Us" section of the General Terms.

R2.6 Warranty.

- (a) The warranty for the Equipment and services is set forth in the "Warranty" section of the General Terms.

R2.7 Limitation of Liability.

- (a) PBI's limitation of liability is set forth in the "Limitation of Liability" section of the General Terms.

R2.8 Collection of Information.

- (a) You authorize us to access and download information from your Meter. We may disclose this information to the USPS or other authorized governmental entity.
- (b) 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.
- (c) We may elect to share aggregate data about our customers' postage usage with third parties.

R2.9 IntelliLink® Control Center/Meter Care and Risk of Loss.

- (a) You agree to take proper care of the IntelliLink Control Center and/or Meter(s) as stated in this Agreement and any user documentation.
- (b) You assume all risk of loss or damage to the IntelliLink Control Center and/or Meter(s) while you have possession.

**R3. VALUE BASED SERVICES**

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

R3.1 Fees.

- (a) Any fees charged by the USPS for any Value Based Service you purchase are 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.

R3.2 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.

UI.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.

UI.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.

UI.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.

UI.8 You acknowledge that the terms of this Acknowledgement may be changed, modified, or revoked by the USPS, with appropriate notice.

UI.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.

## PURCHASE POWER® TERMS AND CONDITIONS

The following provisions apply when you first enroll in the Purchase Power Program (the "Program"). Additionally, you will receive from us a set of more specific provisions within twenty (20) days of the date of this Agreement that will be more specifically tailored to your Purchase Power Account (the "Account") and will apply to your ongoing participation in the Program.

**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.

## PRESORTXTRA™ PROGRAM TERMS AND CONDITIONS

The following provisions apply when you enroll in the Pitney Bowes PresortXtra Program and apply only to the services provided under the PresortXtra Program.

### X1. PBI'S RESPONSIBILITIES

Depending on the service(s) you have selected on your PresortXtra qualification form, we will pick up your metered First-Class™ letters ("Letters"), First-Class flats ("Flats"), or both ("Program Mail"), provided to us and prepared by you in accordance with additional terms and conditions provided to you when you enroll in the PresortXtra Program ("Additional Terms and Conditions"). We will pick up your Letters and/or Flats at your designated location(s) and in accordance with the schedule we may mutually agree upon from time to time. We will sort this mail at one of our facilities. For Letters only, we will apply a United States Postal Service® ("USPS") "Move Update" process to your mail. We will deliver the mail to the USPS for final delivery. We will perform this service under this Agreement in accordance with accepted mail processing industry standards. EXCEPT AS OTHERWISE PROVIDED HEREIN, WE MAKE NO OTHER WARRANTIES, EXPRESS OR IMPLIED.

### X2. CUSTOMER'S RESPONSIBILITIES

**X2.1 Letters.** As of the date of this Agreement: for Letters, you will meter your Program Mail at the USPS rates set forth in the Additional Terms and Conditions. NO REPRESENTATION IS MADE AS TO THE AMOUNT OF YOUR MAIL THAT WILL QUALIFY FOR PRESORT MAILING RATES, AND YOU WILL BE RESPONSIBLE FOR METERING YOUR PROGRAM MAIL IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT REGARDLESS OF THE AMOUNT OF YOUR PROGRAM MAIL THAT QUALIFIES OR DOES NOT QUALIFY FOR PRESORT RATES. YOU HEREBY ASSIGN ANY AND ALL OF YOUR RIGHTS TO RECEIVE ANY POSTAGE REFUNDS OR REBATES BASED ON THE AMOUNT OF YOUR MAIL THAT QUALIFIES FOR ANY ADDITIONAL PRESORT MAILING RATES TO PBI (OR ITS SUBSIDIARIES) AND ALL SUCH REFUNDS OR REBATES WILL BECOME THE PROPERTY OF AND BE RETAINED BY PBI (OR ITS SUBSIDIARIES).

**X2.2 Flats.** You will prepare and process your Flats as described in the Additional Terms and Conditions. You are responsible for metering all Flats that meet the criteria detailed in the Additional Terms

and Conditions at the current USPS 3 digit First-Class flat rate. You agree that we will invoice you through your Purchase Power Credit Line at the rate set forth in the Additional Terms and Conditions. We will bill you for the difference between the USPS regular flat rate and the 3 digit USPS First-Class flat rate for any Flats that do not comply with the requirements outlined in the Additional Terms and Conditions.

X2.3 General. You will have your Program Mail ready for pickup at your designated locations and in accordance with the schedule we mutually agree upon from time to time. You agree that time is of the essence with respect to each of your obligations for which time is a factor. You will ensure that your Program Mail complies with all applicable laws, rules and regulations, including but not limited to, all USPS regulations, and you will promptly execute any and all documents required by the USPS. You will ensure that your mail comp

lies with the requirements set forth in the Additional Terms and Conditions.

### **X3. GENERAL TERMS**

X3.1 Indemnification. In the event that we are subjected to any loss, expense, damage or liability due to your acts or omissions, including but not limited to any claims by any third parties, or fines or assessments imposed by the USPS or other governmental entities, you will indemnify and hold us harmless from such loss, expense, damage or liability, including our reasonable attorney's fees.

X3.2 Termination. We may discontinue providing the PresortXtra Program service upon one (1) business day's notice in the event you breach any of your obligations hereunder, including, but not limited to, those set forth in the Additional Terms and Conditions, and fail to cure such breach within ten (10) business days of written notice from us advising you of the nature of such breach. Either party may terminate with or without cause upon thirty (30) days' prior written notice, provided that you remain responsible for paying any outstanding invoice(s) after such discontinuation.

X3.3 Modification; Amendment. If the USPS adopts any new postal regulations, procedures, rates or incentives, we may modify or terminate this program upon fifteen (15) days prior written notice to you.

X3.4 Right to Subcontract. We may subcontract certain of our rights and/or responsibilities hereunder to third parties without your prior consent.

## TERM RENTAL TERMS AND CONDITIONS

This is a term rental agreement with Pitney Bowes Global Financial Services LLC (PBGFS), Pitney Bowes' financing company. PBGFS provides financing options to our customers. PBGFS does not warrant, service or otherwise support the equipment. Those services are provided by Pitney Bowes Inc. (PBI) as stated in the Pitney Bowes Terms. Due to federal regulations, only PBI can own an IntelliLink® Control Center or Meter. Therefore, those items are rented to you, rather than leased or sold.

### L1. DEFINITIONS

L1.1 All capitalized terms that are not defined in this document are defined in the "Definitions" section of the Pitney Bowes Terms.

### 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 Our remedies for your failure to pay on time or other defaults are set forth in the "Default and Remedies" section of the Pitney Bowes Terms.
- 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 L10.

### 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 L10, 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 L10, 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 WE (PBGFS) 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 (and we assign to you our rights in) the limited warranty in the Pitney Bowes Terms.
- L7.3 WE ARE NOT LIABLE FOR ANY LOSS, DAMAGE (INCLUDING INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES), OR EXPENSE CAUSED DIRECTLY OR INDIRECTLY BY THE EQUIPMENT.

### 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.

### L9. RISK OF LOSS

- L9.1 You bear the entire risk of loss to the Equipment from the date of shipment 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

L10.1 You warrant that you have funds available to pay all payments until the end of your current fiscal period, and shall use your best efforts to obtain funds to pay all payments in each subsequent fiscal period through the end of the Term. If your appropriation request to your legislative body, or funding authority ("Governing Body") for funds to pay the payments is denied, you may terminate this Agreement on the last day of the fiscal period for which funds have been appropriated, upon (i) submission of documentation reasonably satisfactory to us evidencing the Governing Body's denial of an appropriation sufficient to continue this Agreement for the next succeeding fiscal period, and (ii) satisfaction of all charges and obligations under this Agreement incurred through the end of the fiscal period for which funds have been appropriated, including the return of the Equipment at your expense.

### 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.

GENERAL TERMS

The following provisions apply to any transaction you enter into with Pitney Bowes. Other provisions in the Pitney Bowes Terms may also apply, depending on your transaction. Please read these provisions carefully as they constitute part of your agreement with Pitney Bowes.

**G1. HOW TO CONTACT US**

- G1.1 To obtain Maintenance Service, please either:
- (a) place a request for service on PBI's website at www.pb.com, under Customer Support; or
  - (b) call PBI's toll-free response center (the "Customer Care Center") at 1-800-522-0020 (Monday - Friday, 8am - 8pm ET, excluding PBI-observed holidays).
- G1.2 In the event you wish to cancel your Meter rental or you do not wish to renew your Maintenance Service after the Initial Term, please send written notice by mail to: Pitney Bowes Inc., 2225 American Drive, Neenah, WI 54956. (See Section S4.3 for details).
- G1.3 To cancel your Soft-Guard® Subscription, please contact us at 1-800-228-1071 (Monday - Friday, 8:30am - 5:30pm CT, excluding PBI-observed holidays).

**G2. DEFINITIONS**

The following terms mean:

**"Agreement"** - the Order, any applicable terms and conditions referred to in the Order 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 leased, 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 Service Term"** - the twelve (12) months immediately following the start of the Lease, or longer as provided 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 the Lease terms and conditions attached to the Order.

**"Lease Term"** - shall have the meaning stated in the Lease.

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

**"Normal Working Hours"** - 8 a.m. - 5 p.m., Monday - Friday, excluding PBI-observed holidays, in the time zone where the Equipment or other items are located.

**"Order"** - the executed agreement between the applicable Pitney Bowes company and you for the equipment covered by the Order.

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

**"PBI"** - Pitney Bowes Inc.

**"PBI Equipment"** - PBI-branded equipment.

**"Pitney Bowes"** - PBI, PBGFS and their respective subsidiaries.

**"Shipment Date"** - the date the Equipment leaves our facility or our agent's facility for delivery to you.

**"SLA"** - the Service Level Agreement.

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

**"Third Party Equipment"** - equipment manufactured by a party other than us.

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

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

**G3. WARRANTY**

- G3.1
- (a) PBI warrants that the PBI Equipment will be free from defects in material and workmanship and will perform according to the equipment user guide for a period of ninety (90) days from the Install Date (the "Warranty Period").
  - (b) PBI warrants that the Maintenance Service provided will be performed in a professional and workmanlike manner.
  - (c) **As your sole remedy in the event of a warranty claim, we will either repair or replace the Equipment or, in the case of defective Maintenance Service, reperform the Maintenance Service.**
  - (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.

**G3.2 EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, WE (ON BEHALF OF OURSELF AND OUR SUPPLIERS) MAKE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE EQUIPMENT OR SERVICES PROVIDED.**

**G3.3 THIRD PARTY EQUIPMENT.** PBI MAKES NO REPRESENTATION OR WARRANTY AS TO ANY THIRD PARTY EQUIPMENT. PBI AGREES TO PASS THROUGH TO YOU ALL THIRD PARTY EQUIPMENT WARRANTIES TO THE EXTENT SUCH WARRANTIES ARE TRANSFERABLE.

**G4. LIMITATION OF LIABILITY**

- G4.1 PBI'S TOTAL LIABILITY (INCLUDING ANY LIABILITY OF ITS SUPPLIERS) IS LIMITED TO THE FEES PAID BY YOU TO PBI FOR THE APPLICABLE EQUIPMENT OR SERVICES IN THE 12 MONTHS BEFORE THE EVENT THAT GIVES RISE TO THE CLAIM, EXCEPT FOR THE LIQUIDATED DAMAGES THAT MAY BE APPLICABLE TO SLA TIER 3 (SEE SECTION S2.3 OF THE SLA).
- G4.2 NEITHER PBI NOR ITS SUPPLIERS IS LIABLE FOR ANY DAMAGE YOU MAY INCUR BY REASON OF YOUR MISUSE OR NEGLIGENT USE OF THE EQUIPMENT, OR YOUR NEGLIGENT ACTS OR OMISSIONS.
- G4.3 NEITHER PBI NOR ITS SUPPLIERS IS LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES OF ANY NATURE WHATSOEVER, INCLUDING COMMERCIAL LOSS, OR LOST PROFITS, DATA, OR GOODWILL, FOR ANY MATTER RELATING TO THIS AGREEMENT.

**G5. DEFAULT AND REMEDIES**

- G5.1 **Default.** You are in immediate default if you do not make any payment when due, you breach any other obligation under

- such fee and charge shall in no event exceed in the aggregate \$35 for each year for each Lease schedule.
- G5.2 **Remedies.** Upon your default, we may:
- (a) cancel this Agreement and any other agreements PBGFS or PBI has with you;
  - (b) require immediate payment of all payments due under a Lease(s) or other agreements, whether accrued or due in the future;
  - (c) disable the IntelliLink Control Center or Meter;
  - (d) require you to return the Equipment and IntelliLink Control Center or Meter;
  - (e) if you do not return the Equipment and IntelliLink Control Center or Meter, require you to make immediate payment of an amount equal to the remaining value of the Equipment, IntelliLink Control Center or Meter at the end of the Lease Term, as determined by us;
  - (f) charge you a late charge for each month that your payment is late;
  - (g) charge you interest on any late payment from its due date until paid in full at the lesser of 18% per year or the maximum rate allowed by law;
  - (h) charge you a check return fee for payments made by you with insufficient funds;
  - (i) reasonably attempt to mitigate our damages and costs in the event of your default, although you acknowledge that we are not obligated to do so; and
  - (j) pursue any other remedy, including repossessing the Equipment without notice to you. By repossessing the Equipment, IntelliLink Control Center or Meter, we are not waiving our right to collect the balance due.

G5.3 **Enforcing Our Rights.** You agree to pay all our costs, including attorneys' fees, in enforcing our rights under the Agreement with you.

G5.4 **Suspension of Services.** PBI reserves the right to suspend any services during any period in which your account is more than thirty (30) days past due.

## G6. TAXES

G6.1 You agree to pay Pitney Bowes for all charges and taxes (other than taxes on or measured by net income), calculated as set forth below, related to the Lease or based on or measured by the lease transaction, payments under the Lease, the Equipment or Equipment location, the Meter or Meter location or services provided in connection with the lease transaction, including but not limited to sales/use and property type taxes. Pitney Bowes will determine the value of the Equipment, the value of the Meter and the amount of such taxes to be charged to you. Such determinations will reflect a reasonable value of the Equipment or of the Meter or the actual taxes and depreciation thereon. The taxes and depreciation to be charged on the Equipment and the Meter may reflect certain average tax rates, different depreciation schedules or some other calculation. You agree to pay a processing, billing and tracking fee and administrative charge to be determined by Pitney Bowes which may not bear a relationship to the tax charged or services performed, but

## G7. EMBEDDED SOFTWARE

G7.1 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.

## G8. INTERNET ACCESS POINT

G8.1 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.

## G.9. MISCELLANEOUS

G9.1 **Force Majeure.** We are not responsible for any delay or failure to perform resulting from causes beyond our control.

G9.2 **Assignment.** You may not assign this Agreement without our prior written consent, which consent shall not be unreasonably withheld. Any purported assignment is void.

G9.3 **No Right to Setoff.** Payments are not subject to setoff or reduction.

G9.4 **Legal Action.** ANY LEGAL ACTION YOU FILE AGAINST US MUST BE STARTED WITHIN ONE (1) YEAR AFTER THE EVENT GIVING RISE TO YOUR CLAIM. YOU WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION ARISING OUT OF THIS AGREEMENT.

G9.5 **Merger; Amendment; Severability.** The Agreement incorporates all of the terms agreed by both parties and can only be changed by written agreement. You may use a purchase order to offer to obtain Equipment or services but you agree that none of the provisions of your purchase order will add to, modify or supersede these provisions unless we expressly agree in writing. If one or more provisions of this Agreement are deemed to be invalid or unenforceable, the remaining provisions will not be affected.

G9.6 **Survival.** Our respective rights and obligations under Section G4 (Limitation of Liability), G5 (Default and Remedies) and G6 (Taxes) survive termination of the Agreement.

G9.7 **Choice of Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Delaware without regard to its conflicts of laws principles.

## SERVICE LEVEL AGREEMENT (SLA)

The following provisions describe the Service Level Agreement ("SLA") tiers that PBI offers on Covered Equipment (excluding software). The SLA tier you select will be listed on the Order. A separate Software License and Maintenance Agreement ("SMA") covers software maintenance and will be attached to the Order if you are acquiring software.

### S1. DEFINITIONS

All capitalized terms that are not defined in these provisions are defined in the "Definitions" section of the General Terms.

### S2. SERVICE LEVEL TIERS

The following describes the three SLA tiers offered by PBI for the Covered Equipment.

#### S2.1 Tier 1

- (a) **General.** Under Tier 1, PBI will provide at its option either repair or replacement services for the Covered Equipment during the Initial Service Term or any Renewal Service Term (as defined in Section S4.2) (the

"Maintenance Service Term"). You are also entitled to two preventative maintenance service calls per calendar year. PB will notify you when preventative maintenance is due or preventative maintenance service calls may be made at your initiation.

- (b) **Obtaining Service.** You can obtain service online or by telephone as set forth in the "How to Contact Us" section of the General Terms.

- (c) **Replacement Service.**

- (i) If PBI determines that replacement is necessary, PBI will, at no additional cost, promptly ship new, reconditioned, or remanufactured equipment of the

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same or a functionally equivalent model to replace the affected Covered Equipment.

- (ii) Within five (5) days of receiving the replacement equipment, you must pack the Covered Equipment to be replaced in the shipping carton that contained the replacement equipment, place the pre-paid return address label on the carton, and return it to PBI.
  - (iii) You are responsible for the return of Covered Equipment until PBI receives it.
- (d) Repair Service.
- (i) If PBI determines that repair service is necessary, PBI may provide repair by remote access, diagnostics and coordinated remote service, or by on-site repair service.
  - (ii) Repair service is provided only for damage resulting from normal wear and tear. Repair service may include the use of new, reconditioned, or remanufactured parts and assemblies.
  - (iii) PBI will provide parts or assemblies for discontinued equipment (or equipment not marketed as new) only if available.
  - (iv) If PBI deems it necessary, PBI will dispatch a service technician to arrive at your location for on-site service. You will not incur hourly charges unless service is performed outside Normal Working Hours, which will be done only with your consent.

- S2.2 Tier 2
- (a) If you select Tier 2, we will provide the following support:
- (i) All coverage provided under Tier 1, PLUS:
  - (ii) Ongoing Equipment Training Services. PBI will provide the following training. PBI will schedule the training at a time convenient for you and PBI. Training will include an overview for the operator(s) on how to use the Covered Equipment. The number of training sessions that are included during each twelve (12) month period during the Maintenance Service Term are as follows:
    - (1) Mail finishing products (which includes Meters and scales) - up to six (6) training sessions;
    - (2) Mail finishing accounting software solutions - up to four (4) training sessions;
    - (3) Mail creation hardware products (which includes tabletop folders, tabletop inserters, and address printers) - up to four (4) training sessions; and
    - (4) Distribution solutions hardware products - up to four (4) training sessions.
  - (iii) Additional Covered Items. PBI will provide printheads for Meters or Covered Equipment without additional charge.

- S2.3 Tier 3
- (a) If you select Tier 3, PBI will provide the following support:
- (i) All coverage provided under Tier 1 and Tier 2, PLUS:
  - (ii) Preventive Maintenance Services.
    - (1) PBI will perform maintenance on the Covered Equipment at regular intervals.
  - (iii) Response Time Commitment.
    - (1) If PBI determines that on-site service is necessary, PBI will use commercially reasonable efforts to have a service technician on-site within four (4) hours (during Normal Working Hours only) of PBI's receipt of the call at the Customer Care Center (the "Response Time Commitment").
    - (2) The Response Time Commitment relates solely to the arrival of a technician at your location; it is not a guaranteed resolution of the problem within the four (4) hour time period, nor does it guarantee that all parts necessary to make a repair will be on-site within this time frame.

- (3) The Response Time Commitment does not apply to Service designated as service by replacement, software maintenance, preventive maintenance, operator training, or other services not essential to repair the Covered Equipment. These services will be scheduled in advance.
- (4) If the Covered Equipment is moved from its original location, PBI may remove the Response Time Commitment. If this happens, you will receive a refund equal to the difference between the cost of the Response Time Commitment and the cost of maintenance coverage without this obligation.

- (iv) Liquidated Damages for Failure to Meet Response Time.
- (1) PBI agrees that if it does not meet the Response Time Commitment, PBI will provide you with a credit equal to six (6) months of the cost of the premium of the Response Time Commitment.
  - (2) You must use a credit request form in order to request a credit. You may obtain a credit form from your service technician or by calling the Customer Care Center. The credits are limited to credits for two (2) failures to meet the Response Time Commitment in any twelve (12) month period during the Maintenance Service Term. **The remedies described in this Section are your sole remedy for PBI's failure to meet the Response Time Commitment.**

- S2.4 Connect+ Advantage
- (a) If you select Connect+ Advantage, PBI will provide the following support:
- (i) All coverage provided under Tier 2 PLUS:
  - (ii) If you select Tier 3 in addition to Connect+ Advantage, coverage provided under Tier 3.
- (b) Connect+ Advantage is only available for items listed with a # next to the description.

### S3. FEES

- S3.1 You will pay the fees for the Initial Service Term, and any Renewal Service Term(s). These fees are incorporated into your payment cycle (e.g., Quarterly Payment for leased equipment).
- S3.2 Late Fees. Our remedies for your failure to pay on time are set forth in the "Default; Remedies" section of the General Terms.
- S3.3 Fees for Services Not Covered by this SLA. If the service technician provides service for repairs caused by one of the conditions listed in Section S6.1(a)(ii), PBI will charge you for the service at PBI's current hourly rates and for any required parts.

### S4. MAINTENANCE SERVICE

- S4.1 Term. PBI will provide you with Maintenance Service for the Initial Service Term and any Renewal Service Terms.
- S4.2 RENEWAL SERVICE TERM(S). MAINTENANCE SERVICE AUTOMATICALLY RENEWS FOR CONSECUTIVE ONE (1) YEAR TERMS (EACH, A "RENEWAL SERVICE TERM"), UNLESS:
- (a) YOU TERMINATE MAINTENANCE SERVICE AS SPECIFIED IN SECTION S4.3 AT LEAST SIXTY (60) DAYS PRIOR TO THE RENEWAL OF THE TERM; OR
  - (b) YOUR LEASE EXPIRES OR IS TERMINATED (IN WHICH CASE, THE MAINTENANCE SERVICE TERM WILL TERMINATE ON THE SAME DAY AS THE LEASE); OR
  - (c) THE RENEWAL IS PROHIBITED BY APPLICABLE LAW.
- S4.3 Ending Your Maintenance Service.
- (a) If you do not wish to renew Maintenance Service, you must deliver a written notice (including your account number) (the "Termination Notice") by Certified Mail™ to the address listed in the "How to Contact Us" section of the General Terms. Your Termination Notice must include your customer account number and lease number (if applicable), and is effective ten (10) business days after PBI receives it.

- (b) PBI reserves the right not to renew your SLA at any time and for any reason.
- S4.4 Maintenance Service Changes.
- (a) PBI may modify its Maintenance Service by giving written notice to you (a "Maintenance Change Notice"), which will state whether the change is material.
- (b) After receiving a Maintenance Change Notice, if the change is material, you may terminate Maintenance Service as described in Section S4.3 above.

**S5. WARRANTIES; LIMITATION OF LIABILITY**

S5.1 The warranty for the Equipment and services as well as PBI's Limitation of Liability are set forth in the applicable section of the General Terms.

**S6. ADDITIONAL MAINTENANCE TERMS**

- S6.1 These terms apply to all Maintenance Service tiers:
- (a) Limitations. Maintenance Service does not include:
- (i) software maintenance and/or updates; and
  - (ii) services and repairs that are made necessary due to:
    - (A) negligence or accident, damage in transit, virus contamination and loss of data;
    - (B) use of Covered Equipment in a manner not authorized by this SLA or the Equipment user guide;
    - (C) natural causes such as fire or flood as well as other causes outside of PBI's control;
    - (D) use of Covered Equipment in an environment with unsuitable humidity and/or line voltage;
    - (E) loss of electrical power, power fluctuation, operator error;
    - (F) sabotage, repair or attempted repair by anyone other than PBI;

- (G) the use of third party supplies (such as ink), hardware, or software resulting in: (i) damage to the Equipment; (ii) poor indicia, text, or image print quality; (iii) indicia readability failures; or (iv) a failure to print indicia, text, or images;
- (H) failure to use applicable software updates; or
- (I) use of Covered Equipment with any system for which PBI has advised it will no longer provide support or has advised is no longer compatible.

- (b) Additional Exclusions. Unless covered under one of the above maintenance tiers, Maintenance Service excludes the supply of rate program software for electronic scales and weighing systems, software maintenance and/or updates and consumable supplies for all levels of service, including printheads for Meters and IntelliLink Control Centers.

- (c) Replacement Equipment.
- (i) If you replace any of your Covered Equipment during the Maintenance Service Term, and the replacement Equipment qualifies for maintenance services, PBI will automatically enroll you for maintenance coverage on the new Equipment at PBI's then current annual rates.
  - (ii) If you acquire an attachment, or add a unit, to your Covered Equipment, PBI will provide coverage for any qualifying attachment or unit and adjust your rate accordingly.
  - (iii) If you choose not to continue coverage on the replacement Equipment, attachment or unit, you may cancel Maintenance Service with respect to the item within thirty (30) days of the date of your initial invoice for the item from PBI. If you cancel, any further maintenance or repair services on the Equipment, attachment or unit will be subject to PBI's current rates.

**EQUIPMENT AND POSTAGE METER RENTAL TERMS AND CONDITIONS**

The following provisions apply whenever you acquire an IntelliLink® Control Center or Meter from Pitney Bowes. Other terms may also apply, depending on the transaction.

**R1. DEFINITIONS**

All capitalized terms that are not defined in these provisions are defined in the "Definitions" section of the General Terms.

**R2. EQUIPMENT RENTAL AND INTELLILINK® SUBSCRIPTION (METER RENTAL)**

- R2.1 Fees.
- (a) If you are not leasing the Equipment and paying for it in your lease payment to PBGFS, we will invoice you the Equipment rental ("rental") and IntelliLink Subscription fees listed on the Order.
  - (b) After the Initial Term, we may increase the rental and IntelliLink Subscription fees upon 30 days' prior written notice.
  - (c) When you receive notice of an increase, you may terminate your rental only as of the date the increase becomes effective.
- R2.2 Postage.
- (a) To obtain postage for your Meter, you must contact our Postage By Phone® data center.
  - (b) You may transfer funds to the Bank for deposit into a Postage By Phone® Reserve Account that 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 the "USPS Acknowledgment of Deposit" section of the General Terms for more information.
  - (c) After the Initial Term, we may increase postage refill fees upon 30 days prior written notice.
  - (d) If you participate in any PBI, PBGFS, or Bank postage advance programs (such as Purchase Power®), we will advance payment on your behalf to the USPS, subject to repayment by you under the terms of the postage advance program and billed separately from your IntelliLink Subscription fees.

R2.3 Meter Repair or Replacement.  
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- (a) If the Meter malfunctions or fails due to reasons other than your negligence or accident, usage which exceeds our recommendations, damage in transit, 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 the Meter, we will repair or replace the Meter.

- R2.4 Terms of Use; Federal Regulations.
- (a) 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.
  - (b) You agree to use the Equipment and Meter only for business or commercial purposes, and not for personal, family, or household purposes.
  - (c) You agree to use only attachments or printing devices authorized by us.
  - (d) You must receive our written consent before moving the Equipment or Meter to a different location.
  - (e) Federal regulations require that we own the Meter.
  - (f) Tampering with or misusing the Meter is a violation of federal law.
  - (g) 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.
  - (h) 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.

- (i) 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.
- (j) 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.

#### R2.5 Rate Updates and Soft-Guard<sup>®</sup> Program.

- (a) Your Meter or Equipment may require periodic rate information updates that you can obtain under our Soft-Guard program, or you will receive individual rate updates as a separate charge.
- (b) If you have purchased a Soft-Guard Subscription, we will provide up to 6 rate updates during each 12 month period following the date of installation of the Equipment.
- (c) We will provide rate updates only if required due to a postal or carrier change in rate, service, ZIP Code™ or zone change.
- (d) 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.
- (e) If your Soft-Guard Subscription has expired, or if you have received the maximum number of rate updates under your Soft-Guard Subscription, you will be billed for any additional rate update you request.
- (f) You can also renew the Soft-Guard Subscription by contacting PBI online or by telephone at the address

and numbers set forth in the "How to Contact Us" section of the General Terms.

R2.6

#### Warranty.

- (a) The warranty for the Equipment and services is set forth in the "Warranty" section of the General Terms.

R2.7

#### Limitation of Liability.

- (a) PBI's limitation of liability is set forth in the "Limitation of Liability" section of the General Terms.

R2.8

#### Collection of Information.

- (a) You authorize us to access and download information from your Meter. We may disclose this information to the USPS or other authorized governmental entity.
- (b) 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.
- (c) We may elect to share aggregate data about our customers' postage usage with third parties.

R2.9

#### IntelliLink<sup>®</sup> Control Center/Meter Care and Risk of Loss.

- (a) You agree to take proper care of the IntelliLink Control Center and/or Meter(s) as stated in this Agreement and any user documentation.
- (b) You assume all risk of loss or damage to the IntelliLink Control Center and/or Meter(s) while you have possession.

### **R3. VALUE BASED SERVICES**

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

R3.1

#### Fees.

- (a) Any fees charged by the USPS for any Value Based Service you purchase are 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.

R3.2

#### 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.

### **UNITED STATES POSTAL SERVICE ACKNOWLEDGMENT OF DEPOSIT**

UI.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<sup>®</sup> Reserve Account ("your Reserve Account") which you maintain at the Bank.

UI.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.

UI.3 Any deposit made by you in your Reserve Account is subject to the Postage By Phone<sup>®</sup> Reserve Account – Agreement and Disclosure Statement governing your Reserve Account.

UI.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.

UI.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.

UI.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.

UI.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.

UI.8 You acknowledge that the terms of this Acknowledgement may be changed, modified, or revoked by the USPS, with appropriate notice.

UI.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.

## PURCHASE POWER® TERMS AND CONDITIONS

The following provisions apply when you first enroll in the Purchase Power Program (the "Program"). Additionally, you will receive from us a set of more specific provisions within twenty (20) days of the date of this Agreement that will be more specifically tailored to your Purchase Power Account (the "Account") and will apply to your ongoing participation in the Program.

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.

## PRESORTXTRA™ PROGRAM TERMS AND CONDITIONS

The following provisions apply when you enroll in the Pitney Bowes PresortXtra Program and apply only to the services provided under the PresortXtra Program.

### X1. RESPONSIBILITIES

#### PBI'S

Depending on the service(s) you have selected on your PresortXtra qualification form, we will pick up your metered First-Class™ letters ("Letters"), First-Class flats ("Flats"), or both ("Program Mail"), provided to us and prepared by you in accordance with additional terms and conditions provided to you when you enroll in the PresortXtra Program ("Additional Terms and Conditions"). We will pick up your Letters and/or Flats at your designated location(s) and in accordance with the schedule we may mutually agree upon from time to time. We will sort this mail at one of our facilities. For Letters only, we will apply a United States Postal Service® ("USPS") "Move Update" process to your mail. We will deliver the mail to the USPS for final delivery. We will perform this service under this Agreement in accordance with accepted mail processing industry standards. EXCEPT AS OTHERWISE PROVIDED HEREIN, WE MAKE NO OTHER WARRANTIES, EXPRESS OR IMPLIED.

### X2. CUSTOMER'S RESPONSIBILITIES

X2.1 Letters. As of the date of this Agreement: for Letters, you will meter your Program Mail at the USPS rates set forth in the Additional Terms and

Conditions. NO REPRESENTATION IS MADE AS TO THE AMOUNT OF YOUR MAIL THAT WILL QUALIFY FOR PRESORT MAILING RATES, AND YOU WILL BE RESPONSIBLE FOR METERING YOUR PROGRAM MAIL IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT REGARDLESS OF THE AMOUNT OF YOUR PROGRAM MAIL THAT QUALIFIES OR DOES NOT QUALIFY FOR PRESORT RATES. YOU HEREBY ASSIGN ANY AND ALL OF YOUR RIGHTS TO RECEIVE ANY POSTAGE REFUNDS OR REBATES BASED ON THE AMOUNT OF YOUR MAIL THAT QUALIFIES FOR ANY ADDITIONAL PRESORT MAILING RATES TO PBI (OR ITS SUBSIDIARIES) AND ALL SUCH REFUNDS OR REBATES WILL BECOME THE PROPERTY OF AND BE RETAINED BY PBI (OR ITS SUBSIDIARIES).

X2.2 Flats. You will prepare and process your Flats as described in the Additional Terms and Conditions. You are responsible for metering all Flats that meet the criteria detailed in the Additional Terms and Conditions at the current USPS 3 digit First-Class flat rate. You agree that we will invoice you through your Purchase Power Credit Line at the rate set forth in the Additional Terms and Conditions. We will bill you for the difference

between the USPS regular flat rate and the 3 digit USPS First-Class flat rate for any Flats that do not comply with the requirements outlined in the Additional Terms and Conditions.

X2.3 General. You will have your Program Mail ready for pickup at your designated locations and in accordance with the schedule we mutually agree upon from time to time. You agree that time is of the essence with respect to each of your obligations for which time is a factor. You will ensure that your Program Mail complies with all applicable laws, rules and regulations, including but not limited to, all USPS regulations, and you will promptly execute any and all documents required by the USPS. You will ensure that your mail complies with the requirements set forth in the Additional Terms and Conditions.

### **X3. GENERAL TERMS**

X3.1 Indemnification. In the event that we are subjected to any loss, expense, damage or liability due to your acts or omissions, including but not limited to any claims by any third parties, or fines or assessments imposed by the USPS or other governmental entities, you will indemnify and hold us harmless from such loss, expense, damage or liability, including our reasonable attorney's fees.

X3.2 Termination. We may discontinue providing the PresortXtra Program service upon one (1) business day's notice in the event you breach any of your obligations hereunder, including, but not limited to, those set forth in the Additional Terms and Conditions, and fail to cure such breach within ten (10) business days of written notice from us advising you of the nature of such breach. Either party may terminate with or without cause upon thirty (30) days' prior written notice, provided that you remain responsible for paying any outstanding invoice(s) after such discontinuation.

X3.3 Modification; Amendment. If the USPS adopts any new postal regulations, procedures, rates or incentives, we may modify or terminate this program upon fifteen (15) days prior written notice to you.

X3.4 Right to Subcontract. We may subcontract certain of our rights and/or responsibilities hereunder to third parties without your prior consent.

# National Joint Powers Alliance® (herein NJPA) REQUEST FOR PROPOSAL (herein RFP)

for the procurement of

## **POSTAGE METERS AND RELATED MAILING EQUIPMENT, SOFTWARE, ACCESSORIES AND SUPPLIES**

### **RFP Opening**

May 1, 2012  
8:00 AM Central TIME  
At the offices of the  
National Joint Powers Alliance®  
202 12<sup>th</sup> Street Northeast, Staples, MN 56479

### **RFP #043012**

The National Joint Powers Alliance® (NJPA), on behalf of NJPA and its current and potential Member agencies from Government; K-12 Education and Higher Education agencies located nationally and potentially internationally, issues this request for proposal (RFP) to provide a national solution for POSTAGE METERS AND RELATED MAILING EQUIPMENT, SOFTWARE, ACCESSORIES AND SUPPLIES. Details of this RFP are available beginning March 21, 2012 and continuing until April 11, 2012. Details may be obtained by letter of request to Gregg Meierhofer, NJPA, 202 12th Street Northeast P.O. Box 219, Staples, MN 56479, or by e-mail at [RFP@njpacoop.org](mailto:RFP@njpacoop.org). Proposals will be received until April 30, 2012 at 4:30 p.m. Central Time at the above address and opened May 1, 2012 at 8:00AM Central Time.

**The text above is the Public Notice to Proposers to be used by NJPA.**

### **RFP Timeline**

<i>March 21, and March 28, 2012</i>	<i>Publication of RFP in the print and online Minneapolis Star Tribune, the NJPA website, and on the website of <a href="http://noticetobidders.com">noticetobidders.com</a></i>
<i>April 11, 2012</i>	<i>Deadline for RFP requests</i>
<i>April 13, 2012 10:00A.M. Central</i>	<i>Pre-Proposal Conference (webcast – conference call - Connection info sent to all inquirers two business days prior to the event)</i>
<i>April 30, 2012 4:30 P.M. Central</i>	<i>Deadline for Submission of Proposals</i>
<i>May 1, 2012 8:00A.M. Central</i>	<i>Public Opening of Proposals</i>

*Direct questions regarding this RFP to:*

*Gregg Meierhofer at [gregg.meierhofer@njpacoop.org](mailto:gregg.meierhofer@njpacoop.org) or (218)894-1930*

**RFP Procedures, offers the methods for submitting questions.**

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# RFP 043012

## 1. INTRODUCTION

### A. ABOUT NJPA

**1.1** The National Joint Powers Alliance®- (NJPA) is a public agency serving as a national municipal contracting agency established under the Service Cooperative statute by Minnesota Legislative Statute §123A.21 with the authority to develop and offer, among other services, cooperative procurement services to its membership. Eligible membership and participation includes states, cities, counties, all government agencies, both public and non-public educational agencies, colleges, universities and non-profit organizations

**1.2** Under the authority of Minnesota state laws and enabling legislation, NJPA facilitates competitive bidding and contracting process on behalf of the needs of itself and the needs of current and potential member agencies nationally. This process results in national procurement contracts with various Vendors of products/equipment and services which NJPA Member agencies desire to procure. These procurement contracts are created in compliance with applicable Minnesota Municipal Contracting Laws. A complete listing of NJPA cooperative procurement contracts can be found at [www.njpacoop.org](http://www.njpacoop.org). Click on contracts.

**1.3** NJPA is a public agency governed by publicly elected officials that serve as the NJPA Board of Directors. NJPA's Board of Directors call for all proposals, awards all Contracts, and hosts those resulting Contracts for the benefit of its own use and its Membership.

**1.3.1 Subject to Approval of the NJPA Board:** NJPA contracts are awarded by the action of NJPA Board of Directors. This action is based on the open and competitive bidding process facilitated by NJPA. The evaluation and resulting recommendation is presented to the Board of Directors by the NJPA Proposal and Evaluation Committee.

**1.4** NJPA currently serves over 40,000 member agencies. Both membership and utilization of NJPA Contracts continues to expand due in part to the acceptance of Cooperative Purchasing throughout the government and education community nationally. The value of NJPA Contracts for our Members is reflected in our membership growth and use of our contracts.

### B. JOINT EXERCISE OF POWERS LAWS

**1.5** NJPA cooperatively shares those contracts with its Members nationwide through various "Joint Exercise of Powers Laws" established in Minnesota and most other States. The Minnesota "Joint Exercise of Powers Law" is Minnesota Statute §471.59 which states "Two or more governmental units...may jointly or cooperatively exercise any power common to the contracting parties..." Similar Joint Exercise of Powers Laws exists within the laws of each State of the United States. This Minnesota Statute allows NJPA to serve Member agencies located in all other states. Municipal agencies nationally have the ability to participate in cooperative purchasing activities as a result of specific laws of their own state. These laws can be found on our website at <http://www.njpacoop.org/contract-purchasing-solutions/legal-authority/state-procurement-resources> and clicking on that state at the bottom of the web-page.

### C. WHY RESPOND TO A NATIONAL COOPERATIVE PROCUREMENT CONTRACT

**1.6** National Cooperative Procurement Contracts create value for both Municipal buyers and Vendors of products/equipment and services in a variety of ways:

**1.6.1** National cooperative contracts potentially **save the time and effort** of municipal buyers charged with soliciting individual procurement proposals to meet the procure needs of the agency. Considerable time and effort is saved by the Vendors in responding individually to those invitations. A single invitation for a cooperatively held contract can replace potentially thousands of invitations for the same items solicited from individual NJPA Member agencies.

**1.6.2** NJPA contracts offer our Members nationally leveraged and **volume purchasing discounts**. Our contract terms and conditions offer the opportunity for Vendors to recognize individual member committed volume through additional contract discounts. A single NJPA awarded contract is exposed to thousands of potential Municipal purchasing agencies nationwide creating efficiency and savings not only to the agency but also to the business community as they call on and present NJPA contracts to sell their products/equipment and services to government and education agencies.

**1.7** State laws that permit or encourage cooperative purchasing contracts do so with the belief that cooperative efficiencies will result in lower prices, better overall value and considerable time savings.

**1.8** The collective purchasing power of thousands of NJPA Members nationwide offers the opportunity for volume pricing discounts. Although no sales or sales volume is guaranteed by a NJPA Contract resulting from this RFP, substantial volume is anticipated and volume pricing is requested and justified.

**1.9** NJPA and its Members desire the best value for their procurement dollar as well as a competitive price. Pre-competed procurement contracts offer NJPA and its Member agency the ability to directly compare non-price factors in their procurement analysis. Vendors have the opportunity to display and highlight value added attributes of their company, equipment/products and services without constraints of a typical individual proposal process.

#### **D. THE INTENT OF THIS RFP**

**1.10. Award a national contract by NJPA Board of Directors:** The intent of this RFP is to Award a national Contract by the action of the NJPA Board of Directors based on the recommendation of the NJPA Proposal Review Committee and based on the competitive proposal and evaluation process and reflecting the best interests of NJPA and its Member agencies. NJPA is seeking the most responsive Vendor relationship(s) to meet this need. The goal and intent of this RFP is to follow through with a proposal award and contract to be marketed nationally through a cooperative effort between the awarded vendor(s) and NJPA to its participating member agencies.

**1.11** NJPA's primary intent is to establish and provide a national cooperative procurement contract offering opportunities for NJPA and our Member agencies to procure through a contract for quality equipment/products, goods and services as desired and needed. Contracts are expected to offer price levels reflective of NJPA and the potential and collective volume of the NJPA member agencies nationally.

**1.11.1** Beyond our primary intent, NJPA further desires to:

- Award a four year term contract with a fifth year contract option resulting from this RFP;
- Offer and apply any applicable technology advances throughout the term of a contract resulting from this RFP;
- Deliver "Value Added" aspects of the company, equipment/products and services as defined in the "Proposer's response";
- Deliver wide spectrums of solutions to meet the needs and requirement of NJPA and NJPA Member agencies.
- Award an exclusive contract to the most responsive vendor when it is deemed to be in the best interest of NJPA and the NJPA Member agencies.
- Reserves the right to award multiple responsive vendors if such action is deemed to be in the best interest of NJPA and NJPA Member agencies.

**1.12 Non-Manufacturer Awards:** NJPA reserves the right to make an award related to this invitation to a non-manufacturer or dealer/distributor if such action is in the best interests of NJPA and its Members.

**1.13 Exclusive or Multiple Awards:** Although it is NJPA’s intent and desire to award a contract to a single exclusive Vendor, NJPA reserves the right to award a Contract to multiple Proposers where the responding Proposers are deemed to be in the best interests of NJPA and its Member agencies.

**E. SCOPE OF THIS RFP**

**1.14** The scope and goal of this RFP is to award a contract to a qualifying manufacturer (s)provider or dealer/distributor (s) established as a Proposer deemed responsive through our open and competitive bidding process. Vendors will be awarded based on demonstrated a valued solutions which meet and/or exceed the need and requirements of NJPA and its Member agencies within the scope of **POSTAGE METERS AND RELATED MAILING EQUIPMENT, SOFTWARE, ACCESSORIES AND SUPPLIES**. Qualifying Proposers must be able to anticipate the needs and requirements NJPA member agencies and demonstrate the knowledge of any and all applicable industry standards, laws and regulations; and the ability to both market to and service NJPA Members in all 50 states. NJPA request companies submit their entire product line as it applies and relates to the scope of this RFP. All proposals received will be evaluated based on (among several other factors) their ability to provide the greatest overall utility to NJPA and NJPA Member agencies and across the widest selection and spectrum of products and services.

**1.15 Best and Most Responsive – Responsible Proposer:** It is the intent of NJPA to award a Contract to the best and most responsible and responsive Proposer(s) offering the best overall quality and selection of equipment/products and services meeting the commonly requested specifications of the NJPA and NJPA Members, provided the Proposer’s Response has been submitted in accordance with the requirements of this RFP.

**1.16 Sealed Proposals:** NJPA will receive sealed proposal responses to this RFP in accordance with accepted standards set forth in the Minnesota Procurement Code and Uniform Municipal Contracting Law. Awards may be made to responsible and responsive Proposers whose proposals are determined in writing to be the most advantageous to NJPA and its current or qualifying future NJPA Member agencies.

**1.17 Use of Contract:** Any Contract resulting from this solicitation shall be awarded with the understanding that it is for the sole convenience of NJPA and its Members. NJPA and/or its members reserve the right to obtain like goods and services solely from this Contract or from another contract source of their choice or from a contract resulting from their own procurement process.

**1.18 NJPA’s interest in a contract resulting from this RFP:** Notwithstanding its own use, to the extent NJPA issues this RFP and any resulting contract for the use of its Members, NJPA’s interests and liability for said use shall be limited to the competitive proposal process performed and terms and conditions relating to said contract and shall not extend to the products, services, or warranties of the Awarded Vendor or the intended or unintended effects of the goods and services procured there from.

**1.19 Awarded Vendor’s interest in a contract resulting from this RFP:** Awarded Vendors will be able to offer to NJPA, and current and potential NJPA Members, only those goods and services specifically awarded on their NJPA Awarded Contract(s). Awarded Vendors may not offer as “contract compliant”, goods and services which are not specifically identified and priced in their NJPA Awarded Contract.

**1.20 Sole Source of Responsibility-** NJPA desires a “Sole Source of Responsibility” Vendor meaning the Vendor will take sole responsibility for the performance of delivered products/services. NJPA also desires sole responsibility with regard to:

**1.20-0.1 Scope of Products/Services:** NJPA desires a provider for the broadest possible scope of the equipment/products, goods and services being proposed over the largest possible geographic

area and to the largest possible cross-section of NJPA current and potential Members.

**1.20.2 Vendor use of sub-contractors in sourcing or delivering goods and services:** NJPA desires a single source of responsibility for equipment/products and services proposed. Proposer's are assumed to have sub-contractor relationships with all organizations and individuals whom are external to the Proposer and are involved in providing or delivering the goods and services being proposed. Vendor assumes all responsibility for the equipment/products and services and actions of any such Sub-Contractor.

**1.21 Additional Definitions** for the scope of this solicitation.

**1.21.1** In addition to **POSTAGE METERS AND RELATED MAILING EQUIPMENT, SOFTWARE, ACCESSORIES AND SUPPLIES, this solicitation should be read to include:**

**1.21.1.1** N/A

**1.21.2** NJPA reserves the right to limit the scope of this solicitation for NJPA and current and potential NJPA member agencies.

**1.22 Suggested Solutions Options**

**1.22.1** All potential Proposers are assumed to be professionals in their respective fields. As professionals you are deemed to be intimately familiar with the spectrum of NJPA and NJPA Member's needs and requirements with respect to the scope of this RFP.

**1.22.2** With this intimate knowledge of NJPA and NJPA Member's needs, Proposers are instructed to provide their proposal response in a format describing their solutions to those current and future needs and requirements. Proposers should take care to be economical in their response to this RFP.

**1.22.3** Multiple solutions to the needs of NJPA and NJPA Members are possible. **Examples could include:**

**1.22.3.1 Materials Only Solution:** A Materials Only Solution may be appropriate for situations where NJPA or NJPA Members possess the ability, either in-house or through local third party contractors, to properly install and bring to operation those materials being proposed.

**1.22.3.2 Turn-Key Solutions:** A Turn-Key Solution is combination of materials and services which provides a single price for materials, delivery, and installation to a properly operating status. Generally this is the most desirable solution as NJPA and NJPA Members may not possess, or desire to engage, personnel with the necessary expertise to complete these tasks internally or through other independent contractors

**1.22.3.3 Good, Better, Best:** Where appropriate and properly identified, Proposers are invited to offer the CHOICE of good – better – best multiple grade solutions to NJPA and NJPA Member's needs.

**1.22.3.4 Proven – Accepted – Leading Edge Technology:** Where appropriate and properly identified, Proposers are invited to provide the CHOICE of an appropriately identified spectrum of technology solutions to NJPA and NJPA Member's needs both now and into the future.

**1.23 Overlap of Scope:**

**1.23.1** When considering equipment, products or groups of goods and services submitted as a part of your response and inclusion or submission to fall within a “Scope of Bid”, please consider the validity of an inverse statement.

- For example, pencils and post-it-notes can generally be classified as office supplies and office supplies generally include pencils and post-it-notes.
- In contrast, computers (PC’s and peripherals) can generally be considered office supplies, however the scope of office supplies does not generally include computers (servers and infrastructure).
- In conclusion: With this in mind, individual products and services must be examined individually by NJPA, from time to time and in its sole discretion, to determine their compliance and fall within the original “Scope” as intended by NJPA.

**1.24 Geographic Area to be Proposed:** This RFP invites proposals to provide **POSTAGE METERS AND RELATED MAILING EQUIPMENT, SOFTWARE, ACCESSORIES AND SUPPLIES** to NJPA and NJPA Members throughout the entire United States and possibly internationally. Proposers will be expected to express willingness to explore service to NJPA Members located abroad; however the lack of ability to serve Members outside of the United States will not be cause for non-award. The ability to serve Canada, for instance, will be viewed as a value-added attribute.

**1.25 Manufacturer as a Proposer:** If the Proposer is a Manufacturer or wholesale distributor, the response received will be evaluated on the basis of a response made in conjunction with that Manufacturer’s Dealer Network. Unless stated otherwise, a Manufacturer or wholesale distributor Proposer is assumed to have a documented relationship with their Dealer Network where that Dealer Network is informed of, and authorized to accept, purchase orders pursuant to any Contract resulting from this RFP on behalf of the Manufacturer or wholesale distributor Proposer. Any such dealer will be considered a sub-contractor of the Proposer/Vendor. The relationship between the Manufacturer and wholesale distributor Proposer and its Dealer Network may be proposed at the time of the proposed submission if that fact is properly identified.

**1.26 Dealer/Re-seller as a Proposer:** If the Proposer is a dealer or re-seller of the products and/or services being proposed, the response will be evaluated based on the Proposer’s authorization to provide those products and services from their manufacturer. Where appropriate, Proposers must document their authority to offer those products and/or services.

**1.27 Contract Term:** At NJPA’s option a contract resulting from this RFP will become effective 1) the date awarded by the NJPA Board of Directors, or the day following the expiration date of an existing NJPA procurement contract for the same or similar goods and services.

**1.27.1** NJPA is seeking a Contract base term of four years subject to annual renewals as allowed by Minnesota Contracting Law. Full term is expected, however will only occur through successful annual renewals. One additional one-year renewal-extension may be offered by NJPA to Vendor beyond the original four year term if NJPA deems such action to be in the best interests of NJPA and its Members.

**1.28 Minimum Contract Value:** NJPA anticipates considerable activity resulting from this RFP and subsequent award; however no commitment of any kind is made concerning actual quantities to be acquired. NJPA does not guarantee usage. Usage will depend on the actual needs of the NJPA Members

and the value of the awarded contract.

**1.29 Estimated Contract Volume:** Estimated quantities and sales volume are based on potential usage by NJPA and NJPA Member agencies nationally.

**1.30 Largest Possible Solution:** If applicable, Contracts will be awarded to Proposer(s) able to deliver a proposal meeting the entire needs of NJPA and its Members within the scope of this RFP. NJPA prefers Proposers submit their complete product line of products and services described in the scope of this RFP. NJPA reserves the right to reject individual, or groupings of specific equipment/products and services proposals as a part of the award.

**1.31 Contract Availability:** This Contract must be available to all current and potential NJPA Members who choose to utilize this NJPA Contract to include all governmental agencies, public and private primary and secondary education agencies, and all non-profit organizations nationally.

**1.32 Proposer's Commitment Period:** In order to allow NJPA the opportunity to evaluate each proposal thoroughly, NJPA requires any response to this solicitation be valid and irrevocable for ninety (90) days after the date proposals were opened regarding this RFP.

## **F. EXPECTATIONS FOR EQUIPMENT/PRODUCTS AND SERVICES BEING PROPOSED**

**1.33 Industry Standards:** Except as contained herein, the specifications or solutions for this RFP shall be those accepted guidelines set forth by the **POSTAGE METERS AND RELATED MAILING EQUIPMENT, SOFTWARE, ACCESSORIES AND SUPPLIES** industry, as they are generally understood and accepted within that industry across the nation. Submitted products/services, related services, and their warranties and assurances are required to meet and/or exceed all current, traditional and anticipated needs and requirements of NJPA and its Members.

**1.33.1 Deviations from industry standards** must be identified by the Proposer and explained how, in their opinion, the equipment/products and services they propose will render equivalent functionality, coverage, performance, and/or service. Failure to detail all such deviations may comprise sufficient grounds for rejection of the entire proposal.

**1.33.2 Technical Descriptions/Specifications.** Bidder's must supply **sufficient** information to:

- Demonstrate the Bidder's knowledge of industry standards, and
- identify the products and services being bid, and
- differentiate those products and services from others.

Excessive technical descriptions and specifications which, in the opinion of NJPA, unduly enlarges the bid response may reduce evaluation points awarded on Form G.

**1.34 Important note:** NJPA does not typically offer specific product and service specifications; rather NJPA is requesting an industry standard or accepted specification for the requested products and services. Where specific line items are specified, those line items should be considered the minimum which can be expanded by the Proposer to deliver the Proposer's "Solution" to NJPA and NJPA Member's needs.

**1.35 Commonly used Goods and Services:** It is important that the equipment/products and services submitted are the equipment/products and services commonly used by public sector entities.

**1.36 New Current Model Goods:** Proposals submitted shall be for new, current model products and services with the exception of certain close-out products allowed to be offered on the Proposer's "Hot List" described herein.

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**1.37 Compliance with laws and standards:** All items supplied on this Contract shall comply with any current applicable safety or regulatory standards or codes.

**1.38 Delivered and operational;** Products offered herein are to be proposed based upon being delivered and operational at the NJPA Member's site. Exceptions to "delivered and operational" must be explicitly disclosed in the "Total Cost of Acquisition" section of your proposal response.

**1.39 Warranty:** The Proposer/Vendor warrants that all products, equipment, supplies, and services delivered under this Contract shall be covered by the industry standard or better warranty. All products and equipment should carry a minimum industry standard manufacturer's warranty that includes materials and labor. The Proposer has the primary responsibility to submit product specific warranty as required and accepted by industry standards. Dealer/Distributors agree to assist the purchaser in reaching a solution in a dispute over warranty's terms with the manufacturer. Any manufacturer's warranty which is effective past the expiration of the warranty will be passed on to the NJPA member. Failure to submit a minimum warranty may result in the non-award.

**1.40 Proposer's Warrants:** The Proposer warrants all goods and services furnished hereunder will be free from liens and encumbrances; and defects in design, materials, and workmanship; and will conform in all respects to the terms of this RFP including any specifications or standards. In addition, Proposer/Vendor warrants the goods and services are suitable for and will perform in accordance with the purposes for which they were intended.

### G. SOLUTIONS BASED SOLICITATION

NJPA solicitations and contract process will not offer specifications for proposers or respondents to meet or base your response on. This RFP is a "Solutions Based Solicitation". This means the proposers are asked to understand and anticipate what NJPA and the NJPA current and potential member agencies located nationally needs and future needs and requirements are to include any specific, desired common specifications desired or required by law or industry standards. Your proposal will be evaluated in part by the basis of your company "solutions" and your demonstrated ability and features to meet or exceed the needs and requirements of NJPA and our member agencies.

## 2. DEFINITIONS

### A. PROPOSER - VENDOR

**2.1 Exclusive Vendor-** A sole Vendor awarded in a product category. NJPA reserves the right to award to an Exclusive Vendor in the event that such an award is in the best interests of NJPA Members. Such a Proposer must exhibit the ability to offer an outstanding overall program and demonstrate the ability and willingness to serve NJPA Members in all 50 states, and comply with all other requirements of this RFP.

**2.2 Potential Proposer-** A person or entity requesting a copy of this RFP.

**2.3 Proposer-** A company, person, or entity delivering a timely response to this RFP.

**2.4 Vendor-** One of a number of Proposers whose proposal has been awarded a contract pursuant to this RFP.

**2.5 Request for Proposal-** Herein referred to as RFP

### B. CONTRACT

**2.6 "Contract"** as used herein shall mean cumulative documentation consisting of this RFP, an entire Proposer's response, and a fully executed "Acceptance and Award" pursuant to this RFP.

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## C. TIME

2.7 Periods of time, stated as number of days, shall be in calendar days.

## D. PROPOSER'S RESPONSE

2.8 A Proposer's Response is the entire collection of documents as they are received by NJPA from a Potential Proposer in response to this RFP.

## E. CURRENCY

2.9 All transactions are payable in U.S. dollars on U.S. sales. All administrative fees are to be paid in U.S. dollars.

## F. FOB

2.10 FOB stands for "Freight On Board" and defines the point at which responsibility for loss and damage of goods purchased are transferred from Seller to Buyer. "FOB Destination" defines the transfer of responsibility for loss are transferred from Seller to Buyer at the Buyer's designated delivery point.

2.11 FOB does not identify whom is responsible for the costs of shipping. The responsibility for the costs of shipping is addressed elsewhere in this document.

## 3. INSTRUCTIONS TO PREPARING YOUR PROPOSAL

### A. PRE-PROPOSAL CONFERENCE

3.1 A non-mandatory pre-proposal conference will be held at the date and time specified in the time line on page one of this RFP. Conference call and web connection information will be sent to all Potential Proposers through the same means employed in their inquiry. The purpose of this conference call is to allow Potential Proposers to ask questions regarding this RFP. Only answers issued in writing by NJPA to questions asked before or during the Pre-proposal Conference shall be considered binding.

### B. IDENTIFICATION OF KEY PERSONNEL

3.2 Vendor will designate one senior staff individual who will represent the awarded Vendor to NJPA. This contact person will correspond with members for technical assistance, questions or problems that may arise including instructions regarding different contacts for different geographical areas as needed.

3.3 Individuals should also be identified (if applicable) as the primary contacts for the contents of this proposal, marketing, sales, and any other area deemed essential by the Proposer.

### C. PROPOSER'S EXCEPTIONS TO TERMS AND CONDITIONS

3.4 Any exceptions, deviations, or contingencies a Proposer may have to the terms and conditions contained herein must be documented on Form C.

3.5 Exceptions, Deviations or contingencies stipulated in Proposer's Response, while possibly necessary in the view of the Proposer, may result in disqualification of a Proposal Response.

### D. FORMAL INSTRUCTIONS TO PROPOSERS

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**3.6** It is the responsibility of all Proposers to examine the entire RFP package, to seek clarification of any item or requirement that may not be clear and to check all responses for accuracy before submitting a Proposal. Negligence in preparing a Proposal confers no right of withdrawal after the deadline for submission of proposals.

**3.7** All proposals must be sent to “The National Joint Powers Alliance®, 202 12th ST NE Staples, MN 56479.”

**3.8 Format for bid response:** Please use Form A as the basic format for your response. Please use the general headings in Form A to “Section” your electronic response. All proposals must be physically delivered to NJPA® at the above address in the following format:

**3.8.1** Hard copy Original signed, completed, and dated forms A (signature page only), C,D, E, H, and I (full documents) from this RFP,

**3.8.2** Hard copies of all addenda issued for the RFP with original counter signed by the Proposer,

**3.8.3** Certificate of insurance verifying the coverage identified in this RFP,

**3.8.4** Two complete copies of your response on a CD (Compact Disc) or flash drive containing completed Forms A,B,C,D,E,H, and I, your statement of products and pricing together with all appropriate attachments, and a Dunn and Bradstreet report on your organization.

**3.9** All Proposal forms must be legible. All appropriate forms must be executed by an authorized signatory of the Proposer. Blue ink is preferred for signatures.

**3.10** Proposal submissions should be submitted using the electronic forms provided. If a Proposer chooses to use alternative documents for their response, the proposer will be responsible for ensuring the content is effectively equal to the NJPA form and the document is in a format readable by NJPA.

**3.11** It is the responsibility of the Proposer to be certain the proposal submittal is in the physical possession of NJPA on or prior to the deadline for submission of proposals.

**3.11.1** Proposals must be submitted in a sealed envelope or box properly addressed to NJPA and prominently identifying the proposal number, proposal category name, the message “**Hold for Proposal Opening**”, and the deadline for proposal submission. NJPA cannot be responsible for late receipt of proposals. Proposals received by the correct deadline for proposal submission will be opened and the name of each Proposer and other appropriate information will be publicly read.

**3.12** Corrections, erasures, and interlineations on a Proposer’s Response must be initialed by the authorized signer in original ink on all copies to be considered.

**3.13** Addendums to the RFP: The Proposer is responsible for ensuring receipt of all addendums to this RFP.

**3.13.1** Proposer’s are responsible for checking directly with the NJPA website for addendums to this RFP.

**3.13.2** Addendums to this RFP can change terms and conditions of the RFP including the deadline for submission of proposals.

## F. QUESTIONS AND ANSWERS ABOUT THIS RFP

**3.14** Upon examination of this RFP document, Proposer shall promptly notify the NJPA of any ambiguity, inconsistency, or error they may discover. Interpretations, corrections and changes to this RFP will be made by NJPA through addendum. Interpretations, corrections, or changes made in any other manner will not be binding and Proposer shall not rely upon such.

**3.15** Submit all questions about this RFP, in writing, referencing “**POSTAGE METERS AND RELATED MAILING EQUIPMENT, SOFTWARE, ACCESSORIES AND SUPPLIES** to Gregg Meierhofer, NJPA 202 12th Street NE, Staples, MN 56479 or RFP@njpacoop.org. Those not having

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access to the Internet may call Gregg Meierhofer at (218) 894-1930. Requests for additional information or interpretation of instructions to Proposers or technical specifications shall also be addressed to Gregg Meierhofer. NJPA urges Potential Proposers to communicate all concerns well in advance of the deadline to avoid misunderstandings. Questions received less than seven (7) days ending at 4:00 p.m. Central Time of the seventh (7<sup>th</sup>) calendar day prior to proposal due-date cannot be answered.

**3.16** If the answer to a question is deemed by NJPA to have a material impact on other potential proposers or the RFP itself, the answer to the question will become an addendum to this RFP.

**3.17** If the answer to a question is deemed by NJPA to be a clarification of existing terms and conditions and does not have a material impact on other potential proposers or the RFP itself, no further documentation of that question is required.

**3.18** As used in this solicitation, clarification means communication with a Potential Proposer for the sole purpose of eliminating minor irregularities, informalities, or apparent clerical mistakes in the RFP.

**3.19** Addenda are written instruments issued by NJPA that modify or interpret the RFP. All addenda issued by NJPA shall become a part of the RFP. Addenda will be delivered to all Potential Proposers using the same method of delivery of the original RFP material. NJPA accepts no liability in connection with the delivery of said materials. Copies of addenda will also be made available on the NJPA website at [www.njpacoop.org](http://www.njpacoop.org) by clicking on “Current Proposals” and from the NJPA offices. No questions will be accepted by NJPA later than five (5) days prior to the deadline for receipt of proposals, except an addendum withdrawing the request for proposals or one that includes postponement of the date of receipt of proposals. Each Potential Proposer shall ascertain prior to submitting a Proposal that it has received all addenda issued, and the Proposer shall acknowledge their receipt in its Proposal Response.

**3.20** An amendment to a submitted proposal must be in writing and delivered to NJPA no later than the time specified for opening of all proposals.

### G. MODIFICATION OR WITHDRAWAL OF A SUBMITTED PROPOSAL

**3.21** A submitted proposal may not be modified, withdrawn from or cancelled by the Proposer for a period of ninety (90) days following the date proposals were opened regarding this RFP. **Prior** to the deadline for submission of proposals, any proposal submitted may be modified or withdrawn by notice to the NJPA Bids and Contracts Officer. Such notice shall be submitted in writing and include the signature of the Proposer and shall be delivered to NJPA prior to the deadline for submission of proposals and it shall be so worded as not to reveal the content of the original proposal. However, the original proposal shall not be physically returned to the Potential Proposer until after the official proposal opening. Withdrawn proposals may be resubmitted up to the time designated for the receipt of the proposals if they are then fully in conformance with the Instructions to Proposer.

### H. VALUE ADDED ATTRIBUTES, PRODUCTS/SERVICES

**3.22** **Examples of Value Added Attributes:** Value-Added attributes, products and services are items offered in addition to the products and services being proposed which adds value to those items being proposed. The availability of a contract for maintenance or service after the initial sale, installation, and set-up may, for instance, be “Value Added Services” for products where a typical buyer may not have the ability to perform these functions.

**3.23** **Where to document Value Added Attributes:** The opportunity to indicate value added dimensions and such advancements will be available in the Proposer’s Questionnaire and Proposer’s product and service submittal.

**3.24** Value added equipment/products and services and expanded services, as they relate to this RFP, will be given positive consideration in the award selection. Consideration will be given to an expanded selection of POSTAGE METERS AND RELATED MAILING EQUIPMENT, SOFTWARE,

ACCESSORIES AND SUPPLIES, and advances to provide products/services, supplies meeting and/or exceeding today's industry standards and expectations. A value add would include a program or service that further serves the members needs above and possibly beyond standard expectation and complements the equipment/products and services and training. Value added could include areas of product and service, sales, ordering, delivery, performance, maintenance, technology, and service that furthers the functionality and effectiveness of the procurement process while remaining within the scope of this RFP.

**3.25 Minority, Small Business, and Women Business Enterprise (WMBE) participation:** It is the policy of some NJPA Members to involve Minority, Small Business, and WMBE contractors in the purchase of goods and services. Vendors should document WMBE status for their organization AND any such status of their affiliates (i.e. Supplier networks) involved in carrying out the activities invited. The ability of a Proposer to provide "Credits" to NJPA and NJPA Members in these subject areas, either individually or through related entities involved in the transaction, will be evaluated positively by NJPA. NJPA is committed to facilitating the realization of such "Credits" through certain structuring techniques for transactions resulting from this RFP.

**3.26 Environmentally Preferred Purchasing Opportunities:** There is a growing trend among NJPA Members to consider the environmental impact of the equipment/products and services they purchase. Please identify any "Green" characteristics of the goods and services in your proposal and identify the sanctioning body determining that characteristic. Where appropriate, please indicate which products have been certified as "green" and by which certifying agency.

**3.27 On-Line Requisitioning systems:** When applicable, on-line requisitioning systems will be viewed as a value-added characteristic. Proposer shall include documentation about user interfaces that make on-line ordering easy for NJPA Members as well as the ability to punch-out from mainstream e-Procurement or Enterprise Resource Planning (ERP) systems that NJPA Members may currently utilize.

**3.28 Financing:** The ability of the Proposer to provide financing options for the products and services being proposed will be viewed as a Value Added Attribute.

## **I. CERTIFICATE OF INSURANCE**

**3.29** Proposer shall provide evidence of liability insurance coverage identified below in the form of an ACCORD binder form with their proposal. Upon Award issued pursuant to this contract, and prior to the execution of any commerce relating to such award, Vendor will be responsible for providing verification, in the form of an ACCORD binder identifying the coverage required below and identifying NJPA as a "Certificate Holder" and an "Additional Insured". Vendor will be responsible to maintain such insurance coverage at their own expense throughout the term of any contract resulting from this solicitation.

**3.30** Vendor, upon award, shall be required to maintain the following insurance coverage's during the term of the NJPA Contract:

- (1) Workers Compensation insurance (Occurrence) with the following minimum coverage's:  
Bodily injury by accident--per employee \$100,000; Bodily injury by disease--per employee \$100,000; Policy limits \$500,000. In addition, Proposer shall require all subcontractors occupying the premises or performing work under the contract to obtain an insurance certificate showing proof of Workers Compensation Coverage with the following minimum coverage's: Bodily injury by accident--per employee \$100,000; Bodily injury by disease--per employee \$100,000; Policy limits \$500,000.
- (2) Commercial General Liability Policy per occurrence \$1,000,000.
- (3) Business Auto Policy to include but not be limited to liability coverage on any owned, non-owned and hired vehicle used by Proposer or Proposer's personnel in the performance of this Contract. The Business Automobile Policy shall have a per occurrence limit of \$1,000,000.

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**3.31** The foregoing policies shall contain a provision that coverage afforded under the policies will not be canceled, or not renewed or allowed to lapse for any reason until at least thirty (30) days prior written notice has been given to NJPA. Certificates of Insurance showing such coverage to be in force shall be filed with NJPA prior to commencement of any work under the contract. The foregoing policies shall be obtained from insurance companies licensed to do business nationally and shall be with companies acceptable to NJPA, which must have a minimum AM Best rating of A-. All such coverage shall remain in full force and effect during the term and any renewal or extension thereof.

### J. ORDER PROCESS AND/OR FUNDS FLOW

**3.32** Please propose an order process and funds flow. Please choose from one of the following:

**3.32.1 B-TO-G:** The Business-to-Government order process and/or funds flow model involves NJPA Members issuing Purchase Orders directly to a Vendor and pursuant to a Contract resulting from this RFP.

**3.32.3 Other:** Please fully identify.

### K. ADMINISTRATIVE FEES

**3.33** Proposer agrees to authorize and/or allow for an administrative fee payable to NJPA by an Awarded Vendor in exchange for its facilitation and marketing of a Contract resulting from this RFP to current and potential NJPA Members. This Administration Fee shall be:

**3.33.1** Calculated as a percentage of the dollar volume of all equipment/products and services provided to and purchased by NJPA Members or calculated as reasonable and acceptable method applicable to the contracted transaction, and

**3.33.2** Included in, and not added to, the pricing included in Proposer's Response to this RFP, and

**3.33.3** Designed to offset the anticipated costs of NJPA's involvement in facilitating the establishment, Vendor training, and the order/product/funds flow of the Contract resulting from this RFP, and other uses as deemed appropriate by NJPA's Board of Directors from time to time.

**3.33.3.1** Typical administrative fees for a B-TO-G order process and funds flow is 2.0%.

**3.34** The opportunity to propose these factors and an appropriate administrative fee is available in the Proposer's Questionnaire.

## 4. PRICING STRATEGIES

**4.1** NJPA requests Potential Proposers respond to this RFP only if they are able to offer a wide array of equipment/products and services and at prices lower and better value than what they would ordinarily offer to single government agency, larger school district, or regional cooperative.

**4.2** RFP is an "Indefinite Quantity Product/Service Price Request" with potential national sales distribution and service. Proposers are agreeing to fulfill Contract obligations regarding each product/service to which you provide a description and a price. If Proposer's solution requires additional supporting documentation, describe where it can be found in your submission. If Proposer offers the solution in an alternative fashion, describe your solution to be easily understood. All pricing must be copied on a CD along with other requested information as a part of a Proposer's Response.

**4.3** Regardless of the payment method selected by NJPA or NJPA Member, a total cost associated with any purchase option of the equipment/products and services and being supplied must always be disclosed at the time of purchase.

**4.4 Primary Pricing/Secondary Pricing Strategies-** All Proposers will be required to submit "Primary

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Pricing” in the form of either “Line-Item Pricing,” or “Percentage Discount from Catalog Pricing,” or a combination of these pricing strategies. Proposers are also encouraged to offer OPTIONAL pricing strategies including “Hot List,” “Sourced Goods,” and “Volume Discounts,” as well as financing options such as leasing.

### A. LINE-ITEM PRICING

**4.5 Line-Item pricing-** A pricing format where specific individual products and/or services are offered at specific individual Contract prices. Products and/or services are individually priced and described by characteristics such as manufacture name, stock or part number, size, or functionality. This method of pricing offers the least amount of confusion as products and prices are individually identified, however Proposers with a large number of products to propose may find this method cumbersome. In these situations, a percentage discount from catalog or category pricing model may make more sense.

**4.6** All Line-Item Pricing items must be numbered, organized, sectioned, including SKU’s (when applicable) and easily understood by the Proposal Review Committee and members.

**4.7** Line-Item Pricing items are to be submitted in an Excel spreadsheet format provided and are to include all appropriate identification information necessary to discern the line item from other line items in each Proposer’s proposal.

**4.8** The purpose for the excel spreadsheet format for Line-Item Pricing is to be able to use the “Find” function to quickly find any particular item of interest. For that reason, Proposers are responsible for providing the appropriate product and service identification information along with the pricing information which is typically found on an invoice or price quote for such products and services.

**4.9** All products and services typically appearing on an invoice or price quote must be individually priced and identified on the line-item price sheet, including any and all ancillary costs.

**4.10** Proposers are asked to provide both a “List” price as well as a “Proposed Contract Price” in their pricing matrix. “List” price will be the standard “quantity of one” price currently available to government and educational customers excluding cooperative and volume discounts

### B. PERCENTAGE DISCOUNT FROM CATALOG OR CATEGORY

**4.11 Percent Discount From Catalog, List or Category Pricing-** A specific percentage discount from a “Catalogue or List Price” defined as a Manufacturer’s Suggested Retail Price (MSRP) for the products or services being proposed.

**4.12** Individualized percentage discounts can be applied individually to any number of defined product groupings.

**4.13** A Percentage Discount from MSRP may be applied to all elements identified in MSRP including the base vehicle AND all Manufacturer Options.

**4.14** Dealer supplied Options will be priced using a “Sourced Goods Multiplier” as defined herein.

**4.15** When a Proposer elects to use “Percentage Discount from Catalog or Category,” Proposer will be responsible for providing and maintaining current “MSRP” with NJPA both in their proposal and throughout the term of any Contract resulting from this RFP.

**4.16** NJPA reserves the right to review catalogs submitted to determine if the represented products and services reflect the scope of this bid. Each new catalog received may have the effect of adding new product offerings and deleting products no longer carried by the Vendor. New catalogs shall apply to the

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Contract only upon approval of the NJPA. Non-approved use of catalogs may result in termination for convenience. New price lists or catalogs found to be offering non-contract items during the Contract may be grounds for terminating the Contract for convenience. New optional accessories for equipment may be added to the Contract at the time they become available.

### C. HOT LIST PRICING

**4.17** Where applicable, NJPA also invites the Vendor, at their option, to offer a specific selection of products/services, defined as a Hot List Pricing, at greater discounts than those listed in the standard Contract pricing. All product/service pricing, including the Hot List Pricing, must be submitted in hard copy as well as electronically provided in Excel format. Hot List pricing must be submitted in a Line-Item format. Providing a “Hot List” of equipment/products and services is optional. Equipment/products and services may be added or removed from the “Hot List” at any time provided that current “Hot List” prices are provided to NJPA at all times.

**4.18** Hot List pricing when applicable may also be used to discount and liquidate close-out and discontinued equipment/products and services as long as those close-out and discontinued items are clearly labeled as such. Current ordering process and administrative fees apply. This option must be published and made available to all NJPA Members.

**4.19** Hot List Pricing is allowed to change at the discretion of the Vendor within the definition of Hot List Pricing. The Vendor is responsible to maintain current Hot List product/service descriptions and Pricing with NJPA.

### D. CEILING PRICE

**4.20** Proposal pricing is to be established as a ceiling price. At no time may the proposed equipment/products and services be offered pursuant to this Contract at prices above this ceiling price without approval by NJPA. **IMPORTANT NOTE:** Contract prices may be reduced to allow for volume considerations and commitments and to meet the specific and unique needs of an NJPA Member.

**4.21** Allowable specific needs may include competitive situations, certain purchase volume commitments or the creation of custom programs based on the individual needs of NJPA Members.

### E. VOLUME PRICE DISCOUNTS

**4.22** Proposers are free to offer volume discounts from the contract pricing documented in a Contract resulting from this RFP. Volume considerations shall be determined between the Vendor and individual NJPA Members on a case-by-case basis.

**4.23** Nothing in this Contract establishes a favored member relationship between the NJPA or any NJPA Member and the Vendor. The Vendor will, upon request by NJPA Member, extend this same reduced price offered or delivered to another NJPA Member provided the same or similar volume commitment, specific needs, terms, and conditions, a similar time frame, seasonal considerations, locations, competitively situations and provided the same manufacturer support is available to the Vendor.

**4.24** All price adjustments are to be offered equally to all NJPA Members exhibiting the same or substantially similar characteristics such as purchase volume commitments, and timing including the availability of special pricing from the Vendor’s suppliers.

### F. SOURCED GOODS

**4.25** NJPA and NJPA Members may, from time to time, request goods and/or equipment/products and services within the scope of this RFP which are not included in an awarded Vendor’s line-item product /service listing or “list or catalog” known as Sourced Goods.

**4.26** An awarded Vendor resulting from this RFP may “Source” these equipment/products and services for NJPA or NJPA Member to the extent they:

**4.26.1** Include in their bid response a cost-plus-percentage-of-cost pricing factor for such Sourced goods and services, and

**4.26.2** Provide as many quotes for the Member’s “Total Cost of Acquisition” for the goods and services to be sourced as may reasonably be required by NJPA Member.

**4.26.3** Provide “Sourced Goods” only to the extent that they are incidental to the total transaction being contemplated.

#### **G. COST PLUS A PERCENTAGE OF COST**

**4.27** Except as provided in “Sourced Goods” above, cost plus a percentage of cost as a primary pricing mechanism is not desirable.

#### **H. TOTAL COST OF ACQUISITION**

**4.28** The Total Cost of Acquisition for the equipment/products and services being proposed, including those payable by NJPA Members to either the Proposer or a third party, shall be defined as:

- The cost of the proposed goods and services delivered and operational for its intended purpose in the end-user’s location.

**4.29** For example, if you are proposing a materials only “Warehouse Goods” contract FOB Proposer’s dock and physically at the Proposer’s dock, your proposal would identify your deviation from the “The Total Cost of Acquisition” is to be “Proposal does not provide for delivery beyond Proposer’s dock, nor any set-up activities or costs associated with those delivery or set-up activities.” In contrast, proposed terms including all costs for goods and services delivered and operational at to the end-user’s location would require a disclosure of “None”

#### **I. REQUESTING PRODUCT AND SERVICE ADDITIONS/DELETIONS**

**4.30** Requests for product, service, and price additions, deletions, or changes must be made in written form and shall be subject to approval by NJPA.

**4.31** New equipment/products and services may be added to a Contract resulting from this RFP at any time during that Contract to the extent those equipment/products and services are within the scope of this RFP. Those requests are subject to review and approval of NJPA. Allowable new equipment/products and services generally include new updated models of equipment/products and services and or enhanced services previously offered which could reflect new technology and improved functionality.

**4.32** Proposers representing multiple manufacturers, or carrying multiple related product lines may also request the addition of new manufacturers or product lines to their Contract to the extent they remain within the scope of this RFP.

**4.33** NJPA’s due diligence in analyzing any request for change is to determine if approval of the request is 1) within the scope of the original RFP, and 2) in the “Best Interests of NJPA and NJPA Members.” We are looking for consistent pricing and delivery mechanisms and an understanding of what value the proposal brings to NJPA and NJPA Members.

**4.34** Documenting the “Best Interests of NJPA and NJPA Members” when outdated equipment is being deleted is fairly straight forward since the product is no longer available and not relevant to the

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procurement Contract.

**4.35** Requests must be in the form of 1) a cover letter to NJPA a) asking to add the product line, b) making a general statement identifying how the products to be added are within the scope of the original RFP, and c) making a general statement identifying that, if appropriate, the pricing is consistent with the existing Contract pricing and 2) the detail as to what is being added at what price will then be an attachment to that cover letter.

**4.36** NJPA's intent here is to encourage Proposers to provide and document NJPA's due diligence in a clear and concise one page format on which we can stamp and sign our acknowledgment and acceptance. This information must ultimately come from Proposers, and NJPA is requiring it in this format.

### J. REQUESTING PRICING CHANGES

**4.37 Price Decreases:** Requests for standard Contract price decrease adjustments (percentage discount increases) are encouraged and will be allowed at any time based on market place efficiencies, market place competitiveness, improved technologies and/or improved methods of delivery or if Vendor engages in innovative procurement practices such as strategic sourcing, aggregate and volume purchasing. NJPA expects Vendors to propose their very best prices and anticipates price reductions due to the advancement of technologies and market place efficiencies. Documenting the "Best Interests of NJPA and NJPA Members" is pretty easy when we are documenting price reductions.

**4.38 Price increases:** Requests for standard contract price increases (or the inclusion of new generation products/services/services at higher prices) can be made at any time. These requests will again be evaluated by NJPA based on the best interests of NJPA and NJPA Members. As an example, typically acceptable requests for price increases for existing equipment/products and services may cite increases to the Vendor of input costs such as petroleum or other applicable commodities. Typically acceptable requests for price increases for new equipment/products and services enhance or improve on the current solutions currently offered as well as cite increases in utility of the new compared to the old. Vendors are requested to reasonably document the claims cited in their requests. Your written request for a price increase, therefore, is an exercise in describing what you need, and a justification for why you need it in sufficient detail for NJPA to deem such change to be in the best interests of our self and our Members.

**4.39 Price Change Request Format:** An awarded Proposer will use the format of a cover letter requesting price increases in general terms (a 5% increase in product line X) and stating their justification for that price increase (due to the recent increase in petroleum costs) by product category. Specific details for the requested price change must be attached to the request letter identifying product/services where appropriate, both current and proposed pricing. Attachments such as letters from suppliers announcing price increases are appropriate for documenting your requests here.

### K. PRICE AND PRODUCT CHANGES FORMAT

**4.40** NJPA's due diligence regarding product and price change requests is to consider the reasonableness of the request and document consideration on behalf of our members. We would appreciate it if you would send the following documentation to request a pricing change:

**4.40.1** A cover letter:

- a. Please address the following subjects in your cover letter:
  - i. What product/service prices are changing?
  - ii. How much are the prices changing?
  - iii. Why are the prices changing?
  - iv. Any additions or deletions from the previous product list and the reason for the changes.
- b. The specifics of the product/services and price changes will be listed in the excel spreadsheets identified below. Please take a more general "Disclosure" approach to

identifying changes in the cover letter.

- i. If appropriate, **for example**, state, “All paper equipment/products and services increased 5 % in price due to transportation costs.”
- ii. If appropriate, for instance, state, “The 6400 series floor polisher added to the product list is the new model replacing the 5400 series. The 6400’s 3% price increase reflects the rate of inflation over the past year. The 5400 series is now included in the “Hot List” at a 20% discount from previous pricing until remaining inventory is liquidated.”

**4.40.2** An excel spreadsheet identifying all equipment/products and services being offered and their pricing. Each subsequent pricing update will be saved using the naming convention of “(Vendor Name) pricing effective XX/XX/XXXX.”

- a. Include all equipment/products and services regardless of whether their prices have changed. By observing this convention we will:
  - i. Reduce confusion by providing a single, easy to find, current pricing sheet for each Vendor.
  - ii. Create a historical record of pricing.

#### **L. SINGLE STATEMENT OF PRICING/HISTORICAL RECORD OF PRICING**

**4.41** Initially; and with each request for product addition, deletion, and pricing change; all equipment/products and services and services available, and the prices for those equipment/products and services and services will be stated in an Excel workbook. The request for price changes described above will serve as the documentation for those requested changes. Each complete pricing list will be identified by its “Effective Date.” Each successive price listing identified by its “Effective Date” will create a “Product and Price History” for the Contract.

**4.42** Proposers may use the multiple tabs available in an Excel workbook to separately list logical product groupings or to separately list product and service pricing as they see fit.

**4.43** All equipment/products and services together with their pricing, whether changed within the request or remaining unchanged, will be stated on each “Pricing” sheet created as a result of each request for product, service, or pricing change.

**4.44** Each subsequent “Single Statement of Product and Pricing” will be archived by its effective date therefore creating a product and price history for any Contract resulting from this RFP.

#### **M. PAYMENT TERMS**

**4.45** Payment terms will be defined by the Proposer in the Proposer’s Response. Proposers are encouraged to offer payment terms through P Card services.

**4.46** Leasing- If available, identify any leasing programs available to NJPA and NJPA Members as part of your proposed. Proposers should submit an example of the lease agreement to be used. Proposers should identify:

- General leasing terms such as:
  - The percentage adjustment over/under an index rate used in calculating the internal rate of return for the lease; and
  - The index rate being adjusted; and
  - The “Purchase Option” at lease maturity (\$1, or fair market value); and
  - The available term in months of lease(s) available.
- Leasing company information such as:
  - The name and address of the leasing company; and
  - Any ownership, common ownership, or control between the Proposer and the Leasing

**N. SALES TAX**

**4.47** Sales and other taxes, where applicable, shall not be included in the prices quoted. Vendor will charge state and local sales and other taxes on items for which a valid tax exemption certification has not been provided. Each NJPA Member is responsible for providing verification of tax exempt status to Vendor. When ordering, if applicable, NJPA Members must indicate that they are tax exempt entities. Except as set forth herein, no party shall be responsible for taxes imposed on another party as a result of or arising from the transactions contemplated by a Contract resulting from this RFP.

**O. SHIPPING AND SHIPPING PROGRAM**

**4.48** Shipping program for material only proposals, or sections of proposals, must be defined as a part of the cost of goods. If shipping is charged to NJPA or NJPA Member, only the actual cost of delivery may be added to an invoice. Shipping charges calculated as a percentage of the product price may not be used, unless such charges are lower than actual delivery charges. No COD orders will be accepted. It is desired that delivery be made within ninety-days (90) of receipt of the Purchase Order.

**4.49** Any shipping cost charged to NJPA or NJPA Members will be considered to be part of “proposal pricing.”

**4.50** Additional costs for expedited deliveries will be at the additional shipping or handling expense to the NJPA Member.

**4.51** Selection of a carrier for shipment will be the option of the party paying for said shipping. Use of another carrier will be at the expense of the requester.

**4.52** Proposers must define their shipping programs for Alaska and Hawaii and any location not served by conventional shipping services. Over-size and over-weight items and shipments may be subject to custom freight programs.

**4.53** Proposals containing restocking fees are less advantageous than those not containing re-stocking fees. That being said, certain industries cannot avoid restocking fees. Certain industries providing made to order goods may not allow returns. With regard to returns and restocking fees, Proposers will be evaluated based on the relative flexibility extended to NJPA and NJPA Members relating to those subjects. Where used, restocking fees in excess of 15% will not be considered excessive. Restocking fees may be waived, at the option of the Proposer/Vendor. Indicate all shipping and re-stocking fees in price program.

**4.54** Proposer agrees shipping errors will be at the expense of the Vendor. For example, if a Vendor ships a product that was not ordered by the member, it is the responsibility of the Vendor to pay for return mail or shipment at the convenience of the member.

**4.55** Unless specifically stated otherwise in the “Shipping Program” of a Proposer’s Response, all prices quoted must be F.O.B. destination with the freight prepaid by the Vendor. Time is of the essence on this Contract. If completed deliveries are not made at the time agreed, NJPA or NJPA Member reserves the right to cancel and purchase elsewhere and hold Vendor accountable. If delivery dates cannot be met, Vendor agrees to advise NJPA or NJPA Member of the earliest possible shipping date for acceptance by NJPA or NJPA Member.

**4.56** Goods and materials must be properly packaged. Damaged goods and materials will not be accepted, or if the damage is not readily apparent at the item of delivery, the goods shall be returned at no cost to NJPA or NJPA Member. NJPA and NJPA Members reserve the right to inspect the goods at a reasonable time subsequent to delivery where circumstances or conditions prevent effective inspection of the goods at the time of delivery.

**4.57** Vendor shall deliver Contract conforming products in each shipment and may not substitute products without approval from NJPA Member.

**4.58** NJPA reserves the right to declare a breach of Contract if the Vendor intentionally delivers substandard or inferior products which are not under Contract and described in its paper or electronic price lists or sourced upon request to any member under this Contract. In the event of the delivery of a non-conforming product, NJPA Member will immediately notify Vendor and Vendor will replace non-conforming product with conforming product.

**4.59** Throughout the term of the Contract, Proposer agrees to pay for return shipment on goods that arrive in a defective or inoperable condition. Proposer must arrange for the return shipment of damaged goods.

**4.60** Unless contrary to other parts of this solicitation, if the goods or the tender of delivery fail in any respect to conform to this Contract, the purchasing member may: 1) reject the whole, 2) accept the whole or 3) accept any commercial unit or units and reject the rest.

## **P. NORMAL WORKING HOURS**

**4.61** Prices quoted are for equipment/products and services delivered during normal business hours. Normal Business hours will be as specifically defined herein, defined through industry standards OR defined through statement contained in the purchase/work order issued pursuant to a Contract resulting from this RFP.

## **5. MARKETING PLAN**

**5.1 Internal Marketing Plan:** Our sales force is your sales force. If you are awarded a contract based on this solicitation your sales force will be the primary driver of everyone's success. Your sales person is only minor interested in the fact that:

- The use of the NJPA Contract will save their customer (NJPA's Member) the time and effort of bringing a new individual Invitation for Bids (IFB);
- The use of the NJPA Contract will guaranty their ability to choose you

An award of Contract resulting from this RFP is an opportunity for the awarded contractor to pursue commerce with, and deliver value to NJPA and NJPA Members nationwide. An award of Contract is not an opportunity to see how much business NJPA can drive to an awarded Vendor's door. Your internal marketing plan should serve to:

**5.1.1** Identify the appropriate levels of sales management whom will need to understand the value of, and the internal procedures necessary to deliver this Contract opportunity to NJPA and NJPA Members through your sales force.

**5.1.2** Identify, in general, your national foot print and dedicated feet-on-the-street sales force that will be carrying this Contract message and opportunity in the field to NJPA Members. Outline the sale force in terms of numbers and geographic distribution.

**5.1.2.1** Identify whether your sales force are employees or independent contractors.

**5.1.3** Identify your plan for delivering training to these individuals.

**5.1.3.1** Will you have your sales force gathered at national or regional events in the near future? Does your sales force have the ability to participate in webinar or webcast events?

**5.1.3.2** NJPA is prepared to provide our personnel in your location for sales training and/or on a webinar or webcast where sufficient efficiencies can be shown in reaching the appropriate groups within your employee base, and sufficient numbers of personnel trained.

**5.1.4** Identify your personnel involved in training.

**5.1.4.1** NJPA can provide personnel to deliver training regarding the Contract itself, the authority of NJPA to offer the Contract vehicle to its Members, the value the Contract vehicle delivers to NJPA and NJPA Members, the scope of NJPA Membership, and the authority of NJPA Members to utilize our procurement contracts.

**5.1.4.2** Your personnel will be needed to provide training regarding employee compensation and internal procedures when delivering the Contract opportunity, and how this Contract purchasing opportunity relates with other such opportunities available.

**5.2** Success in marketing is dependent upon 1) the delivery of value as defined in section 1.4, 2) the delivery of knowledge of the program and its proper use and utility, and 3) the delivery of opportunity and reward which creates a personal commitment to the program. NJPA desires a marketing plan that:

**5.2.1** identifies the value delivered in a competitively proposed national cooperative procurement contract by relieving both the NJPA Member and the Vendor/Vendor's sales staff of the responsibility for bringing and answering many similar and individual RFP's; and

**5.2.2** identifies the appropriate Vendor personnel from both management and sales staff who will be trained on the use and utility of such a contract and a general schedule of when and how those individuals will be trained; and

**5.2.3** identifies in general how the reward system for the marketing, delivery, and service chain of the Vendor will be affected by the implementation of the proposed Contract and how that will be proposed to those individuals in terms of the value created for them and their departments in 5.1.1 above.

**5.3 External Marketing Plan:** NJPA is seeking the ability to serve all our current and potential members nationwide. The Proposer must demonstrate the ability to both market and service their products/services/services nationwide. Please demonstrate your sales and service force contains sufficient people in sufficient proximities, to receive the knowledge, opportunity, and reward in order to make a personal commitment to serving NJPA and NJPA Members nationwide.

**5.4** The Proposer must exhibit the willingness and ability to develop marketing materials and participate in marketing venues such as:

**5.4.1 Printed Marketing Materials.** Proposer will initially produce and thereafter maintain full color print advertisements in camera ready electronic format including company logos, identifying the Vendor, the Vendor's general utility for NJPA and NJPA Members, and contact information to be used by NJPA and NJPA Members in a full page, half page, and quarter page formats. These advertisements will be used in the NJPA Catalog and publications.

**5.4.2 Press releases and advertisements.** Proposer will identify a marketing plan identifying their anticipated press releases, contract announcements, advertisements in industry periodicals, or

other direct or indirect marketing activities.

**5.4.3 Proposer’s Website.** Proposer will identify how an Awarded Contract will be displayed on the Proposer’s website. An on-line shopping experience for NJPA and NJPA Members is desired when applicable and will be viewed as a value-added attribute to a Proposer’s Response.

**5.4.4 Trade Shows.** Proposer will outline their proposed involvement in the promotion of a Contract resulting from this RFP through trade shows. Vendors are encouraged to identify trade-show, and other appropriate venues, for the promotion of any such Contract. Vendors are strongly encouraged to participate in cooperation with NJPA at the following NJPA embraced trade shows:

NAEP	National Association of Education Procurement
I-ASBO	International Association of School Business Officials
NIGP	National Institute of Government Purchasing

**5.5 Proposer must** also work in cooperation with NJPA to develop a marketing strategy and provide avenues to equally market and drive sales through the Contract and program to all NJPA Members nationally. Awarded Vendor agrees to actively market in cooperation with NJPA all available equipment/products and services to current and potential NJPA Members. NJPA reserves the right to deem a proposer non-responsive or to waive an award based on an unacceptable marketing plan.

**5.6 As a part of this response,** submit a complete Marketing Plan on how you would help NJPA rollout this program to current and potential NJPA Members. NJPA requires the Vendor actively promote the Contract in cooperation with the NJPA. Vendors are advised to consider marketing efforts in the areas of 1) Website Link from Vendors website to NJPA’s website, 2) Attendance and participation with a display booth at national trade shows as agreed upon/required by NJPA, and 3) Sales team and sales training programs involving both Vendor sales management and NJPA staff. NJPA requires awarded Vendors to offer the NJPA Contract opportunity to all current and qualified NJPA Members.

**5.7 Facilitating NJPA Membership:** Proposer should express their commitment to determine the membership status of their customers whom are eligible for NJPA Membership, AND their commitment to establishing that membership.

**5.7.1** Membership information: Proposer should further express their commitment to capturing sufficient member information as is deemed necessary by NJPA to appropriately facilitate membership and certain marketing activities as agreed to by NJPA and an Awarded contractor.

**6. PROPOSAL OPENING PROCEDURE**

**6.1** Sealed and properly identified Proposer’s Responses for this RFP entitled “**POSTAGE METERS AND RELATED MAILING EQUIPMENT, SOFTWARE, ACCESSORIES AND SUPPLIES**” will be received by Gregg Meierhofer, Bids and Contracts Officer, at NJPA Offices, 202 12th Street NE, Staples, MN 56479 until the deadline for receipt of, and bid opening identified on page one of this RFP. The NJPA Director of Contracts and Marketing, or Representative from the NJPA Proposal Review Committee, will then read the Proposer’s names aloud. A summary of the responses to this RFP will be made available for public inspection in the NJPA office in Staples, MN. A letter or e-mail request is required to receive a complete RFP package. Send or communicate all requests to the attention of Gregg Meierhofer 202 12th Street Northeast Staples, MN 56479 or RFP@njpacoop.org to receive a complete copy of this RFP. Method of delivery needs to be indicated in the request; an email address is required for electronic transmission. Oral, facsimile, telephone or telegraphic Proposal Submissions or requests for this RFP are invalid and will not receive consideration. All Proposal Responses must be submitted in a sealed package. The outside of the package shall plainly identify “**POSTAGE METERS AND**

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**RELATED MAILING EQUIPMENT, SOFTWARE, ACCESSORIES AND SUPPLIES”** To avoid premature opening, it is the responsibility of the Proposer to label the Proposal Response properly.

### 7. EVALUATION OF PROPOSALS

#### A. PROPOSAL EVALUATION PROCESS

**7.1** NJPA will use a 1,000 Point Evaluation System to help determine the best overall Proposer(s) selection. Bonus points may be available for specific proposal characteristics identified such as “Green Product Certifications.”

**7.2** NJPA reserves the right to use a “Cost Scoring Evaluation” through a product comparison process of like products/services. This process will establish points for submitted price levels. See Cost Scoring Evaluation.

**7.3** NJPA shall use a final overall scoring system to include consideration for best price and cost evaluation. The total possible score is 1,000 points. NJPA reserves the right to assign any number of point awards or penalties it considers warranted if a Proposer stipulates exceptions, exclusions, or limitations of liabilities.

**7.4** To qualify for the final evaluation, a Proposer must have been deemed responsive as a result of the criteria set forth under “Proposer Responsiveness.”

**7.5** Responses will be evaluated first for responsiveness and thereafter for content. The NJPA Board of Directors will make awards to the selected Proposer(s) based on the recommendations of the Proposal Review Committee.

**7.6** The procurement activities of the NJPA Proposal Review Committee are limited to document preparation, answering Proposer questions, advertising the solicitation, distribution of this RFP upon request, conducting an evaluation and making recommendation for possible approval to NJPA Board of Directors.

#### B. PROPOSER RESPONSIVENESS

**7.7** Proposer’s Responses received after the deadline for submission will be invalid and returned to the Potential Proposer unopened.

**7.8** An essential part of the proposal evaluation process is an evaluation to qualify the Proposer being considered. All proposals must contain answers or responses to the information requested in the proposal forms. Any Proposer failing to provide the required documentation may be considered non-responsive.

**7.9** Deviations or exceptions stipulated in Proposer’s Response may result in the proposal being classified as non-responsive.

**7.10** To qualify for evaluation, a proposal must have been submitted on time and materially satisfy all mandatory requirements identified in this document. A proposal must reasonably and substantially conform to all the terms and conditions in the solicitation to be considered responsive.

**7.11** **The Proposal Review Committee shall utilize the following criteria to evaluate all proposals received. Items 1-4 constitute the test for “Level One Responsiveness” and are determined on the proposal opening date. “Level 2” responsiveness is determined through the evaluation of the remaining items listed below. These items are not arranged in order of importance and each item may encompass multiple areas of information requested.**

1. The proposal response is received prior to the deadline for submission.

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2. The proposal package was properly addressed and identified as a sealed bid with a specific opening date and time.
3. The proposal response contains the required certificate of liability insurance.
4. The proposal response contains original signatures on all documents requiring such.
5. Response's conformance to terms and conditions as described in the solicitation, including documentation.
6. Possesses qualifications as a responding Proposer that meets or exceeds those set within the solicitation.
7. Information from references and past performance information including past member approval.
8. Demonstrates that they offer the most current industry standard equipment/products and services and/or services.
9. Demonstrates financial stability and a favorable banking line of credit.
10. Demonstrates their equipment/products and services and/or services proposed meet and/or exceed industry standards accepted by educational or governmental institutions.
11. Has demonstrated market place success and their past performance exhibit an acceptable reputation.
12. Demonstrates the company possesses the background, knowledge, capacity, and ability to sell, deliver, and support equipment/products and services offered to Members.
13. Has provided documentation defining, outlining, and describing their concept of a national marketing program they will be implementing to facilitate and coordinate the cooperative activities required by an awarded Contract.
14. Has provided all of the required and applicable documentation required i.e. insurance certificates, licenses, and/or registration certificates required to do business nationally.
15. Line-Item Pricing, in approved excel format, listing of all of the proposed equipment/products and services and warranty provisions with their associated units of costs.
16. Core List selection of equipment/products and services in Line-Item Pricing format
17. Hot List Pricing equipment/products and services in a Line-Item Pricing format (where applicable).
18. Contract Pricing submitted as requested to include core list or products/services, Line-Item Pricing and/or Percentage Discount from published gov/ed price list or Catalog.

### C. PROPOSAL EVALUATION CRITERIA

**7.12** If a manufacturer or supplier chooses not to produce or supply goods and services to meet the scope of this RFP, such action will be considered sufficient cause to reduce evaluation points.

**7.13** Consideration will be given in the award based on the completion and degree of information provided regarding available products, equipment, and accessories, as well as, applicable parts of the Proposer Information and Questionnaire.

**7.14** The fact a manufacturer or supplier chooses not to produce or provide equipment products or services to meet the intent and scope of this RFP will not be considered sufficient cause to adjudge this RFP as restrictive.

**7.15** The Proposer is required to have extensive knowledge and at least three (3) years of experience with the related activities surrounding the selling of the equipment, service or related products offered.

**7.16** NJPA reserves the right to accept or reject newly formed companies solely based on information provided in the proposal and/or its own investigation of the company.

**7.17** Consideration will be given in the proposal evaluation based upon the selection, variety, technological advances, and demonstrated quality of products submitted, technological advances, and pricing. The ability of the Proposer to communicate the value of these factors and to demonstrate how the depth and breadth of their product and service offerings provide NJPA and NJPA Members with a sole

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source of responsibility within the scope of this RFP will be positively reviewed.

**7.18** Consideration will also be given to proposals demonstrating technological advances, provide increased efficiencies, expanded service and other related improvements beyond today's NJPA member's needs and applicable standards.

**7.19** Strong consideration will be given to a Proposer's past performance, distribution model, and the demonstration their ability to effectively market and service NJPA Membership nationally.

**7.20** Strong consideration will be given to the best price as it relates to the quality of the product and service. However, price is ultimately one of the factors taken into consideration in evaluation and award.

**7.21** Evaluation of a Proposer's Responses will take into consideration as a minimum response but not necessarily limited to the following:

1. Adherence to all requirements of this RFP as defined by industry standards.
2. Prior knowledge of and experience with a Proposer in terms of past performance and market place success.
3. Capability of meeting or exceeding current and future needs or requirements of NJPA and NJPA Members.
4. Evaluation of Proposer's ability to market to and provide service to all NJPA Members nationally.
5. Financial condition of the Proposer.
6. Nature and extent of company data furnished in Proposer's Response.
7. Quality of products, equipment, and services offered including value added related services.
8. History of member service to NJPA type customers.
9. Overall ability to perform sales, solutions and contract support as submitted.
10. Ability to meet service and warranty needs.
11. History of meeting shipping and delivery expectations of contracted products/ services.
12. Technology advancements and related provisions.
13. Ability to market and promote the Contract within current business practices.
14. Willingness to develop and enter into NJPA Contract and business relations.
15. Favorable bond rating and applicable industry standard licensing ability.
16. Past market place successes and brand recognition.
17. Demonstrated warranty and product/service responsibility.

**7.22** The Proposer's ability to follow the proposal preparation instructions set forth in this solicitation will also be considered to be an indicator of the Proposer's ability to follow other future instructions should they receive an award as a result of this solicitation. Any Contract between NJPA and a Proposer requires the delivery of information and data. The quality of organization and writing reflected in the proposal will be considered an indication of the quality of organization and writing which would be prevalent if a Contract was awarded. As a result, the proposal will be evaluated as a sample of data submission.

**7.23** Proposer's Dunn and Bradstreet reports- The Proposer's Dunn and Bradstreet report are requested and reviewed to get a general feel for the size, strength, and probable scope of the Proposer.

**7.24** NJPA reserves the right to reject the Proposer's Response of the apparent successful Proposer where the available evidence or information does not exhibit the ability or intent to satisfy NJPA that the potential Vendor is unable to properly carry out the terms of this RFP and potential Contract.

**7.25** NJPA shall reserve the right to reject any or all proposals. NJPA also reserves the right to reject a proposal not accompanied by required certificate of insurance, other data required by this RFP, or if a Proposer's Response is incomplete or irregular. The NJPA shall reject all proposals where there has been collusion among the Proposers.

**7.26 Overall Evaluation (FORM G)** - The NJPA Proposal Review Committee will evaluate proposal received based on a 1,000 point evaluation system. The Committee will establish both the evaluation criteria and designate the relative importance of those criteria by assigning possible scores for each category.

**7.27 Bonus Evaluation Points-** Bonus evaluation points may be awarded by the NJPA Proposal Review Committee based on criteria identified as being both “optional” and “having additional value”

#### **D. COST SCORING EVALUATION**

**7.28** NJPA reserves the right to use this process in the event the evaluation committee feels it is necessary to make a final determination.

**7.29** This process will be based on a point system with points being awarded for being low to high Proposer for each cost evaluation item selected. A “Market Basket” of identical (or substantially similar) equipment/products and services may be selected by the NJPA proposal Review Committee and the unit cost will be used as a basis for determining the point value. The “Market Basket:” will be selected by NJPA from all product categories as determined appropriate by NJPA. The low priced Proposer will receive the full point value and all other Proposers will receive points as follows: Lowest price Proposal = 5 (where there are five proposers), and inferior proposals = 4, 3, 2, 1 points each. The Total Score for each proposer will be the sum of all points earned. The result of this process shall not be the sole determination for award.

#### **E. PRODUCT TESTING**

**7.30** NJPA reserves the right to request and test equipment/products and services and/or services from the apparent successful Proposer. Prior to the award of the Contract, the apparent successful Proposer, if requested by NJPA, shall furnish current information and data regarding the Proposer’s resources, personnel, and organization within three (3) days.

#### **F. PAST PERFORMANCE INFORMATION**

**7.31** Past performance information is relevant information regarding a Proposer’s actions under previously awarded contracts to schools, local, state, and governmental agencies and non-profit agencies. It includes the Proposer’s record of conforming to specifications and standards of good workmanship. The Proposer’s history for reasonable and cooperative behavior and commitment to member satisfaction shall be under evaluation. Ultimately, Past Performance Information can be defined as the Proposer’s businesslike concern for the interests of the NJPA Member.

#### **G. WAIVER OF FORMALITIES**

**7.32** NJPA reserves the right to waive any minor formalities or irregularities in any proposal and to accept proposals, which, in its discretion and according to the law, may be in the best interest of its members.

### **8. POST AWARD OPERATING ISSUES**

#### **A. SUBSEQUENT AGREEMENTS**

**8.1 Purchase Order-** Purchase Orders for goods and services may be executed between NJPA or NJPA Members (Purchaser) and awarded Vendor(s) or Vendor’s sub-contractors pursuant to this invitation and any resulting Contract. NJPA Members are instructed to identify on the face of such Purchase orders that “This purchase order is issued pursuant to NJPA procurement contract #XXXXXXX.” A Purchase Order is

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an offer to purchase goods and services at specified prices by NJPA or NJPA Members pursuant to a Contract resulting from this RFP. Purchase Order flow and procedure will be developed jointly between NJPA and an Awarded Vendor after an award is made.

**8.2 Governing Law-** Purchase Orders, as identified above, shall be construed in accordance with, and governed by, the laws of a competent jurisdiction with respect to the purchaser. Each and every provision of law and clause required by law to be included in the Purchase Order shall be read and enforced as though it were included. If through mistake or otherwise any such provision is not included, or is not currently included, then upon application of either part the Contract shall be physically amended to make such inclusion or correction. The venue for any litigation arising out of disputes related to Purchase Order(s) shall be a court of competent jurisdiction to the Purchaser.

**8.3 Additional Terms and Conditions-** Additional terms and conditions to a Purchase Order may be proposed by NJPA, NJPA Members, or Vendors. Acceptance of these additional terms and conditions is OPTIONAL to all parties to the Purchase Order. The purpose of these additional terms and conditions is to, among other things; formerly introduce job or industry specific requirements of law such as prevailing wage legislation. Additional terms and conditions can include specific local policy requirements and standard business practices of the issuing Member. Said additional terms and conditions shall not interfere with the general purpose and intent of this RFP.

**8.4 Asset Management Contracts:** Asset Management type contracts can be initiated pursuant to a Contract resulting from this RFP at any time during the term of said Contract. The establishment of such Asset Management Contracts cannot exceed the authorized term of a Contract resulting from this RFP; however the Asset Management Contract term may extend beyond the maturity date of a Contract resulting from this RFP.

**8.5 Specialized Service Requirements-** In the event service requirements or specialized performance requirements such as e-commerce specifications, specialized delivery requirements, or other specifications and requirements not addressed in the Contract resulting from this RFP, NJPA Member and Vendor may enter into a separate, standalone agreement, apart from a Contract resulting from this RFP. Any proposed service requirements or specialized performance requirements require pre-approval by Vendor. Any separate agreement developed to address these specialized service or performance requirements is exclusively between the NJPA Member and Vendor. NJPA, its agents, Members and employees shall not be made party to any claim for breach of such agreement. Product sourcing is not considered a service. NJPA Members will need to conduct procurements for any specialized services not identified in this Contract.

**8.6 Performance Bond-** At the request of the member, a Vendor will provide all performance bonds typically and customarily required in their industry. These bonds will be issued pursuant to the requirements of Purchase Orders for goods and services. If a purchase order is cancelled for lack of a required performance bond, it shall be the recommendation of NJPA that pending Purchase Orders with all NJPA Members be considered for cancellation. Each member has the final decision on Purchase Order continuation. ANY PERFORMANCE BONDING REQUIRED BY THE MEMBER OR CUSTOMER STATE LAWS OR LOCAL POLICY IS TO BE MUTUALLY AGREED UPON AND SECURED BETWEEN THE VENDOR AND THE CUSTOMER/MEMBER.

### B. NJPA MEMBER SIGN-UP PROCEDURE

**8.7** Awarded Vendors will be responsible for familiarizing their sales and service forces with the various forms of NJPA Membership documentation and shall encourage and assist potential Members in establishing Membership

### C. REPORTING OF SALE ACTIVITY

**8.8** A report of the total gross dollar volume of all equipment/products and services purchased by NJPA

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Members as it applies to this RFP and Contract will be provided quarterly to NJPA. The form and content of this reporting will be developed by NJPA in cooperation with the Vendor to include, but not limited to, name and address of purchasing agency, amount of purchase, and a description of the items purchased.

**8.8.1 Zero sales reports:** Awarded Contractors are responsible for providing a quarterly sales report EVERY QUARTER regardless of the existence or amount of sales.

### D. AUDITS

**8.9** During the Term, Vendor will, upon not less than fourteen (14) business days' prior written request, make available to NJPA no more than once per calendar year, at Vendor's corporate offices, during normal business hours, the invoice reports and/or invoice documents from Vendor pertaining to all invoices sent by Vendor and payments made by NJPA members for all equipment/products and services purchased under this Contract. NJPA may employ an independent auditor or NJPA may choose to conduct such audit on its own behalf. Vendor shall have the right to approve the independent auditor, which approval shall not be unreasonably withheld. Upon approval and after the auditor has executed an appropriate confidentiality agreement, Vendor will permit the auditor to review the relevant Vendor documents. NJPA shall be responsible for paying the auditor's fees. The parties will make every reasonable effort to fairly and equitably resolve discrepancies to the satisfaction of both parties. Vendor agrees that the NJPA may audit their records with a reasonable notice to establish total compliance and to verify prices charged hereunder of the Contract are being met. Vendor agrees to provide verifiable documentation and tracking in a timely manner.

### E. HUB PARTNER

**8.10 Hub Partner:** Where Applicable, NJPA Members may, from time to time, request to be served in some way through a "Hub Partner" for the purposes of complying with a Law, Regulation, or Rule to which that individual NJPA Member deems to be applicable in their jurisdiction. Hub Partners may bring value to the proposed transactions through consultancy, Disadvantaged Business Entity Credits, or other considerations.

**8.11 Hub Partner Fees:** Fees, costs, or expenses from this Hub Partner levied upon a transaction resulting from this contract, shall be payable by the NJPA Member provide that:

**8.11.1** The fees, costs, or expenses levied by the Hub Vendor must be clearly itemized in the transaction. and

**8.11.2** To the extent that the he Vendor stands in the chain of title during a transaction resulting from this RFP, the documentation shall be documented to show it is "Executed for the Benefit of [NJPA Member Name]".

### F. TRADE-INS

**8.12** Where Appropriate, the value in US Dollars, of Trade-ins will be negotiated between NJPA or an NJPA Member, and an Awarded Vendor. That identified "Trade-In" value shall be credited in full against the NJPA purchase price identified in a purchase order issued pursuant to any Awarded NJPA procurement contract. The full value of the trade-in will be consideration to that purchase order.

### G. OUT OF STOCK NOTIFICATION

**8.13** Vendor shall immediately notify NJPA members upon receipt of order(s) when an out-of -stock occurs. Vendor shall inform the NJPA member regarding the anticipated date of availability for the out-of- stock item(s), and may suggest equivalent substitute(s).

- The ordering organization shall have the option of accepting the suggested equivalent substitute, or canceling the item from the order.
- Under no circumstance is Proposer permitted to make unauthorized substitutions.
- Unfilled or substituted item(s) shall be indicated on the packing list.

#### H. TERMINATION OF CONTRACT RESULTING FROM THIS RFP

**8.14** NJPA reserves the right to cancel the whole or any part of a resulting Contract due to failure by the Vendor to carry out any obligation, term or condition as described in the below procedure. Prior to any termination for cause, the NJPA will provide written notice to the Vendor, opportunity to respond and opportunity to cure according to the steps in the procedure in this Cancellation Section. Some examples of material breach are the following:

- The Vendor provides material that does not meet reasonable quality standards and is not remedied under the warranty;
- The Vendor fails to ship the products or provide the services within a reasonable amount of time;
- NJPA has reason to believe the Vendor will not or cannot perform to the requirements of the Contract and issues a request for assurance as described herein and Vendor fails to respond;
- The Vendor fails to observe any of the material terms and conditions of the Contract; and/or,
- The Vendor fails to follow the established procedure for purchase orders, invoices and/or receipt of funds as established by the NJPA and the Vendor in the Contract.
- The Vendor fails to report quarterly sales volume;
- The Vendor fails to actively market this Contract within the guidelines provided in this RFP and the expectations of NJPA.

**8.15** Each party shall follow the below procedure if the Contract is to be terminated for violations or non-performance issues:

**Step 1:** Issue a warning letter outlining the violations and/or non-performance and state the length of time (10 days) to provide a response and correct the problem(s) if reasonably possible in such time frame.

**Step 2:** Issue a letter of intent to cancel Contract, if the problem(s) is not resolved within fifty (50) days.

**Step 3:** Issue letter to cancel Contract for cause.

**8.16** Upon receipt of the written notice of concern, the Vendor shall have ten (10) business days to provide a satisfactory response to the NJPA. Failure on the part of the Vendor to reasonably address all issues of concern may result in Contract cancellation pursuant to this Section.

**8.17** Any termination shall have no effect on purchases that are in progress at the time the cancellation is received by the NJPA. The NJPA reserves the right to cancel the Contract immediately for convenience, without penalty or recourse, in the event the Vendor is not responsive concerning the remedy, the performance, or the violation issue within the time frame, completely or in part.

**8.18** NJPA reserves the right to cancel or suspend the use of any Contract resulting from this RFP if the Vendor files for bankruptcy protection or is acquired by an independent third party. Prior to commencing services under this Contract, the Proposer/Vendor must furnish NJPA certification from insurer(s) proving level of coverage usual and customary to the specific industry. The coverage is to be maintained in full effect during the Contract period. Vendor must be willing to provide, upon request, certification of insurance to any NJPA member or member using this Contract.

**8.19** Either party may execute Contract termination without cause with a required 60-day written notice of termination. Termination of Contract shall not relieve either party of financial, product or service obligations incurred or accrued prior to termination.

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**8.20** NJPA may cancel any Contract resulting from this solicitation without any further obligation if any NJPA employee significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the NJPA is found to be in collusion with any Proposer to this RFP for their personal gain. Such cancellation shall be effective upon written notice from the NJPA or a later date if so designated in the notice given. A terminated Contract shall not relieve either party of financial, product or service obligations due to participating member or NJPA.

**8.21** Events of Automatic termination to include:

- Vendor's or NJPA's voluntary or involuntary bankruptcy or insolvency;
- Vendor's failure to remedy a material breach of a Contract resulting from this RFP within sixty (60) days of receipt of notice from NJPA specifying in reasonable detail the nature of such breach; and/or,
- Receipt of written information from any authorized agency finding activities of Vendors engaged in pursuant to a Contract resulting from this RFP to be in violation of the law.

## 9. GENERAL TERMS AND CONDITIONS

### A. ADVERTISEMENT OF RFP

**9.1** As a policy, NJPA shall advertise this solicitation 1) for two consecutive weeks in both the print and on-line editions of the MINNEAPOLIS STAR TRIBUNE, 2) it shall be placed on a national wire service by the MINNEAPOLIS STAR TRIBUNE, 3) it shall be posted on NJPA's website, 4) it shall be posted to the website of "Noticetobidders.com," and 5) it shall be posted to other third-party websites deemed appropriate by NJPA. Other third party advertisers may include Onvia and Bidsync,

### B. ADVERTISING OF A CONTRACT RESULTING FROM THIS RFP

**9.2** Proposer/Vendor shall not advertise or publish information concerning this Contract prior to the award being announced by the NJPA. Once the award is made, a Vendor is expected to advertise the awarded Contract to both current and potential NJPA Members.

### C. APPLICABLE LAW

**9.3 NJPA Compliance with Minnesota Procurement Law:** Contracts awarded through NJPA are intended to meet the procurement laws of all states and NJPA will exhaust all avenues to comply with as many state laws as possible. It is the responsibility of each participating NJPA member to insure to their satisfaction that these laws are satisfied. An individual NJPA member using these contracts is deemed by their own accord to be in compliance with proposal regulations. NJPA encourages the awarded Vendor to assist NJPA and the NJPA member in this research to the benefit of all involved.

**9.4 Governing Law with respect to delivery and acceptance:** All applicable portions of the Minnesota Uniform Commercial Code, all other applicable Minnesota laws, and the applicable laws and rules of delivery and inspection of the Federal Acquisition Regulations (FAR) laws shall govern contracts resulting from this solicitation.

**9.5 Jurisdiction:** Any claims pertaining to this RFP and any resulting Contract that develop between NJPA and any other party must be brought forth only in courts in Todd County in the State of Minnesota.

**9.5.1** Purchase Orders issued pursuant to a contract resulting from this solicitation shall be construed in accordance with, and governed by, the laws of a competent jurisdiction with respect to the purchaser.

**9.6 Vendor Compliance with applicable law:** Vendor(s) shall comply with all federal, state, or local

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laws applicable to or pertaining to the acquisition, manufacturer, or sale of the equipment/products and services resulting from this RFP.

**9.7** All applicable laws, whether or not herein contained, shall be included by this reference. It shall be Proposer's/Vendor's responsibility to determine the applicability and requirements of any such laws and to abide by them.

**9.8 Indemnity:** Each party agrees it will be responsible for its own acts and the result thereof to the extent authorized by law and shall not be responsible for the acts of the other party and the results thereof. NJPA's liability shall be governed by the provisions of the Minnesota Tort Claims Act, Minnesota Statutes, Section §3.736, and other applicable law.

**9.9 Prevailing Wage:** It shall be the responsibility of the Vendor to comply, when applicable, with prevailing wage legislation in effect in the jurisdiction of the purchaser (NJPA or NJPA Member). It shall be the responsibility of the Vendor to monitor the prevailing wage rates as established by the appropriate department of labor for any increase in rates during the term of this Contract and adjust wage rates accordingly.

**9.10 Patent and Copyright infringement:** If an article sold and delivered to NJPA or NJPA Members hereunder shall be protected by any applicable patent or copyright, the Vendor agrees to indemnify and save harmless NJPA and NJPA Members against any and all suits, claims, judgments, and costs instituted or recovered against it by any person whoseever on account of the use or sale of such articles by NJPA or NJPA Members in violation or right under such patent or copyright.

### D. ASSIGNMENT OF CONTRACT

**9.11** No right or interest in this Contract shall be assigned or transferred by the Proposer/Vendor without prior written permission by the NJPA. No delegation of any duty of the Proposer/Vendor shall be made without prior written permission of the NJPA. The NJPA shall notify the members within fifteen (15) days of receipt of written notice by the Vendor. After issuance the awarded Contract may be reassigned to a comparable Vendor at the discretion of NJPA.

**9.12** If the original Vendor sells or transfers all assets or the entire portion of the assets used to perform this Contract, a successor in interest must guarantee to perform all obligations under this Contract. NJPA reserves the right to reject the acquiring person or entity as a Vendor. A simple change of name agreement will not change the contractual obligations of the Vendor.

### E. PROPOSERS LIST

**9.13** NJPA will not maintain or communicate to a proposers list. All interested proposers must respond to the solicitation as a result of one of the methods of proposal advertisements listed above. Because of the scope of the potential Members and national Vendors, NJPA has determined this to be the best method of fairly soliciting proposals.

### F. CAPTIONS, HEADINGS, AND ILLUSTRATIONS

**9.14** The captions, illustrations, headings, and subheadings in this solicitation are for convenience and ease of understanding and in no way define or limit the scope or intent of this request.

### G. CONFIDENTIAL INFORMATION

**9.15** If a Proposer wishes to withhold any part of its proposal from public inspection, then a statement advising the NJPA of this fact shall accompany the submission. NJPA shall review the statement, from time to time, to determine whether the information can be legally withheld. If NJPA determines at any point, that disclosure the information submitted is required by law, NJPA reserves the right to make that

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disclosure.

### H. DATA PRIVACY

**9.16** Proposer agrees to abide by all applicable STATE and FEDERAL laws and regulations including HIPPA concerning the handling and disclosure of private and confidential information regarding individuals. Proposer agrees to hold NJPA harmless from its unlawful disclosure and/or use of private/confidential information.

### I. ENTIRE AGREEMENT

**9.17** The Contract, as defined herein, shall constitute the entire understanding between the parties to that Contract.

**9.16** A Contract resulting from this RFP is formed when the NJPA Board of Directors approves and signs the applicable Acceptance and Award Form document (see Form D).

### J. FORCE MAJEURE

**9.18** Except for payments of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented due to force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence including, but not limited to, the following: acts of God, acts of the public enemy, war, riots, strikes, mobilization, labor disputes, civil disorders, fire, flood, snow, earthquakes, tornadoes or violent wind, tsunamis, wind shears, squalls, Chinooks, blizzards, hail storms, volcanic eruptions, meteor strikes, famine, sink holes, avalanches, lockouts, injunctions-intervention-acts, terrorist events or failures or refusals to act by government authority and/or other similar occurrences where such party is unable to prevent by exercising reasonable diligence. The force majeure shall be deemed to commence when the party declaring force majeure notifies the other party of the existence of the force majeure and shall be deemed to continue as long as the results or effects of the force majeure prevent the party from resuming performance in accordance with a Contract resulting from this RFP. Force majeure shall not include late deliveries of equipment/products and services caused by congestion at a manufacturer's plant or elsewhere, an oversold condition of the market, inefficiencies, or other similar occurrences. If either party is delayed at any time by force majeure, then the delayed party shall notify the other party of such delay within forty-eight (48) hours.

### K. GRATUITIES

**9.19** NJPA may cancel this Contract by written notice if it is found that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Proposer/Vendor or any agent or representative of the Proposer/Vendor, to any employee of the NJPA are deemed to be excessive with a view toward securing a contract or with respect to the performance of this Contract.

### L. HAZARDOUS SUBSTANCES

**9.20** Proper Material Safety Data Sheets (MSDS), in compliance with OSHA's Hazard Communication Standard, must be provided by the Vendor to NJPA or NJPA Member at the time of purchase.

### M. LEGAL REMEDIES

**9.21** All claims and controversies between NJPA and Vendor shall be subject to the laws of the State of Minnesota and are to be resolved in Todd County, Minnesota, the county in which NJPA is domiciled.

### N. LICENSES

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**9.22** Proposer/Vendor shall maintain a current status on all required federal, state, and local licenses, bonds and permits required for the operation of the business conducted by the Proposer/Vendor.

**9.23** All responding Proposers must be licensed (where required) and have the authority to sell and distribute offered equipment/products and services to NJPA and NJPA Members in all states. Documentation of said licenses and authorities, if applicable, is requested.

### O. MATERIAL SUPPLIERS AND SUB-CONTRACTORS

**9.24** The apparent successful Vendor shall be required to supply the names and addresses of sourcing suppliers and sub-contractors when requested.

**9.25** Awarded Vendors under this RFP will be the sole source of responsibility for transactions originating that award. The Awarded Vendor is solely responsible for equipment/products and services and services provided by third party sourcing or service providers.

### P. NON-WAIVER OF RIGHTS

**9.26** No failure of either party to exercise any power given to it hereunder, nor to insistence upon strict compliance by the other party with its obligations hereunder, and no custom or practice of the parties at variance with the terms hereof, nor any payment under a Contract resulting from this RFP shall constitute a waiver of either party's right to demand exact compliance with the terms hereof. Failure by NJPA to take action or assert any right hereunder shall not be deemed as waiver of such right.

### Q. PROTESTS OF AWARDS MADE

**9.27** Protests shall be filed with the NJPA's Executive Director and shall be resolved in accordance with appropriate state statutes of Minnesota. Protests will only be accepted from Proposers. A protest must be in writing and filed with NJPA. A protest of an award or proposed award must be filed within ten (10) days after the public notice or announcement of the award to the potential protester. No protest shall lie for a claim that the selected Proposer is not a responsible Proposer. A protest must include:

1. The name, address and telephone number of the protester;
2. The original signature of the protester or its representative (you must document the authority of the Representative);
3. Identification of the solicitation by RFP number;
4. Identification of the statute or procedure that is alleged to have been violated;
5. A precise statement of the relevant facts;
6. Identification of the issues to be resolved;
7. The aggrieved party's argument and supporting documentation;
8. The aggrieved party's statement of potential financial damages;
9. A protest bond in the name of NJPA and in the amount of 10% of the aggrieved party's statement of potential financial damages.

### R. PROVISIONS REQUIRED BY LAW

**9.28** Proposer/Vendor agrees in the performance of a Contract resulting from this RFP, it has complied with or will comply with all applicable statutes, laws, regulations, and orders of the United States and any State thereof.

### S. PUBLIC RECORD

**9.29** All proposals submitted to this invitation shall become the property of the NJPA and will become a matter of public record and available for review subsequent to the award notification. Proposals may be viewed by appointment at the NJPA offices Monday through Friday from 8:30 a.m. to 3:30 p.m.

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### T. RIGHT TO ASSURANCE

**9.30** Whenever one party to this Contract has reason to question the other party's intent to perform, he/she may demand a written assurance of this intent. In the event a demand is made and no written assurance is given, the demanding party may treat this failure as an anticipatory repudiation of the Contract provided, however, in order to be effective, any such demand shall be addressed to the authorized signer for the party from whom the assurance is being sought, and sent via U.S. Postal Service, certified mail, return receipt requested or national overnight delivery service with proof of delivery.

### U. SUSPENSION OR DISBARMENT STATUS

**9.31** If within the past five (5) years, any firm, business, person or Proposer submitting a proposal has been lawfully precluded from participating in any public procurement activity with a federal, state or local government, the Proposer must include a letter with its response setting forth the name and address of the public procurement unit, the effective date of the suspension or debarment, the duration of the suspension or debarment and the relevant circumstances relating to the suspension or debarment. Any failure to supply such a letter or to disclose pertinent information may result in the cancellation of any Contract. By signing the proposal affidavit, the Proposer certifies that no current suspension or debarment exists.

### V. HUMAN RIGHTS CERTIFICATE (Forms H&I)

**9.32** If Proposer is not domiciled in Minnesota and has NOT on any single working day in the past year, employed more than 40 employees in the State of Minnesota, Proposer must provide a statement to that effect.

**9.33** If Proposer is not domiciled in Minnesota and has on any single working day in the past year, employed more than 40 employees in the State of Minnesota, Proposer must document their application for a Human Rights Certificate issued by the Minnesota Commissioner of Human Rights. Proposer must also document receipt by the Minnesota Commissioner of Human Rights of that application and the Proposer's affirmative action plan for the employment of minority persons, women, and qualified disabled individuals.

**9.34** If Proposer is domiciled in Minnesota and has on any single working day in the past year, employed more than 40 employees in the State of Minnesota, Proposer must provide a copy of their "Certificate of Compliance" from the Commissioner of the Minnesota Department of Human Rights.

### W. SEVERABILITY

**9.35** In the event that any of the terms of a Contract resulting from this RFP are in conflict with any rule, law, statutory provision or are otherwise unenforceable under the laws or regulations of any government or subdivision thereof, such terms shall be deemed stricken from a Contract resulting from this RFP, but such invalidity or unenforceability shall not invalidate any of the other terms of a Contract resulting from this RFP.

### X. RELATIONSHIP OF PARTIES

**9.36** No Contract resulting from this RFP shall be considered a contract of employment. The relationship between NJPA and an Awarded Contractor is one of independent contractors each free to exercise judgment and discretion with regard to the conduct of their respective businesses. The parties do not intend the proposed Contract to create, or is to be construed as creating a partnership, joint venture, master-servant, principal-agent, or any other relationship. Except as provided elsewhere in this RFP, neither party may be held liable for acts of omission or commission of the other party and neither party is authorized or has the power to obligate the other party by contract, agreement, warranty, representation or otherwise in any manner whatsoever except as may be expressly provided herein.



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## PROPOSER QUESTIONNAIRE

### Form A

Proposer Name: \_\_\_\_\_

Questionnaire completed by: \_\_\_\_\_

Please provide an answer to all questions below and address all requests made in this RFP. Please use the Microsoft Word/Excel document version of this questionnaire to respond to the questions contained herein. Please provide your answer to each question indented below the question. Please supply any applicable supporting information and documentation you feel appropriate in addition to answers entered to the Word document. All information must be typed, organized, and easily understood by evaluators.

### Company Information

- 1) Why did you respond to this RFP?
- 2) Provide the full legal name, address, tax identifications number, and telephone number for your business.
- 3) Does your company name match the name identified on the Dunn and Bradstreet report? If no, why not?
- 4) Provide a brief history of your company that includes its goals and philosophy.
- 5) Provide profiles and an organizational chart for key sales and marketing executives of your company that will oversee the implementation and operation of a Contract resulting from this RFP.
- 6) How long has your company been in the **POSTAGE METERS AND RELATED MAILING EQUIPMENT, SOFTWARE, ACCESSORIES AND SUPPLIES**, industry?
- 7) Is your organization best described as a manufacturer or a distributor/dealer/re-seller for a manufacturer of the products and services being proposed?
  - a) If the Proposer is best described as a re-seller, manufacturer aggregate, or distributor, please provide evidence of your authorization as a dealer/re-seller/manufacturer aggregate for the manufacturer of the products you are proposing.
  - b) If the Proposer is best described as a manufacturer, please describe your relationship with your sales/service force and/or Dealer Network in delivering the products and services proposed. Are these people your employees, or the employees of a third party?
- 8) Please provide a Dunn and Bradstreet (not more than six months old), your bond rating, and/or a credit reference from your bank.
- 9) Provide a discussion of licenses and certifications both required to be held, and actually held by your organization in pursuit of the commerce contemplated by this RFP.
- 10) Provide a discussion of licenses and certifications both required to be held, and actually held by third parties and sub-contractors to your organization in pursuit of the commerce contemplated by this RFP. If not applicable, please respond with "Not Applicable."
- 11) Provide all "Suspension or Disbarment" information required herein.

### Industry-Marketplace Successes

- 12) List and document recent industry awards and recognition.
- 13) Supply three references/testimonials from customers similar to NJPA Members. Please include the customer's name, contact, and phone number.
- 14) Provide names and addresses of the top five (5) governmental or education customers and dollar volumes from the past year.
- 15) Provide documentation indicating the total dollar volume for each of your sales to government, education, and non-profit agencies for the last three (3) fiscal years.

### Proposer's ability to sell and service nationwide.

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- 16) Please describe your **sales force** in terms of numbers, geographic dispersion, and the proportion of their attention focused on the sale of the equipment/products and services contemplated in this RFP? a) Are these individuals your employees, or are they employees of a third party?
- 17) Please describe your **service force** in terms of numbers, geographic dispersion, and the proportion of their attention focused on the sale of the equipment/products and services contemplated in this RFP? a) Are these individuals your employees, or are they employees of a third party?
- 18) Describe in detail your customer service program regarding process and procedure. Please include, where appropriate, response time commitments.
- 19) Identify any geographic areas or NJPA market segments of the United States you will **NOT** be serving through the proposed contract.
- 20) Identify any of NJPA Member segments you will NOT be serving? (Government, Education, Non-profit)

### **Marketing Plan**

- 21) Describe your training program for both greet-the-public and sales management levels relating to a NJPA award.
- 22) Describe your general marketing program strategy to promote the proposed Contract nationally.
- 23) Describe your marketing material, and overall marketing ability, relating to promoting this type of partnership and contract opportunity. As much as possible, please send marketing materials in electronic format only to save paper.
- 24) Describe your use of technology and the internet to provide marketing and product awareness.
- 25) Describe your perception of NJPA's role in marketing the partnership and your products/services.
- 26) Describe the unique quality of the equipment/products and services in your proposal in relationship to others available in the market.
- 27) Describe your organizations Senior Management level commitment with regards to promoting, supporting and managing a resultant NJPA awarded contract

### **Value Added Attributes**

- 28) Describe any training programs available as options for members.
- 29) Describe technological advances your proposal equipment/products and services offer.
- 30) Describe your "Green" program as it relates to your company, your products, and your recycling program, including a list of all green products accompanied by the certifying agency for each.
- 31) Describe any Women or Minority Business Entity (WMBE) or Small Business Entity (SBE) accreditations of your organization directly involved in a Contract resulting from this RFP.
- 32) Identify any other unique or custom value added attributes.
- 33) Identify any service contract options included in the proposed price, or offered as a proposed option, for the products or services being offered.
- 34) Identify your ability and willingness to service Canada specifically and internationally in general.
- 35) Describe any unique distribution method employed in your proposal.

### **Payment Terms and Financing Options**

- 36) Identify your payment terms if applicable. (Net 30, etc.)
- 37) Identify any applicable leasing or other financing options as defined herein.
- 38) Briefly describe your proposed order process for this proposal and contract award. (Note: order process may be modified or refined during an NJPA member's final Contract phase process).

### **Warranty**

- 39) Describe, in detail, your Warranty Program including conditions to qualify, claims procedure, and overall structure.
- 40) Do all warranties cover all material and labor?
- 41) Do warranties impose usage limit restrictions?
- 42) Do warranties cover the technicians travel time to perform warranty repairs?
- 43) Please list any other limitations or circumstances that would not be covered under your warranty.
- 44) Please list any geographic regions of the United States for which you cannot provide a certified technician to perform

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warranty repairs. How do NJPA Members in these regions receive warranty work?

### Other Cooperative Procurement Contracts Held

- 45) Identify all cooperative government or education procurement contracts which are marketed in more than one state held or utilized by the Proposer.
- 46) Identify all government or state procurement contracts held or utilized by the Proposer with any State of the United States.
- 47) Identify any GSA Contracts held or utilized by the Proposer.
- 48) If you are awarded the NJPA contract, are there any market segments (e.g., higher education, county governments, etc.) or geographical markets where the NJPA contract will not be your primary contract purchasing vehicle? If so, please identify those markets and which cooperative purchasing agreement will be your primary vehicle.

### Equipment/products and services and Pricing

- 49) Provide a general narrative description of the equipment/products and services and services you are offering in your proposal.
- 50) Provide a general narrative description of your pricing model identifying how the model works (line item and/or percentage discount).
- 51) Propose a strategy, process, and specific method of facilitating “Sourced Goods” solution as defined herein.
- 52) Provide an overall statement of method of pricing for individual line items, catalogs and category pricing with regard to all equipment/products and services and being proposed. Provide a SKU number for each item being proposed.
- 53) Provide a “CORE LIST” of equipment/products and services(as anticipated and defined by Proposer to meet or exceed the NJPA Member’s needs) as a separate and named spreadsheet. Include special pricing, if any, on these items.
- 54) Provide, if any, your volume rebate programs
- 55) Identify any Total Cost of Acquisition (as defined herein) cost(s) which is **NOT** included “Pricing” submitted with your proposal response. Identify to whom these items are payable and their relationship to Proposer.
- 56) As an important part of the evaluation of your offer, you must indicate the level of pricing you are offering.  
Prices offered in this proposal are:
  - \_\_\_\_\_ a. The same as typically offered to an individual municipality or school district.
  - \_\_\_\_\_ b. The same as typically offered to cooperative procurement organizations or state purchasing departments.
  - \_\_\_\_\_ c. Better than typically offered to cooperative procurement organizations or state purchasing departments.(Your proposal will be considered “Non-Responsive” if this question is not answered.)
- 57) Do you offer quantity or volume discounts? \_\_\_\_\_ YES \_\_\_\_\_ NO Outline guidelines and program.
- 58) Describe your shipping, exchange and return program(s) and policy(s). Also specifically identify those programs as they relate to Alaska and Hawaii.
- 59) Identify the Proposer’s proposal for an administrative fee payable to NJPA for facilitation and promotion of the Contract opportunity invited here. This fee should be calculated as a percentage of Contract sales.

**Form B**

**PROPOSER INFORMATION**

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Toll Free Number: \_\_\_\_\_ E-mail: \_\_\_\_\_

Web site: \_\_\_\_\_

VOIDS sometimes exist between management (those who respond to RFPs) and sales staff (those who contact NJPA Members) that result in communication problems. Due to this fact, provide the names of your key sales people, phone numbers, and geographic territories for which they are responsible

**COMPANY PERSONNEL CONTACTS**

Contract Manager:

\_\_\_\_\_

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

Name: \_\_\_\_\_ Title: \_\_\_\_\_

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



**Contract Award  
RFP #043012**

**FORM D**

**POSTAGE METERS AND RELATED MAILING EQUIPMENT, SOFTWARE, ACCESSORIES AND SUPPLIES,**

**Proposal Offering (To be completed Only by Proposer)**

In compliance with the Request for proposal (RFP) for POSTAGE METERS AND RELATED MAILING EQUIPMENT, SOFTWARE, ACCESSORIES AND SUPPLIES, the undersigned warrants that I/we have examined this RFP and, being familiar with all of the instructions, terms and conditions, general specifications, expectations, technical specifications, service expectations and any special terms, do hereby offer and agree to furnish the defined equipment/products and services and services in compliance with all terms, conditions of this RFP, any applicable amendments of this RFP, and all Proposer's Response documentation. Proposer further understands they are the sole offeror herein and that the performance of any sub-contractors employed by the Proposer in fulfillment of this offer is the sole responsibility of the Proposer.

Company Name: \_\_\_\_\_ Date: \_\_\_\_\_

Company Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Title: \_\_\_\_\_

Authorized Signature (ink only): \_\_\_\_\_  
(Name printed or typed)

**Contract Acceptance and Award (To be completed only by NJPA)**

Your proposal offering is hereby accepted and awarded. As an awarded Proposer, you are now bound to provide the defined goods and services contained in your proposal offering according to all terms, conditions, and pricing set forth in this RFP, any amendments to this RFP, and the Proposer's Response. The effective date of the Contract be \_\_\_\_\_, \_\_\_\_\_ and continue for four years thereafter AND which is subject to annual renewal at the option of both parties.

**National Joint Powers Alliance® (NJPA)**

NJPA Authorized signature: \_\_\_\_\_  
(Name printed or typed)

Title: \_\_\_\_\_Executive Director NJPA\_\_\_\_\_

Awarded this \_\_\_\_\_ day of \_\_\_\_\_ **Contract Number # 043012**

NJPA Authorized signature: \_\_\_\_\_  
(Name printed or typed)

Title: \_\_\_\_\_

Executed this \_\_\_\_\_ day of \_\_\_\_\_ **Contract Number # 043012**

**PROPOSER ASSURANCE OF COMPLIANCE**

**Form E**

**Proposal Affidavit Signature Page**

**PROPOSER'S AFFIDAVIT**

The undersigned, representing the persons, firms and corporations joining in the submission of the foregoing proposal (such persons, firms and corporations hereinafter being referred to as the "Proposer"), being duly sworn on his/her oath, states to the best of his/her belief and knowledge:

1. The undersigned certifies the Proposer is submitting their proposal under their true and correct name, the Proposer has been properly originated and legally exists in good standing in its state of residence, that the Proposer possesses, or will possess prior to the delivery of any goods and services, all applicable licenses necessary for such delivery, and that they are authorized to act on behalf of, and encumber the "Proposer" in this Contract, and
2. To the best of my knowledge, no Proposer or Potential Proposer, nor any person duly representing the same, has directly or indirectly entered into any agreement or arrangement with any other Proposers, Potential Proposers, any official or employee of the NJPA, or any person, firm or corporation under contract with the NJPA in an effort to influence either the offering or non-offering of certain prices, terms, and conditions relating to this RFP which tends to, or does, lessen or destroy free competition in the letting of the Contract sought for by this RFP, and
3. The Proposer or any person on his/her behalf, has not agreed, connived or colluded to produce a deceptive show of competition in the manner of the proposal or award of the referenced contract, and
4. Neither I, the Proposer, nor, any officer, director, partner, member or associate of the Proposer, nor any of its employees directly involved in obtaining contracts with the NJPA or any subdivision of the NJPA, has been convicted of false pretenses, attempted false pretenses or conspiracy to commit false pretenses, bribery, attempted bribery or conspiracy to bribe under the laws of any state or federal government for acts or omissions after January 1, 1985, and
5. The Proposer has examined and understands the terms, conditions, scope, contract opportunity, specifications request and other documents of this solicitation and that any and all exceptions have been noted in writing and have been included with the proposal submittal, and
6. If awarded a contract, the Proposer will provide the equipment/products and services and/or services to qualifying members of the NJPA in accordance with the terms, conditions, scope of this RFP, Proposer offered specifications and other documents of this solicitation, and
7. The undersigned, being familiar with expectations and specifications request outlined in this RFP under consideration, hereby proposes to deliver through valid service request, Purchase Orders or forms for NJPA Members per this RFP, only new, unused and first quality equipment/products and services and services to designated NJPA Members, and
8. The Proposer has carefully checked the accuracy of all items and listed total price per item in this proposal. In addition, the Proposer accepts all general terms and conditions of this RFP, including all responsibilities of commitment and delivery of services as outlined, and
9. In submitting this proposal, it is understood that the right is reserved by the NJPA to reject any or all proposals and it is agreed by all parties that this proposal may not be withdrawn during a period of 90 days from the date proposals were opened regarding this RFP, and
10. The Proposer certifies that in performing this Contract they will comply with all applicable provisions of the federal, state, and local laws, regulations, rules, and orders, and

**RFP 031212**

11. If Proposer has more than 40 employees in the state in which their principal place of business is located, Proposer hereby certifies their compliance with federal affirmative action requirements.

Company Name: \_\_\_\_\_

Contact Person for Questions: \_\_\_\_\_ Phone: \_\_\_\_\_  
(Must be individual who is responsible for filling out this Proposer's Response form)

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Telephone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

Authorized Name (typed): \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Notarized**

Subscribed and sworn to before me this \_\_\_\_\_ the day of \_\_\_\_\_, 20\_\_\_\_\_

Notary Public in and for the County of \_\_\_\_\_ State of \_\_\_\_\_

My commission expires: \_\_\_\_\_

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

Evaluation for: \_\_\_\_\_

For the Proposed Subject **POSTAGE METERS AND RELATED MAILING EQUIPMENT, SOFTWARE, ACCESSORIES AND SUPPLIES,**

	Available Points	Points Awarded
Conformance to terms and conditions to include documentation	75	
Pricing	300	
Industry and Marketplace Successes	50	
Bidder's Ability to Sell and Service Contract Nationally	100	
Bidder's Marketing Plan	75	
Value Added Attributes	75	
Invoicing Payment Terms and Financing Options	25	
Warranty Coverages and Information.	100	
Selection and Variety of Products and Services Offered	200	
<b>Total Points</b>	<b>1000</b>	<b>0</b>
Bonus Points awarded for:		
Bidders "Green" characteristics	50	
Bidders Dissadvantaged Business Entity Characteristics	50	
<b>Overall Evaluation Points</b>	<b>1100</b>	<b>0</b>

Proposed

Reviewed by: \_\_\_\_\_ Its \_\_\_\_\_

\_\_\_\_\_ Its \_\_\_\_\_

**FORM H State Of Minnesota – Affirmative Action Certification**

**If your response to this solicitation is or could be in excess of \$100,000**, complete the information requested below to determine whether you are subject to the Minnesota Human Rights Act (Minnesota Statutes 363A.36) certification requirement, and to provide documentation of compliance if necessary. **It is your sole responsibility to provide this information and—if required—to apply for Human Rights certification prior to the due date and time of the proposal or proposal and to obtain Human Rights certification prior to the execution of the contract. The State of Minnesota is under no obligation to delay proceeding with a contract until a company receives Human Rights certification BOX A – For companies which have employed more than 40 full-time employees within Minnesota on any single working day during the previous 12 months. All other companies proceed to BOX B.**

Your response will be rejected unless your business:

has a current Certificate of Compliance issued by the Minnesota Department of Human Rights (MDHR)

–or–

has submitted an affirmative action plan to the MDHR, which the Department received prior to the date and time the responses are due.

Check one of the following statements if you have employed more than 40 full-time employees in Minnesota on any single working day during the previous 12 months:

- We have a current Certificate of Compliance issued by the MDHR. **Proceed to BOX C. Include a copy of your certificate with your response.**
- We do not have a current Certificate of Compliance. However, we submitted an Affirmative Action Plan to the MDHR for approval, which the Department received on \_\_\_\_\_ (date). [If the date is the same as the response due date, indicate the time your plan was received: \_\_\_\_\_ (time). **Proceed to BOX C.**
- We do not have a Certificate of Compliance, nor has the MDHR received an Affirmative Action Plan from our company. **We acknowledge that our response will be rejected. Proceed to BOX C. Contact the Minnesota Department of Human Rights for assistance.** (See below for contact information.)

**Please note:** Certificates of Compliance must be issued by the Minnesota Department of Human Rights. Affirmative Action Plans approved by the Federal government, a county, or a municipality must still be received, reviewed, and approved by the Minnesota Department of Human Rights before a certificate can be issued.

**BOX B – For those companies not described in BOX A**

Check below.

- We have not employed more than 40 full-time employees on any single working day in Minnesota within the previous 12 months. **Proceed to BOX C.**

**BOX C – For all companies**

By signing this statement, you certify that the information provided is accurate and that you are authorized to sign on behalf of the responder. You also certify that you are in compliance with federal affirmative action requirements that may apply to your company. (These requirements are generally triggered only by participating as a prime or subcontractor on federal projects or contracts. Contractors are alerted to these requirements by the federal government.)

Name of Company: \_\_\_ Date \_\_\_\_\_

Authorized Signature: \_ Telephone number: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_

**For assistance with this form, contact:**

Minnesota Department of Human Rights, Compliance Services Section

Mail: 190 East 5<sup>th</sup> St., Suite 700 St. Paul, MN 55101

TC Metro: (651) 296-5663

Toll Free: 800-657-3704

Web: www.humanrights.state.mn.us

Fax: (651) 296-9042

TTY: (651) 296-1283

**Form I**

**State of Minnesota — Immigration Status Certification**

By order of the Governor’s Executive Order 08-01, vendors and subcontractors **MUST** certify compliance with the Immigration Reform and Control Act of 1986 (8 U.S.C. 1101 et seq.) and certify use of the *E-Verify* system established by the Department of Homeland Security.

*E-Verify* program information can be found at <http://www.dhs.gov/ximgtn/programs>.

If any response to a solicitation is or could be in excess of \$50,000, vendors and subcontractors must certify compliance with items 1 and 2 below. In addition, prior to the delivery of the product or initiation of services, vendors **MUST** obtain this certification from all subcontractors who will participate in the performance of the contract. All subcontractor certifications must be kept on file with the contract vendor and made available to the state upon request.

<p>1. The company shown below is in compliance with the Immigration Reform and Control Act of 1986 in relation to all employees performing work in the United States and does not knowingly employ persons in violation of the United States immigration laws. The company shown below will obtain this certification from all subcontractors who will participate in the performance of this contract and maintain subcontractor certifications for inspection by the state if such inspection is requested; and</p>	
<p>2. By the date of the delivery of the product and/or performance of services, the company shown below will have implemented or will be in the process of implementing the <i>E-Verify</i> program for all newly hired employees in the United States who will perform work on behalf of the State of Minnesota.</p>	
<p><b>I certify that the company shown below is in compliance with items 1 and 2 above and that I am authorized to sign on its behalf.</b></p>	
Name of Company: _____	Date: _____
Authorized Signature: _____	Telephone Number: _____
Printed Name: _____	Title: _____

If the contract vendor and/or the subcontractors are not in compliance with the Immigration Reform and Control Act, or knowingly employ persons in violation of the United States immigration laws, or have not begun or implemented the *E-Verify* program for all newly hired employees in support of the contract, the state reserves the right to determine what action it may take. This action could include, but would not be limited to cancellation of the contract, and/or suspending or debaring the contract vendor from state purchasing.

**For assistance with the *E-Verify* Program**

Contact the National Customer Service Center (NCSC) at **1-800-375-5283** (TTY 1-800-767-1833).

**For assistance with this form, contact:**

Mail: 112 Administration Bldg, 50 Sherburne Ave. St. Paul, MN 55155

E-mail: [MMDHelp.Line@state.mn.us](mailto:MMDHelp.Line@state.mn.us)

Telephone: 651.296.2600

Persons with a hearing or speech disability may contact us by dialing 711 or 1.800.627.3529

## RFP 031212

### Pre-submission Checklist

- Have you read and understood the RFP?
- Have you attended the Pre-Bid Conference for this RFP?
- Have you completed the questionnaire (Form A) to the best of your ability?
- Have you submitted pricing for all of the goods and services you offer within the scope of this RFP?
- Have you submitted a “Sourced Goods Multiplier”?
- Have you packaged your bid submission identifying conspicuously “Competitive Bid Enclosed, Please hold for public opening XX-XX-XXX”.
- Have you sent your package in sufficient time for physical delivery at 202 12th ST NE Staples, MN 56479 will occur prior to the deadline for delivery?
- Have you submitted original completed and executed forms C,D,E,H, and I from this RFP?
- Have you submitted verification of liability insurance with the coverage and limits required in the RFP?
- Have you provided an electronic copy (saved on a CD or flash drive) of your **entire** proposal including, but not limited to, Forms A, B, C, D, E, H, and I in your proposal?

#### Contents of your bid response:

- **Original executed forms A (signature page only), B, C, D, E, H & I (complete documents).**
- **Electronic submission of proposal forms A, B, C, D, E, H & I (CD or flash drive).**
- **Certificate of Insurance (demonstration of insurability)**