

**STATE OF TEXAS
TEXAS COMPTROLLER OF PUBLIC ACCOUNTS
COOPERATIVE CONTRACT PARTICIPATION AGREEMENT NO: 985L1-1969**

THIS CONTRACT is entered into by and between the Texas Comptroller of Public Accounts (CPA), an agency of the State of Texas, through its Statewide Procurement Division located at 1711 San Jacinto Blvd., Austin, Texas 78774 and Pitney Bowes Inc. (“Contractor”) with its principal place of business located at 3001 Summer Street, Stamford, CT 06926.

This Contract is effective as of the date of signature by CPA after having first been signed by Contractor.

1. BACKGROUND

Contractor has entered into a contract with NASPOValuePoint a governmental cooperative purchasing entity led by State of Arizona (the “Master Agreement”). The Master Agreement is ADSPO16-169897 led by the State of Arizona between Contractor and the State of Arizona for Mailroom Equipment, Supplies & Maintenance, as amended. CPA has determined that entering into a Participating Addendum under the Master Agreement would be in the best interest of the state. “Customers” includes any entity authorized by Texas law to purchase under a CPA contract. This Cooperative Contract Participation Agreement (the “Contract”) supplements and supersedes the Master Agreement. It establishes terms and conditions under which Customers may acquire Contractor’s goods or services, but does not obligate any Customer to do so.

2. CONTRACT DOCUMENTATION

- (a) This Contract incorporates the Master Agreement (see section entitled “Entire Agreement” below). To the extent there is a conflict between this Contract and the Master Agreement, this Contract controls.
- (b) This Contract incorporates the Participating Addendum that is attached to it and labeled “Attachment A.” To the extent there is a conflict between this Contract and the Participating Addendum, this Contract controls.
- (c) The Master Agreement consists of all documents and materials incorporated in that agreement with the governmental entity that awarded the Master Agreement. Those documents include, but are not limited to, the governmental entity’s competitively procured solicitation, Contractor’s response to that solicitation, any resulting contract and all amendments, exhibits, and attachments thereto, and any authorized price lists.
- (d) Additionally, all representations, clarifications, and certifications submitted by Contractor as a part of the Master Agreement contracting process are also included.
- (e) Prices reflected on the Master Agreement are maximum prices. A Customer may negotiate a lower price for goods and services than that listed on the Master Agreement.

3. CERTIFICATION OF ACCURACY

Contractor hereby certifies that all copies of the Master Agreement documents that were submitted to CPA are true, correct, current, and complete. Contractor further represents and warrants that all future Master Agreement revisions submitted to revise this Contract will also be true, correct, current, and complete.

4. REPRESENTATIONS

Contractor warrants that all certifications and representations made as a basis for obtaining or as a part of the Master Agreement were and still are true and accurate. Contractor further agrees that such representations are a basis for CPA entering into this Contract and that such representation and certifications inure to the benefit of the State of Texas, CPA, and all Customers under this Contract.

5. FUTURE NOTICE

- (a) Contractor acknowledges that any continuing obligation to notify the governmental entity that awarded Contractor's Master Agreement of changes affecting the Master Agreement (including, by way of example only, notices required under any price change provisions of the Master Agreement) imposes a corresponding continuing obligation to notify CPA under this Contract.
- (b) Contractor agrees to notify CPA within 30 calendar days of all changes in the status of or amendments to the Master Agreement.
- (c) Contractor shall promptly notify CPA of any modifications to the Master Agreement. CPA will consider Contractor's violation of this clause a material breach of the Contract and CPA may immediately terminate this Contract or pursue any other available contract remedy.

6. PARTIES TO THIS CONTRACT

- (a) For purposes of this Contract, all rights and obligations of Contractor and the governmental entity that awarded Contractor's Master Agreement will be rights and obligations of Contractor and the State of Texas, CPA, and Customers, except to the extent that such would create an absurdity, are modified by this Contract, or would violate state or federal law. CPA is the contracting agency that is a party to this Contract, but may, as a state agency, also be a Customer under this Contract.
- (b) Unless expressly stated otherwise or unless the context clearly indicates otherwise, all Customers of this Contract will have the same rights and remedies of the State of Texas and CPA under this Contract including, but not limited to, the provisions regarding indemnification. Any order placed by a local government under this Contract will be between Contractor and the local government. Contractor will look solely to the local government for performance, including but not limited to, payment, and will hold the State of Texas harmless with regard to such orders. The State of Texas, however, will have the right to terminate this Contract in accordance with the Master Agreement and seek such remedies on termination as this Contract provides should Contractor fail to honor its obligations under an order from a local government after being notified in writing and given the opportunity to cure such failure as provided in Master Agreement.
- (c) In performing this Contract, Contractor and Contractor's employees, representatives, agents and any subcontractors are not employees of the State of Texas, CPA, or Customers. Should Contractor subcontract any of the services required in this Contract, Contractor expressly understands and acknowledges that in entering into such subcontract(s), the State of Texas, CPA, and Customers are in no manner liable to any subcontractor(s) of Contractor. In no event shall this provision relieve Contractor of the responsibility for ensuring that the services rendered under all subcontracts are rendered in compliance with this Contract.

7. COOPERATIVE CONTRACT PROGRAM REQUIREMENTS

In addition to all other provisions in this Contract that constitute changes or modifications to the Master Agreement, Contractor agrees to the following provisions, notwithstanding anything to the contrary contained

in the Master Agreement:

- (a) All equipment will be new and all replacement parts will be new.
- (b) The ordering and payment addresses under this Contract will be those contained in Contractor's offer letter to the State.
- (c) Payments and invoicing will be in accordance with the terms discussed under the provisions in this Contract entitled "PAYMENT; TRAVEL EXPENSES" and "INVOICE REQUIREMENTS."
- (d) All shipping of equipment under warranty for repairs will be at Contractor's expense.
- (e) All references to hours of the day will be deemed to be references to Central Time.
- (f) Neither the State of Texas, nor CPA, nor Customers will purchase goods or services for overseas delivery or provide Contractor with overseas support.
- (g) Contractor may not sell and Customers may not purchase goods or services that are not included in this Contract. Therefore, to the extent the Master Agreement contains terms that are not included in this Contract (such as blanket purchase agreements and contractor team arrangements), those terms are not applicable to this contract. However, for administrative convenience and to satisfy a total best value procurement requirement, a Customer may, if the quoted price is determined to be fair and reasonable, purchase incidental items that are not on the Master Agreement to the extent permitted by applicable laws, rules, and regulations. The purchase of incidental items will be treated as an open market purchase and clearly labeled on the purchase order as open market items. These incidental items may not exceed \$5,000. If incidental goods or services exceed \$5,000, the purchase order may be void.
- (h) Contractor may only sell professional services to Customers as defined and mandated by Chapter 2254, Subchapter A, of the Texas Government Code. CPA will consider Contractor's violation of this clause a material breach of the Contract and CPA may immediately terminate this Contract or pursue any other available contract remedy.
- (i) Contractor may not sell to state agency Customers under this Contract any consulting services available on Contractor's Master Agreement that are subject to Chapter 2254, Subchapter B of the Texas Government Code. CPA will consider Contractor's violation of this clause a material breach of the Contract and CPA may immediately terminate this Contract or pursue any other available contract remedy.
- (j) Contractor may not sell to Customers under this Contract any technology commodity items (defined under Section 2157.068 Texas Government Code) that are available on Contractor's Master Agreement. This includes commercial software, hardware, or technology services that are generally available to businesses or the public. This Contract specifically excludes any technology commodity item listed in Contractor's Master Agreement or Contractor's catalog or proposal. CPA will consider Contractor's violation of this clause a material breach of the Contract and CPA may immediately terminate this Contract or pursue any other available contract remedy.
- (k) Contractor must submit a TxSmartBuy catalog to CPA with the exact same list of goods and services that the Master Agreement permits Contractor to sell for uploading into the TxSmartBuy online ordering system. The TxSmartBuy catalog must reflect the goods and services listed on the Master Agreement website. If a good or service is not visible online, then CPA will not list the good or service

on the TxSmartBuy online ordering system.

8. TXSMARTBUY

- (a) **Online ordering.** CPA operates the TxSmartBuy online ordering system to allow Customers to order from the Contract online. Customers may search for available goods and services, compare prices, and place orders through TxSmartBuy. Customers will exclusively access the goods or services available under Contractor's contract through TxSmartBuy.
- (b) **Pricing and related information not confidential or proprietary.** The operation of TxSmartBuy requires CPA to publish all pricing information and other related information online. Consequently, by signing this agreement, Contractor agrees that the pricing (and other related information) submitted by Contractor is not confidential or proprietary. By signing this Contract, Contractor consents to the publication of Contractor's pricing and related information on TxSmartBuy.
- (c) **TxSmartBuy administrative fee.** To cover the costs of operating TxSmartBuy, CPA will charge Contractor a 1.5% TxSmartBuy administrative fee. If Contractor wishes to recover this fee, CPA authorizes Contractor to charge up to 1.5228% additionally for goods and services. In CPA's review and evaluation of Contractor's pricing, CPA assumes that Contractor has already considered and factored in no more than a 1.5228% maximum recoupment of the TxSmartBuy administrative fee.
 - (i) Contractor shall remit the 1.5% TxSmartBuy administrative fee on a monthly basis. The TxSmartBuy administrative fee is based on the amount of sales (based on the good's or service's delivery date) under this Contract for the previous month and is due upon receipt of the invoice that CPA will e-mail to Contractor the following month.
 - (ii) CPA will bill Contractor for this fee based on all sales under the Contract.
 - (iii) The TxSmartBuy administrative fee remittance should be identified as "TxSmartBuy Admin Fee" and made payable to CPA. The remittance address is: Texas Comptroller of Public Accounts, Attn: TxSmartBuy Administrative Fee, P.O. Box 13106, Austin, TX 78711-3106.
 - (iv) The TxSmartBuy administrative fee is subject to change at the sole discretion of CPA. CPA will provide Contractor with written notice of any increase to the TxSmartBuy administrative fee.
- (d) **Warrant hold for non-payment of fees.** Texas Government Code § 403.055 prohibits CPA from making payments to anyone indebted to the State of Texas. Payments to Contractor may be held and applied to the Contractor's debt in accordance with Texas Government Code § 403.0551.

9. DEALERS

- (a) Upon CPA approval, Contractor may designate one or more dealers to provide goods or services under this Contract on behalf of Contractor. To designate a dealer, Contractor must provide a Letter of Authorization. Contractor shall provide a separate Letter of Authorization for each designated dealer.
- (b) The Letter of Authorization must be submitted on Contractor's official letterhead, signed by an authorized representative, and addressed to the attention of the Statewide Procurement Division Director at the address set forth in Contract section entitled "Notices." The Letter of Authorization must include a Letter of Acceptance from the dealer and all supporting documentation. By submitting a Letter of Authorization, Contractor represents and warrants the following:

- (1) The dealer has been given a copy of this Contract (and all incorporated documents), a duly authorized representative of the dealer has agreed in writing to be bound by the terms and conditions of this Contract and the Master Agreement as modified by this Contract, and that such agreement specifically provides that it is for the benefit of the State of Texas, CPA, and Customers, as well as Contractor.
 - (2) Contractor agrees to remain liable under this Contract for any failure of the dealer to perform and for any breach of the dealer under this Contract. Any items sold by an authorized Dealer is subject to the fees set forth in Section 8 above. CPA will look solely to Contractor for payment of all applicable fees and Contractor will be responsible for payment of all applicable fees regardless of whether a dealer provided the goods or services to Customer.
 - (3) To the extent that there is any liability to the State of Texas, CPA, or any Customer arising from doing business with a dealer that has not signed the Letter of Acceptance required under this section with Contractor, Contractor will fully and unconditionally indemnify the State of Texas, CPA, and Customers for such liability.
 - (4) Contractor's Letter of Authorization shall remain effective until CPA receives written notification from Contractor, signed by an authorized representative of Contractor, that the authorization to a dealer is withdrawn.
- (c) The Letter of Acceptance must be submitted on the dealer's official letterhead, signed by an authorized representative of the dealer, and addressed to the attention of Contractor. In the Letter of Acceptance, the dealer must represent and warrant that it has been given a copy of this Contract and the Master Agreement, it agrees to be bound by the terms and conditions of this Contract and the Master Agreement, as both may be amended from time to time, and such agreement specifically provides that it is for the benefit of the State of Texas, CPA, and Customers, as well as Contractor. The Letter of Acceptance must also include the following information:
- (1) the dealer's name and address;
 - (2) the dealer's point of contact name, telephone number, fax number, and e-mail address;
 - (3) the dealer's Federal Employer's Identification Number (FEIN); and
 - (4) the dealer's HUB Certificate, if the dealer is a Texas HUB.
- (d) Prior to CPA's approval of Contractor's designated dealer, CPA will review the Letter of Authorization and the required documentation for compliance with this section and applicable state laws and regulations. If the submission of documentation is incomplete (*i.e.*, does not include all required documentation), CPA reserves the right to reject the Letter of Authorization and require re-submission

by Contractor of the Letter of Authorization and all required documentation. Even if a submission is complete, CPA reserves the right to reject Contractor's designation of a dealer to provide services under this Contract on behalf of Contractor. Approval is at CPA's sole discretion

10. POLICY ON UTILIZATION OF HISTORICALLY UNDERUTILIZED BUSINESSES (HUBS)

This section relates to requirements for business within the State of Texas only. In accordance with Chapter 2161 of the Texas Government Code and 34 Texas Administrative Code (TAC) §§20.281 *et seq.*, state agencies shall make a good faith effort to utilize Historically Underutilized Businesses (HUBs) in contracts for construction, services (including professional and consulting services), and commodities Acquisition in the State of Texas.

Contractors are urged to utilize HUBs as defined in 2161.001 of the Texas Government Code Section or small businesses as defined in Section 2155.505(a) Texas Government Code Section to sell or provide services under the Master Agreement. A Contractor's failure to make a good faith effort to use HUBs and small businesses under the Master Agreement may result in exclusion of Contractor from participation in state contracts. A list of Certified Texas HUB Vendors can be accessed on CPA's website.

11. LIMITATION ON AUTHORITY; LIMITATION OF LIABILITY

Contractor shall have no authority to act for or on behalf of the State of Texas, CPA, or Customers except as expressly provided for in this Contract; no other authority, power, use, or joint enterprise is granted or implied. Contractor may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of the State of Texas, CPA, or Customers.

TO THE EXTENT PERMITTED BY THE CONSTITUTION AND THE LAWS OF THE STATE OF TEXAS, THE PARTIES AGREE THAT IN NO EVENT WILL THE STATE OF TEXAS, CPA, OR CUSTOMERS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS, EVEN IF THE PARTIES HAD BEEN ADVISED, KNEW, OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

TO THE EXTENT NOT PROHIBITED BY THE CONSTITUTION AND THE LAWS OF THE STATE OF TEXAS, THE PARTIES AGREE THAT IN NO EVENT WILL THE CONTRACTOR BE LIABLE FOR ANY INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES IN EXCESS OF TWO (2) TIMES THE AMOUNTS PAID TO CONTRACTOR DURING THE 12 MONTHS IMMEDIATELY PRECEDING THE EVENT WHICH GAVE RISE TO THE CLAIM , INCLUDING BUT NOT LIMITED TO LOST PROFITS, EVEN IF THE PARTIES HAD BEEN ADVISED, KNEW, OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

12. PAYMENT; TRAVEL EXPENSES

- (a) Payment shall be made in accordance with Chapter 2251 of the Texas Government Code.
- (b) Except as provided for in Section 2251.021(b) of the Texas Government Code, payment by a state agency or local government is due within thirty (30) calendar days after the later of:
 - (1) the date the state agency or local government receives the goods under this Contract;
 - (2) the date the state agency or local government receives a proper invoice (see Paragraph below entitled "INVOICE REQUIREMENTS") for the goods or services; or
 - (3) the date the performance of the service under the contact is completed

- (c) Except as provided for in Section 2251.021(b) of the Texas Government Code, a payment will begin to accrue interest at a rate by CPA pursuant to the statute on the 31st day after the later event described by subsections (b)(1) through (3) above. Interest stops accruing on the date the state agency or local government mails (postmark) or electronically transmits the payment.

Any travel or per diem required by Contractor to perform its obligations under this Contract and the Master Agreement will be at Contractor's expense. All travel and per diem that a Customer requests in addition to what this Contract or the Master Agreement requires Contractor to provide at Contractor's expense are subject to, and shall not exceed, the reimbursement limitations applicable to Texas state employees in conducting official state business as prescribed by applicable law, rules, and regulations including, but not limited to, Chapter 660 of the Texas Government Code, the General Appropriations Act and rules adopted by the Comptroller.

13. INVOICE REQUIREMENTS

- (a) In order to receive payment, Contractor must submit an original invoice to the office designated in the purchase order as the "Bill To" address. To be a proper invoice, the invoice must include the following information and/or attachments:
 - (1) Name and address of Contractor as designated in this Contract.
 - (2) Contractor's Federal Employer's ID Number (FEIN) as designated in this Contract.
 - (3) Contractor's invoice remittance address as designated in this Contract.
 - (4) The purchase order number authorizing the delivery of products or services.
 - (5) A description of what Contractor delivered, including, as applicable, the time period, serial number, unit price, quantity, and total price of the products and services. If the invoice is for a lease, Contractor must also include the payment number (e.g., 1 of 36).
- (b) If an invoice does not meet this section's requirements or if Contractor fails to give proper notice of a price increase (see Paragraph below entitled "NOTIFICATION OF PRICE INCREASE"), CPA will send Contractor written notice with the improper invoice to the address designated for receipt of purchase orders. The notice will contain a description of the defect or impropriety and any additional information Contractor needs to correct the invoice.
- (c) In submitting an invoice to a Customer, Contractor certifies: that the invoice has been carefully reviewed for detailed description of the services performed or goods delivered; that the services have been performed or goods delivered in compliance with this Contract and the Master Agreement; that the amount of the invoice and all previous invoices together do not exceed the contractual cap of this Contract, the Master Agreement, or Contractor's negotiated fees; that the charges and expenses shown on the invoices are reasonable and necessary; and that all appropriate and required supporting documentation is attached. Customer may, in its sole discretion, require additional documentation to support payment and Contractor shall respond to any such requests within five (5) calendar days of receipt. Customer reserves the right to make payments only upon receipt of a correct invoice, including all of the required supporting documentation. Customer also reserves the right to refuse payments for invoices that exceed the rates specified in this Contract or the Master Agreement or Contractor's negotiated fees.

14. AUDIT REQUIREMENTS

Pursuant to Section 2262.154 of the Texas Government Code, the State Auditor's Office, or successor agency, may conduct an audit or investigation of Contractor or any other entity or person receiving funds from the state directly under this Contract or indirectly through a subcontract under this Contract. The acceptance of funds by Contractor or any other entity or person directly under this Contract or indirectly through a subcontract under this Contract acts as acceptance of the authority of the State Auditor's Office, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, Contractor or other entity that is the subject of an audit or investigation must provide the State Auditor's Office with access to any information the State Auditor's Office considers relevant to the investigation or audit. This Contract may be amended unilaterally by the CPA to comply with any rules and procedures of the State Auditor's Office in the implementation and enforcement of Section 2262.154 of the Texas Government Code. **Contractor shall ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Contractor and the requirement to cooperate is included in any dealer agreement or subcontract.**

Customers who order under the Contract using federal or grant funds may have additional audit requirements that are required by state or federal law or regulation. Those additional requirements will be included on the purchase order for that particular order.

15. NOTIFICATION OF PRICE INCREASES

For price increases authorized under this Contract, notification of such must be given to CPA and to the purchase order "bill to" address contained in the applicable purchase order(s) for any orders affected by the increase (e.g., existing leases, licenses, or annual maintenance programs). Contractor must give these notices no later than 30 calendar days before the effective date of the price increase. This notification must specify, when applicable, the product serial number, location, current price, increased price, and applicable purchase order number.

16. NON-APPROPRIATION OF FUNDS

All obligations of CPA and Customers are subject to the availability of legislative appropriations and, for Customers expending federal funds, to the availability of the federal funds applicable to this Contract. Contractor acknowledges that the ability of CPA and the Customers to make payments under this Contract is contingent upon the continued availability of funds. Contractor further acknowledges that funds may not be specifically appropriated for the Contract and CPA's or Customers' continual ability to make payments under this Contract is contingent upon the funding levels appropriated for each particular appropriation period. CPA and the Customers will use all reasonable efforts to ensure that such funds are available. Contractor agrees that if future levels of funding for CPA or a Customer are not sufficient to continue operations without any operational reductions, CPA, in its discretion, may terminate this Contract, either in whole or in part, or the Customer, in its discretion, may terminate a pending order under this Contract, either in whole or in part. In the event of such termination, neither CPA nor Customers will be considered to be in default or breach under this Contract, nor shall CPA or Customers be liable for any further payments ordinarily due under this Contract, nor shall CPA or Customers be liable for any damages or any other amounts which are caused by or associated with such termination. CPA and Customers shall make best efforts to provide reasonable written advance notice to Contractor of any such Contract or order termination. In the event of such a termination, Contractor shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination, either on that particular order if an order is being terminated, or this Contract, if this Contract is being terminated. CPA or the Customer, as applicable, shall be liable for payments limited only to the portion of work CPA or the Customer authorized in writing and which Contractor has completed, delivered to CPA or Customer, and which has been accepted by CPA or Customer. All such work shall have been completed, per

Contract requirements of this Contract and the Master Agreement, prior to the effective date of termination.

17. PUBLIC INFORMATION

The CPA is a governmental body subject to the Texas Public Information Act (PIA), Chapter 552, Texas Government Code, as are other potential Customers of this Contract. The Master Agreement and other information submitted to the CPA by Contractor are subject to release as public information by the CPA and by any Customer that is also subject to the PIA. The Master Agreement and other submitted information shall be presumed to be subject to disclosure unless a specific exception to disclosure under the PIA applies. If it is necessary for Contractor to include proprietary or otherwise confidential information in its submitted information, Contractor must clearly label that proprietary or confidential information and identify the legal basis for confidentiality. Merely making a blanket claim that the entire submission is protected from disclosure because it contains some proprietary information is not acceptable, and shall make the entire submission subject to release under the PIA. In order to trigger the process of seeking an Attorney General opinion on the release of proprietary or confidential information, the specific provisions of the submitted information that are considered by Contractor to be proprietary or confidential must be clearly labeled as described above. Any information which is not clearly identified by Contractor as proprietary or confidential shall be deemed to be subject to disclosure pursuant to the PIA and Contractor shall thereby be irrevocably deemed to have waived, and Contractor agrees to fully indemnify the State of Texas, CPA, and any Customer subject to the PIA from, any claim of infringement by CPA and any Customer subject to the PIA regarding the intellectual property rights of Contractor or any third party for any materials appearing in the submitted information.

Contractor is required to make any information created or exchanged with a state governmental entity (as defined by Section 2252.907(d) of the Texas Government Code) pursuant to this Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in at least one of the following formats that is accessible by the public at no additional charge to the State of Texas, CPA, or Customers: portable document format (pdf) compatible with the latest version of Adobe Acrobat®; Microsoft Word®; Microsoft Excel®; or, hard copy (paper).

18. CONFIDENTIALITY AND SECURITY

Any information Contractor receives, compiles, or creates as a result of this Contract must be maintained and protected in accordance with any federal, state, or local laws and regulations that apply. Contractor shall establish a method to secure the confidentiality of records and other information relating to Customers in accordance with applicable federal and state laws, rules, and regulations.

The obligations of Contractor under this Confidentiality and Security section shall survive this Contract and shall be included in all subcontracts.

19. RECORDS RETENTION

Contractor shall retain all financial records, supporting documents, statistical records, and any other records or books relating to the performances called for in this Contract. Contractor shall retain all such records for a period of seven (7) years after the expiration of this Contract, or until the CPA or State Auditor's Office is satisfied that all audit and litigation matters are resolved, whichever period is longer. Contractor shall grant access to all books, records and documents pertinent to this Contract to the CPA, the State Auditor of Texas, and any federal governmental entity that has authority to review records due to federal funds being spent under this Contract.

20. INSURANCE AND OTHER SECURITY

Contractor represents and warrants that it will obtain and maintain for the term of this Contract all insurance coverage required to ensure proper fulfillment of the Contract and its liabilities thereunder. Contractor shall insure any of its motor vehicles used to fulfill its duties under the Contract and ensure that its subcontractors do the same. Such insurance shall comply with all statutory requirements of all states in which Contractor performs under this Contract and must cover any cargo being delivered to Customers.

Contractor represents and warrants that all of the above coverage will be obtained from companies that are licensed in the state of Texas, have an "A" rating from Best, and are authorized to provide the coverage. Contractor shall furnish proof of insurance upon request of a Customer or the CPA.

21. LIABILITY FOR AND PAYMENT OF TAXES

CPA and certain Customers are exempt from certain taxes. Customers will furnish proof of tax exempt status to Contractor upon request. Contractor shall pay all taxes resulting from this Contract and the Master Agreement including any federal, state, or local income, sales, excise, or property taxes. The State of Texas, CPA, and Customers does not have tax liability under this Contract and will not reimburse Contractor for the payment of such taxes incurred by Contractor in acquiring any goods or services as a part of any work called for in this Contract or the Master Agreement. Contractor's invoice may not include any amount for such taxes.

22. TERM AND TERMINATION

This Contract shall become effective on the date countersigned by the appropriate CPA official. Unless otherwise sooner terminated as provided in this Contract, this Contract will terminate no later than five years from the date of execution. If the Master Agreement expires less than five years from the date of Contract execution, this Contract will terminate upon the later to occur of (1) the expiration of the Master Agreement or (2) the physical completion of the last outstanding task or delivery of the final order placed under, and prior to the expiration of, the Master Agreement through this Contract. Except as otherwise provided in this Contract or the Master Agreement or as determined by Customer, any agreements that were entered into between Contractor and Customers under the terms and conditions of this Contract shall survive the cancellation or termination of this Contract and the cancellation or termination of the Master Agreement for the term set forth in the respective lease, rental or software license agreement. Absent Customer agreement to the contrary, or as set forth in the applicable lease, rental or software license agreement(s) in the event of termination of this Contract, Customers' sole and maximum obligation shall be to authorize payment to Contractor for previously authorized goods or services performed in accordance with all requirements of this Contract and the Master Agreement, up to the termination date. Any Order (including without limitation, any lease, rental, or software license agreement) entered into shall survive the termination of this Contract, and shall still be bound by the original terms and conditions, as amended, of this Contract and the respective lease, rental, or software license agreement.

(a) Termination for Convenience of the State of Texas

The CPA reserves the right to terminate this Contract at any time, in whole or in part, without cost or penalty, by providing 30 calendar days' advance written notice, if the CPA determines that such termination is in the best interest of the state. In the event of such a termination, Contractor shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. Any Order (including without limitation, any lease, rental, or software license agreement) entered into shall survive the termination of this Contract, and shall still be bound by the original terms and conditions, as amended, of this Contract and the respective lease, rental, or software license agreement.

(b) Termination for Cause

If Contractor fails to provide the goods or services contracted for according to the provisions of this Contract or the Master Agreement, or fails to comply with any of the terms or conditions of this Contract or the Master Agreement, the CPA may, upon written notice of default to Contractor, immediately terminate all or any part of this Contract. Notwithstanding the foregoing, Contractor shall have a thirty (30) day period, after receiving

notice from CPA, to cure a Contractor performance issue. Termination is not an exclusive remedy, but will be in addition to any other rights and remedies provided in equity, by law or under this Contract and the Master Agreement. The CPA may exercise any other right, remedy or privilege which may be available to it under applicable law of the state and any other applicable law or may proceed by appropriate court action to enforce the provisions of this Contract or the Master Agreement, or to recover damages for the breach of any agreement being derived from this Contract or the Master Agreement. The exercise of any of the foregoing remedies will not constitute a termination of this Contract unless the CPA notifies Contractor in writing prior to the exercise of such remedy. Contractor shall remain liable for all covenants and indemnities under this Contract and the Master Agreement.

(c) Change in Federal or State Requirements

If federal or state laws, rules, regulations, or requirements applicable to this Contract are amended, performance under this Contract will be subject to the laws, rules, regulations, or requirements applicable at the time of performance under this Contract. If federal or state laws or regulations or other federal or state requirements are amended or judicially interpreted so that either the CPA or Contractor cannot reasonably fulfill this Contract and if the Parties cannot agree to an amendment that would enable substantial continuation of this Contract, the Parties shall be discharged from any further obligations under this Contract.

(d) Termination for Non-Appropriation of Funds

CPA may terminate the Contract immediately for non-appropriation of funds as further detailed in the Contract section entitled, "Non-Appropriation of Funds."

(e) Property Rights upon Termination

For purposes of this Contract, the term "Work Product" is defined as all work papers, work products, materials, approaches, designs, specifications, systems, software, programs, source code, documentation, methodologies, concepts, intellectual property or other property first developed, produced or generated as a deliverable in connection with the services to be provided by Contractor. In the event that this Contract or the Master Agreement is terminated for any reason, or upon the expiration of either this Contract or the Master Agreement, Customers shall retain ownership of all associated Work Product and documentation obtained from Contractor under the Master Agreement through this Contract. In the event that Contractor has any rights in and to the Work Product that cannot be assigned to Customers, Contractor shall grant to Customers an exclusive, worldwide, royalty-free, irrevocable, and perpetual license to directly and indirectly reproduce, distribute, modify, create derivative works of, publicly perform and publicly display, such rights to make, have made, use, sell and offer for sale any products developed by practicing such rights, and to otherwise use such rights, with the right to sublicense such rights through multiple levels of sublicenses. "Work Product" does not include any material, equipment or software that was developed prior to the Effective Date that is used, without modification, in the performance of the Work.

(f) No Liability Upon Termination

If this Contract is terminated for any reason, the State of Texas, CPA, and Customers shall not be liable to Contractor for any damages, claims, losses, or any other amounts arising from or related to any such termination. In the event of termination of this Contract, except as set forth in a lease agreement, the sole and maximum obligation of the State of Texas, CPA, and Customers shall be to authorize payment to Contractor for previously authorized goods or services performed in accordance with all requirements of this Contract and the Master Agreement, up to the termination date.

(g) Survival of Terms

Termination of this Contract or the Master Agreement for any reason shall not release Contractor from any

liability or obligation set forth in this Contract or the Master Agreement that is expressly stated to survive any such termination or by its nature would be intended to be applicable following any such termination, including the provisions regarding confidentiality, indemnification, transition, records, audit, property rights, dispute resolution, and invoice and fees verification.

(h) Misrepresentation of goods and services available under Master Agreement

If Contractor sells goods or services through this Contract that are not available on the Master Agreement, excluding permitted incidental goods and services as further defined in this Contract, CPA may immediately terminate the Contract.

23. FORCE MAJEURE

CPA, any Customer, and Contractor will not be responsible for delays in performance under the Contract should it be prevented from performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of CPA, Customer, or Contractor. In the event of an occurrence under this Section, the CPA, Customer, or Contractor (Parties) will be excused from any further performance or observance of the requirements so affected for as long as such circumstances prevail and the Party continues to use commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay. The Party will immediately notify the other Party(ies) by telephone (to be confirmed in writing within five calendar days of the inception of such occurrence) and describe at a reasonable level of detail the circumstances causing the non-performance or delay in performance.

24. VENDOR PERFORMANCE

- (a) CPA may use vendor performance to analyze whether a vendor is eligible for a contract. CPA may conduct reference checks with other entities regarding past performance both prior to awarding a contract to Contractor and during the entire term of a contract.
- (b) CPA may consider the following conditions when awarding a contract or when considering continued contract existence:
 - (i) A score of less than a C or Legacy Unsatisfactory in the Vendor Performance Tracking System (VPTS);
 - (ii) Whether the vendor or Contractor is under a Corrective Action Plan with CPA or another state agency;
 - (iii) Having repeated negative vendor performance reports;
 - (iv) Having a record of repeated non-responsiveness to vendor performance issues; and
 - (v) Having purchase orders that have been cancelled in the previous 12 months for non-performance (such as late delivery or not meeting specifications).
- (c) In addition to evaluating performance through VPTS as authorized by 34 Texas Administrative Code § 20.217, CPA may examine other publically available sources of Contractor performance including notices of termination, cure notices, assessments of liquidated damages, litigation, audit reports, and non-renewals of contracts. These sources of Contractor performance may include any governmental entity,

whether an agency or political subdivision of the State of Texas, another state, or the federal government. Further, CPA may initiate these examinations of Contractor's performance based upon media reports. Any investigations are at CPA's sole discretion, and any negative findings, as determined by CPA, may result in not awarding a contract or enforcing remedies against Contractor, including contract termination. Information pertaining to VPTS is located on CPA's website at: http://www.window.texas.gov/procurement/prog/vendor_performance/.

Additionally, in accordance with Section 2155.089 of the Texas Government Code, CPA or state agency Customers will review successful Contractor's performance under a contract resulting from this solicitation after the Contract is completed or otherwise terminated. These reviews and any resulting classification grades will be posted on VPTS as noted in Section 2262.055 of the Texas Government Code.

25. DELIVERIES

All deliveries for orders placed under this Contract shall be F.O.B. Destination.

If delivery delay is foreseen, Contractor shall give written notice to the Customer. Customer has the right to extend delivery or service date if reasons appear valid. Contractor shall keep Customer advised at all times of the status of the order. Default in promised delivery (without accepted reasons), service date, or failure to meet specifications, authorizes the Customer to purchase goods or services elsewhere and charge the full increase, if any, in cost and handling to Contractor.

26. EQUAL EMPLOYMENT

Contractor shall comply with all federal and state laws regarding equal employment opportunity.

27. DRUG-FREE WORKPLACE ACT

Contractor shall comply with the applicable provisions of the Drug-Free Workplace Act.

28. AMERICANS WITH DISABILITIES ACT

Contractor represents and warrants that it will comply with the requirements of the Americans with Disabilities Act (ADA).

29. CIVIL RIGHTS

Contractor represents and warrants that it shall not discriminate against any person on the basis of race, color, national origin, creed, religion, political belief, sex, sexual orientation, age, and disability in the performance of this Contract.

30. IMMIGRATION

Contractor represents and warrants that it will comply with the requirements of the Immigration and Nationality Act (8 U.S.C. § 1101 et seq.) and all subsequent immigration laws and amendments.

31. INDEMNIFICATION

(a) Acts or Omissions

CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS, CPA, AND CUSTOMERS, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES ('INDEMNIFIED PARTY')FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, SUITS, AND REASONABLE DOCUMENTED EXPENSES (INCLUDING COURT COSTS AND REASONABLE ATTORNEY'S FEES) ("CLAIMS") ASSERTED AGAINST AN INDEMNIFIED PARTY BY THIRD PARTIES TO THE EXTENT CAUSED BY ANY ACTS OR OMISSIONS OF CONTRACTOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THE CONTRACT; PROVIDED, HOWEVER, CONTRACTOR WILL NOT BE REQUIRED TO INDEMNIFY TO THE EXTENT A CLAIM ARISES OUT OF OR RELATES TO THE NEGLIGENCE, WILLFUL MISCONDUCT OR BREACH OF THIS CONTRACT BY THE INDEMNIFIED PARTY. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL, WHICH SHALL NOT BE UNREASONABLY WITHHELD, CONDITIONED OR DELAYED. CONTRACTOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

(b) Infringements

(i) Contractor shall indemnify and hold harmless the State of Texas, CPA, and Customers, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the PERFORMANCES OR ACTIONS OF CONTRACTOR PURSUANT TO THIS CONTRACT. CONTRACTOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.

(ii) Contractor shall have no liability under this section if the alleged infringement is caused in whole or in part by: (i) use of the product or service for a purpose or in a manner for which the product or service was not designed, (ii) any modification made to the product without Contractor's written approval, (iii) any modifications made to the product by Contractor pursuant to Customer's specific instructions, (iv) any intellectual property right owned by or licensed to Customer, or (v) any use of the product or service by Customer that is not in conformity with the terms of any applicable license agreement.

(iii) If Contractor becomes aware of an actual or potential claim, or Customer provides Contractor with notice of an actual or potential claim, Contractor may (or in the case of an injunction against Customer, shall), at Contractor's sole option and expense; (i) procure for the Customer the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior

product or service so that Customer's use is non-infringing.

(c) Taxes/Workers' Compensation/Unemployment Insurance – Including Indemnity

(i) CONTRACTOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, CONTRACTOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF CONTRACTOR'S AND CONTRACTOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. CONTRACTOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. THE STATE OF TEXAS, CPA, AND/OR THE CUSTOMER SHALL NOT BE LIABLE TO CONTRACTOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER.

(ii) CONTRACTOR AGREES TO INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS, CPA, CUSTOMERS, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS CONTRACT. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

32. ADDITIONAL CONTRACTOR CERTIFICATIONS

- (a) Gifts to a public servant.** Contractor certifies that it has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Contract or the Master Agreement.
- (b) Antitrust.** Contractor represents and warrants that neither Contractor nor any firm, corporation, partnership, or institution represented by Contractor, or anyone acting for such firm, corporation or institution has (1) to its knowledge violated the antitrust laws of the State of Texas under Chapter 15 of the Texas Business and Commerce Code, or the federal antitrust laws; or (2) communicated directly or indirectly the bid made to any competitor or any other person engaged in such line of business during the procurement process. Contractor hereby assigns to the State of Texas all of Contractor's rights, title and interest in and to all claims and causes of action Contractor may have under the antitrust laws of Texas or the United States for overcharges associated with this Contract.
- (c) Deceptive Trade Practices; Unfair Business Practices.** Contractor represents and warrants that it has not been the subject of allegations of Deceptive Trade Practice violations under Chapter 17 of the Texas Business and Commerce Code or allegations of any unfair business practice in any administrative hearing or court suit. Contractor represents and warrants that it has not been found to be liable for such practices in such proceedings. Contractor certifies that it has no officers who have served as officers of other entities who have been the subject of allegations of Deceptive Trade Practice violations or allegations of any

unfair business practices in an administrative hearing or court suit, and further certifies that such officers have not been found to be liable for any such practices in such proceedings.

- (d) **Suspension and Debarment.** Contractor certifies that Contractor and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state, or local governmental entity and that Contractor is in compliance with the State of Texas statutes and rules relating to procurement and that Contractor is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <https://www.sam.gov>.
- (e) **Child Support Obligations.** Pursuant to Section 231.006(d) of the Texas Family Code, regarding child support, Contractor certifies that the individuals or business entity named in this Contract are not ineligible to receive the specified payment and acknowledges that this Contract may be terminated and payment may be withheld if the certification is inaccurate. Furthermore, any Contractor subject to Section 231.006 of the Texas Government Code, must provide names and Social Security numbers of each person with at least 25% ownership of the Contractor's business entity. This information must be provided to CPA in writing signed by Contractor's duly authorized representative prior to execution of this Contract. By submission of this Contract signed by Contractor without submission of required identity disclosures pursuant to § 231.006(d), Texas Family Code, constitutes a certification by Contractor that no individual or sole proprietor or partner, shareholder, or owner has an ownership interest of at least 25% of the business entity identified as Contractor.
- (f) **Ineligibility due to preparation of specifications.** Pursuant to Section 2155.004(a) of the Texas Government Code, Contractor certifies that neither it nor any person or entity which will participate financially in the Contract has received compensation for participation in the preparation of specifications for this Contract. Under Section 2155.004 of Texas Government Code, Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive the specified contract and acknowledges that this Contract may be terminated, payment withheld, or both if this certification is inaccurate.
- (g) **Debts and delinquent taxes.** CPA is prohibited from issuing any payment to a person or entity that has been reported as having an indebtedness or delinquency to the state. Contractor acknowledges and agrees that, to the extent Contractor owes any debt or delinquent taxes to the State of Texas, CPA will apply any payments or other amounts Contractor is otherwise owed under this Contract or related to any order resulting from this Contract toward any debt Contractor owes the State of Texas until the debt or delinquent taxes are paid in full. These provisions are effective at any time Contractor owes any such debt or delinquency. Contractor shall comply with all applicable laws and regulations regarding satisfaction of debts or delinquencies to the State of Texas.
- (h) **Contracting with executive head of a state agency.** In accordance with Texas Government Code §669.003 (relating to contracting with executive head of a state agency), by signature hereon, Contractor certifies that it (1) is not the executive head of CPA; (2) was not at any time during the past four years the executive head of CPA; and (3) does not employ a current or former executive head of a state agency. Contractor acknowledges that this Contract may be terminated at any time, and payments withheld, if this information is false.
- (i) **Buy Texas.** To the extent applicable, in accordance with Section 2155.4441 of the Texas Government Code, Contractor agrees that during the performance of a contract for services it shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside this state.
- (j) **Conflicts of interest.** Contractor certifies that it has no actual or potential conflicts of interest with CPA in entering into this Contract, and that Contractor entering into this Contract will not reasonably create an appearance of impropriety.

- (k) **Receipt of appropriated funds not prohibited.** Contractor certifies that payment to Contractor and Contractor's receipt of appropriated or other funds under this Contract are not prohibited by §556.005 or §556.008, Texas Government Code.
- (l) **Disaster Relief Violation.** Sections 2155.006 and 2261.053 of the Texas Government Code prohibit state agencies from awarding a contract to any person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by Section 418.004 of the Texas Government Code, occurring after September 24, 2005. Under Section 2155.006 of the Texas Government Code, Contractor certifies that it is not ineligible to receive the specified contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.
- (m) **Fixed prices for term.** Contractor hereby certifies that all prices under the Master Agreement are current prices and that such prices are guaranteed to remain current with any approved Master Agreement pricing changes for the entire term of this Contract. In the event of a decrease in prices offered under the Master Agreement, Contractor agrees to notify CPA within thirty (30) working days of such decrease and offer such pricing to the State of Texas, CPA, and Customers. If Contractor fails to notify CPA of such decrease in pricing as specified herein, CPA shall have the right to cancel this Contract and Contractor shall issue a refund for items procured under this Contract. Such refund shall be equal to the difference between the prices offered under the Master Agreement submitted as a basis for this Contract and the lower price.
- (n) **Competitively awarded contract.** Contractor hereby certifies that the Master Agreement was previously awarded using a competitive process by the federal government or another governmental entity in accordance with Section 2155.502 of the Texas Government Code and all other applicable laws, rules, and regulations.
- (o) **Franchise tax requirements.** Contractor certifies that it is exempt or not delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171 of the Texas Tax Code. If Contractor is a qualifying business entity type per CPA guidelines and is not set up in the Texas Franchise Tax system, Contractor must do so prior to contracting with the State of Texas.
- (p) **Certifications apply to Customer purchase orders.** Contractor agrees that all affirmations and certifications in this Contract apply to and are for the benefit of Customers. Furthermore, Contractor agrees that by accepting an order under this Contract, Contractor certifies to the Customer that the all affirmations and certifications are true and correct.

If any Contractor certification in this Contract or the Master Agreement is untrue, CPA shall have the right to cancel this Contract in its entirety.

- (q) In accordance with Section 2270.002 of the Texas Government Code, by signature hereon, Contractor certifies that it does not boycott Israel and will not boycott Israel during the term of this Contract.

33. NO DEBT AGAINST THE STATE

This Contract shall not be construed as creating any debt by or on behalf of the State of Texas.

34. COMPLIANCE WITH APPLICABLE LAWS AND OTHER REQUIREMENTS

Contractor must comply with all laws, regulations, requirements, and guidelines applicable to a Contractor providing goods and services to the State of Texas as these laws, regulations, requirements, and guidelines currently exist and as they are amended throughout the term of this Contract.

35. COOPERATION

Contractor must ensure that it cooperates with CPA and other local, state, or federal administrative agencies, at no charge to the State of Texas, CPA, or Customers for purposes relating to the administration of this Contract. Contractor agrees to reasonably cooperate with and work with CPA's contractors, subcontractors, and third party representatives as requested by CPA.

36. ASSIGNMENT AND OTHER ORGANIZATIONAL CHANGES

Contractor shall not assign its rights under this Contract or delegate the performance of its duties under this Contract without prior written approval from CPA.

Contractor must provide CPA with written notification of all name changes and organizational changes relating to Contractor no later than ten (10) business days of such change. Contractor, in its notice, shall describe the circumstances of the name change or organizational change, state its new name (if applicable), provide the new Tax Identification Number (if applicable), and describe how the change will impact its ability to perform this Contract. If the change entails personnel changes for personnel performing the responsibilities of this Contract for Contractor, Contractor shall identify the new personnel. CPA may request other information about the change and its impact on this Contract and Contractor shall supply the requested information within five (5) working days of receipt of CPA's request. All written notifications of organizational change must include a detailed statement specifying the change and supporting documentation evidencing continued right of Contractor, to maintain its status as a party to this Contract.

CPA may terminate this Contract due to any change to Contractor that materially alters Contractor's ability to perform under this Contract. The CPA has the sole discretion to determine if termination is appropriate. CPA may also, in its sole discretion, terminate this Contract for failure to provide notice or documentation or obtain approval as required in this Contract.

37. PUBLICITY

News releases pertaining to this Contract and advertisements, publications, declarations and any other pronouncements by Contractor using any means or media mentioning the State of Texas or CPA or a Customer must be approved in writing by the State of Texas, CPA, or the Customer, as applicable, prior to public dissemination. Contractor may not send out unsolicited electronic mail or facsimile transmissions to CPA or Customers without prior written approval of CPA, regardless of whether the proposed communication specifically references this Contract.

38. NOTICES

Each party must send any written notices required under this Contract to the party at the respective address indicated below:

- (a) The address for Contractor will be the address specified on Page 1 of this Contract.

(b) The address for CPA will be as follows:

by Overnight/Express Mail:
Texas Comptroller of Public Accounts
Statewide Procurement Division
Attn: Contract Management
1711 San Jacinto Blvd.
Room 174-A (CPA mailroom, N.E. Back Door)
Austin, TX 78701

for U.S. mail:
Texas Comptroller of Public Accounts
Statewide Procurement Division
Attn: Contract Management
P.O. Box 13186
Austin, TX 78711-3186

Notices will be by U.S. Mail, addressed to the appropriate foregoing address. Contractor and CPA agree that either party may change the designated notice address in this Paragraph by written notification to the other party.

39. DISPUTE RESOLUTION

Disputes under this Contract and, by virtue of this Contract, the Master Agreement, are subject to Chapter 2260 of the Texas Government Code (Chapter 2260) as set forth below. Set forth below are terms and conditions for dispute resolution relating to claims involving Contractor and CPA. Except as otherwise provided by law or applicable rules, the same terms and conditions in this section shall apply to claims involving Contractor and any other Customer subject to Chapter 2260, substituting such other Customer for "CPA" when referenced below in this section.

The dispute resolution process provided for in Chapter 2260 and applicable CPA rules shall be used by CPA and Contractor to resolve any dispute arising under this Contract. The dispute resolution process provided for in Chapter 2260 shall be used, as further described herein, to attempt to resolve any claim for breach of contract asserted by Contractor under this Contract. If Contractor's claim for breach of Contract cannot be resolved by the Parties in the ordinary course of business, it shall be submitted to the negotiation process provided in Chapter 2260. To initiate the process, Contractor shall submit written notice, as required by Chapter 2260, to the Deputy Comptroller or his or her designee. The notice shall also be given to the individual identified in this Contract for receipt of notices. Compliance by Contractor with Chapter 2260 is a condition precedent to the filing of a contested case proceeding under Chapter 2260.

The contested case process provided in Chapter 2260 and the procedures set forth in Chapter 107 of the Civil Practices and Remedies Code are Contractor's sole and exclusive process for seeking a remedy for an alleged breach of Contract by the CPA if the Parties are unable to resolve their disputes as described above.

Compliance with the contested case process provided in Chapter 2260 is a condition precedent to seeking consent to sue from the Legislature under Chapter 107 of the Civil Practices and Remedies Code. Neither the execution of this Contract by the CPA nor any other conduct of any representative of the CPA relating to this Contract shall be considered a waiver of sovereign immunity to suit.

For all other specific breach of contract claims or disputes under this Contract, the CPA and Contractor shall first attempt to resolve them through direct discussions in a spirit of mutual cooperation. If the Parties' attempts

to resolve their disagreements through negotiations fail, the dispute will be mediated by a mutually acceptable third party to be chosen by the CPA and Contractor within fifteen (15) days after written notice by one of them demanding mediation under this Section. Notwithstanding anything to the contrary in Chapter 2260 of the Texas Government Code, each Party shall be responsible for its own dispute resolution costs. The costs of the mediation process itself shall be divided equally between the parties, unless the parties agree otherwise. By mutual agreement, the CPA and Contractor may use a non-binding form of dispute resolution other than mediation. The purpose of this Section is to reasonably ensure that the CPA and Contractor shall, in good faith, utilize mediation or another non-binding dispute resolution process before pursuing litigation. The CPA's participation in, or the results of, any mediation or other non-binding dispute resolution process under this Section or the provisions of this Section shall not be construed as a waiver by the CPA of (1) any rights, privileges, defenses, remedies or immunities available to the CPA as an agency of the State of Texas or otherwise available to the CPA; (2) the CPA's termination rights; or (3) other termination provisions or expiration dates of this Contract.

Notwithstanding any other provision to the contrary, unless otherwise requested or approved in writing by the CPA, Contractor shall continue performance and shall not be excused from performance during the period any breach of contract claim or dispute is pending under either of the above processes; however, Contractor may suspend performance during the pendency of such claim or dispute if Contractor has complied with all provisions of Section 2251.051 of the Texas Government Code, and such suspension of performance is expressly applicable and authorized under that law.

40. AMENDMENT

- (a) This Contract may be amended only upon written agreement between CPA and Contractor, but in no case shall this Contract be amended so as to make it conflict with the laws of the State of Texas.
- (b) Customers (other than CPA as set forth in this Contract) shall not have the authority to modify the terms of this Contract; however, additional Customer terms and conditions that do not conflict with this Contract and are acceptable to Contractor may be added in a Purchase Order and given effect. No term or condition added in a Purchase Order issued by a Customer can weaken a term or condition of this Contract, regardless of whether such term or condition is acceptable to Contractor. In the event of a conflict between a Customer's Purchase Order and this Contract, this Contract shall control.
- (c) Comptroller reserves the right, in its sole discretion, to unilaterally amend this Contract throughout its term to incorporate any modifications necessary for compliance with all applicable state and federal laws, regulations, requirements, and guidelines.

41. NO WAIVER

No provision of this Contract or the Master Agreement is in any way intended to constitute a waiver by the CPA or the State of Texas or any Customer of any immunities from suit or from liability of the CPA or the State of Texas or any Customer.

Nothing in this Contract or the Master Agreement shall be construed as a waiver of the sovereign immunity of the State of Texas, CPA, or Customers. Neither this Contract nor the Master Agreement shall constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the State of Texas, CPA, or Customers. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the State of Texas, CPA, or Customers under this Contract or the Master Agreement or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. CPA does not waive any privileges, rights, defenses, or immunities available to CPA by entering into this Contract or by its conduct prior to or subsequent to entering into this Contract.

42. HEADINGS

The headings used in this Contract are for convenience only and will not be used in interpreting this Contract.

43. ORDER OF PRIORITY

If there is any inconsistency or conflict between this document and the Master Agreement or any provision of any document incorporated by reference, this document will prevail.

44. ENTIRE AGREEMENT

This Contract consists of the Master Agreement (see Paragraph entitled “MASTER AGREEMENT AND ADMINISTRATIVE FEE”), this Contract, any amendments approved by CPA and, if applicable, Contractor’s dealer Letter(s) of Authorization and dealer Letter(s) of Acceptance, and any price lists or catalogs specifically mentioned elsewhere in this Contract. The foregoing constitutes the entire agreement between the parties, and any changes or modifications to this Contract must be in writing and signed by CPA.

45. GOVERNING LAW, VENUE

This Contract in all respects shall be governed by and construed in accordance with the laws of the State of Texas, except for its provisions regarding conflicts of laws. Contractor agrees that the exclusive venue and jurisdiction of any legal action or suit concerning the CPA under this Contract is, and that any such legal action or suit shall be brought, in a court of competent jurisdiction in Travis County, Texas.

46. SEVERABILITY

In the event that any term, provision, covenant, or condition of this Contract is later determined to be invalid, void, or unenforceable, then the remaining terms, provisions, covenants, and conditions of this Contract shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated.

[remainder of page intentionally left blank]

SIGNATORIES

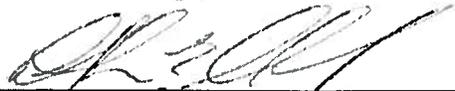
The undersigned signatories represent and warrant that they have full authority to enter into this Contract on behalf of the respective counterparts. This Contract may be executed in one or more counterparts, each of which is an original, and all of which constitute only one agreement between the parties.

Texas Comptroller of Public Accounts

By:  FOR Mike Reissig
Mike Reissig, Deputy Comptroller

Date: 8/31/17

Contractor *P. Iney Bowers Inc.*

By: 
Name: Arthur E. Adams Jr.
Title: Director, Government Contract Compliance

Date: 8/31/2017



MAILROOM EQUIPMENT, SUPPLIES & MAINTENANCE
Led by the State of **Arizona**

Agreement #: ADSPO16-169897, as amended

Contractor: PITNEY BOWES INC.

Participating Entity: STATE OF TEXAS

The following products or services are included in this contract portfolio:

- *All products, services, and accessories listed on the Contractor page of the NASPO ValuePoint website.*

Master Agreement Terms and Conditions:

1. **Scope:** This addendum covers the NASPO ValuePoint Master Agreement for Mailroom Equipment, Supplies and Maintenance led by the State of Arizona for use by state agencies and other entities located in the Participating State authorized by that State's statutes to utilize State contracts with the prior approval of the State's Chief Procurement Official.
2. **Participation:** The NASPO ValuePoint Master Agreement referenced above may be used by all state agencies, institutions of higher education, political subdivisions and other entities authorized by an individual state's statutes to use state/entity contracts are subject to the approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.
3. **Primary Contacts:** The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

Name:	Art Adams, Director Government Contract Compliance
Address:	Pitney Bowes, Inc. 3001 Summer Street, Stamford, CT 06926
Telephone:	(203) 351-7866
Fax:	(203) 460-3827
Email:	art.adams@pb.com



MAILROOM EQUIPMENT, SUPPLIES & MAINTENANCE
Led by the State of **Arizona**

Contractor – Government Sales Channel Director –West Region

<u>Name</u>	<u>Bill Walter, Director, Government Sales</u>
<u>Address</u>	<u>Pitney Bowes Inc. 3001 Summer Street, MSC 1C-305, Stamford, CT 06926</u>
<u>Telephone</u>	<u>480-206-2984</u>
<u>Fax</u>	<u>203-460-5758</u>
<u>E-mail</u>	<u>Bill.walter@pb.com</u>

Lead State

<u>Name</u>	<u>Christopher Lacey, MBA</u>
<u>Address</u>	<u>Arizona DOA-SPO, 100 N. 15th Ave, Suite 201, Phoenix, AZ 85007</u>
<u>Telephone</u>	<u>602-542-7165</u>
<u>Fax</u>	<u>602-542-5508</u>
<u>E-mail</u>	<u>Christopher.Lacey@azdoa.gov</u>

Participating Entity

Name:	Texas Comptroller of Public Accounts
Address:	PO Box 13186, Austin, TX 78711
Telephone:	512-463-3894
Fax:	
Email:	Jason.ochoa@cpa.texas.gov

4. MODIFICATIONS OR ADDITIONS TO THE MASTER AGREEMENT

These modifications or additions apply only to actions and relationships within the Participating Entity.

Participating Entity must check one of the boxes below.

No changes to the terms and conditions of the Master Agreement are required.



MAILROOM EQUIPMENT, SUPPLIES & MAINTENANCE
Led by the State of **Arizona**

The following changes are modifying or supplementing the Master Agreement terms and conditions.

- a. The laws of the State of Texas shall govern this Addendum.
- b. The State of Texas Terms and Conditions takes precedence over this Attachment A.

4.1 Software license terms and conditions shall be mutually agreed upon in writing by the purchasing entity's authorized individual and Pitney Bowes Inc. List of Software Licenses offered under this Addendum are attached hereto as Attachment A-3.

4.2 All purchasing entities requiring the use of a Postage Meter will comply with all United States Postal Service regulations and meter terms and conditions applicable to the rental and use of postage meters supplied under this participating addendum as provided by the Contractor and attached hereto as Attachment A-1.

4.3 Lease Agreements:

Equipment Lease and Rental Agreements are authorized in accordance with the terms of NASPO ValuePoint Master Price Agreement number ADSP016-169897. Attachment A-2 reflects the lease and/or rental options Participating State/Entity has agreed to use. Attachment A-3 reflects the terms and conditions for a lease under this agreement. Any underlying leases to this agreement will remain in full force and effect throughout the stated lease term of such lease agreement, subject to termination provisions stipulated with such lease. The lease program only applies to the SMB Product line explained below. The DMT Product line as described in tabs on the Price Attachments C and C-1 to the Agreement ("Folders-Inserters Production, Inserters-Production, Pre-sorting Equipment Production and Software License and Subscriptions applicable to DMT Production Mail Equipment")) (the "DMT Product Line") for Production Mail categories is only available for purchase at this time.

- (a) Pitney Bowes Global Financial Services LLC "GFS" State & Local Fair Market Value Lease pursuant to Sections 3.15 and 3.16, respectively and its terms and conditions are offered for lease transaction for the SMB Product line specifically listed on Attachments C to the NASPO ValuePoint Master Agreement.

4.4 Sales & Purchase Tax will only be charged if required under Texas Statute.

4.5 Subcontractors:

All Pitney Bowes contractors, subcontractors, Authorized Sales and Services Representatives authorized in the State of *Texas*, as shown on the dedicated Pitney Bowes website, are approved to provide sales and service support to participants in the NASPO ValuePoint Master Agreement. The contractor's dealer participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement.

4.6 Purchase Order Instructions:

All orders under this PA are to be made out to and processed by Pitney Bowes and should contain the following (1) Mandatory Language "PO is subject to NASPO ValuePoint Master Agreement number ADSPO16-169897 " (2) Your Name, Address, Contact, & Phone-Number.

Orders: Any order placed by a Participating Entity or Purchasing Entity for a product and/or service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the order agree in writing that another contract or agreement applies to such order

4.7 Price Agreement Number:

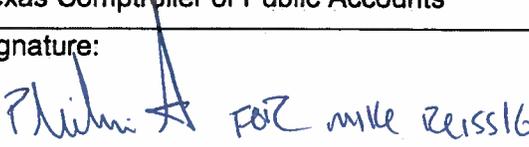
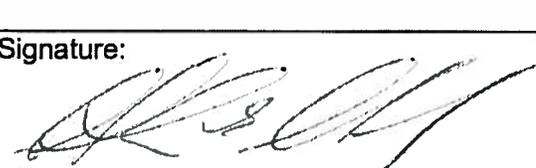
All purchase orders issued by Purchasing Entities within the jurisdiction of this Participating Addendum shall include the Participating State/Entity's contract number: **985-L1-1969** and the Lead State price agreement number: ADSPO16-169897.

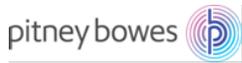
4.8 Individual Customer:

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

4.9 Section 7.2 [State of Arizona Uniform Terms and Conditions], subsection 6 [Risk and Liability], subsection 6.1 [Risk of Loss] is hereby amended by adding the following at the end of said subsection 6.1: "provided, however, that the State shall be deemed to have accepted a Product as to which it doesn't indicate nonconformity within sixty (60) days of the delivery of the product."

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

Participating Entity: Texas Comptroller of Public Accounts	Contractor: Pitney Bowes Inc.
Signature: 	Signature: 
Name: Mike Reissig	Name: Arthur S. Adams Jr.
Title: Deputy Comptroller	Title: Director, Government Contract Compliance
Date: 8.31.17	Date: 8/31/2017



NASPO VALUEPOINT ADSP016-169897 POSTAGE METER RENTAL TERMS AND CONDITIONS

1. DEFINITIONS

As used in this Agreement, the following terms mean:

"Agreement" – the Order, your State's Participating Addendum, the NASPO ValuePoint Master Agreement ADSP016-169897, these terms and conditions, and any attached exhibits.

"Bank" - The Pitney Bowes Bank, Inc.

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

"Meter" - any postage meter supplied by PBI under the Order, including (i) in the case of a Connect+™ or SendPro™ P series 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.

"Master Agreement" – NASPO ValuePoint Master Agreement ADSP016-1698978 Mail Room Equipment, Services and Maintenance contract administered by the State of Arizona and shall consist of: the solicitation as amended, any requests for clarifications and/or best and final offers, the proposal submitted by us, our responses to any requests for clarifications and/or our best and final offer.

"NASPO ValuePoint" – NASPO ValuePoint Cooperative Purchasing Organization LLC, a wholly owned subsidiary of National Association of State Procurement Officials (NASPO).

"Order" - the executed order between the applicable Pitney Bowes company and you for the products covered by the order.

"PBGFS" - Pitney Bowes Global Financial Services LLC or a wholly-owned subsidiary of Pitney Bowes Inc.

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

"Reserve Account" – the Postage By Phone® Reserve Account that you maintain at the Bank.

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

"USPS" – the United States Postal Service.

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

2. METER RENTAL

2.1 Fees

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

2.2 Postage

- (a) You may transfer funds to the Bank for deposit into your Reserve Account or you may transfer funds to the United States Postal Service ("USPS") through a lockbox bank ("Lockbox Bank"). See section U1 for details.
- (b) If you participate in any optional PBI, PBGFS, or Bank postage advance programs (such as Purchase Power), we will advance payment on your behalf to USPS, subject to repayment by you under the terms of the postage advance program and billed separately from your Meter rental fees.
- (c) If you purchase postage through a Lockbox Bank, the USPS is responsible for refunds of unused postage and those refunds will be made in accordance with then current USPS regulations.

2.3 Terms of Use: Federal Regulations

- (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 operator guide and (iii) all USPS regulations.
- (b) You agree to use only attachments or printing devices authorized by us.

- (c) You must receive our written consent before moving the Meter to a different location.
- (d) Federal regulations require that we own the Meter.
- (e) Tampering with or misusing the Meter is a violation of federal law.
- (f) Activities of the USPS including the payment of refunds for postage by the USPS to clients will be made in accordance with the current Domestic Mail Manual.
- (g) 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.
- (h) 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.
- (i) You understand that the rules and regulations regarding the use of this Meter as documented in the Domestic Mail Manual may be updated from time to time by the USPS and it is your obligation to comply with any rules and regulations regarding its use.

2.4 Care and Risk of Loss

- (a) You agree to take proper care of the Meter(s).
- (b) You assume all risk of loss or damage to the Meter while you have possession.

2.5 Rate Updates and Soft-Guard® Program

- (a) Your Meter may require periodic rate information updates that you can obtain under our Soft-Guard® program.
- (b) The Soft-Guard® Subscription, we will provide up to 6 rate updates during each 12 month period following the date of installation..
- (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) We will not be responsible for any losses arising out of or resulting from the failure of rating or software downloads to conform to published rates.

2.6 Repair or Replacement

- (a) If the Meter malfunctions or fails due to reasons other than your negligence or accident, usage which exceeds our recommendations, use of Meter in a manner not authorized by this Agreement or any operator guide, use of equipment in an environment with unsuitable humidity and/or line voltage, damage in transit, virus contamination or loss of data, loss or fluctuation of power, fire, flood or other natural causes, external forces beyond our control, sabotage or service by anyone other than us, failure to use applicable software updates, use of Meter with any system for which we have advised you we will no longer provide support or which we have advised you is no longer compatible, or use of third party

supplies (such as ink), hardware or software that results in (i) damage to Meter (including damage to printheads), (ii) poor indicia, text or image print quality, (iii) indicia readability failures or (iv) a failure to print indicia, text or images

(b) REPAIR OR REPLACEMENT IS YOUR SOLE REMEDY.

2.7 LIMITATION OF LIABILITY

See – Master Agreement

2.8 Collection of Information

(a) You authorize us to access and download information from your Meter and we may disclose this information to the USPS or other 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.

3. VALUE BASED SERVICES

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

3.1 Fees

(a) Any fees charged by the USPS for any Value Based Service you purchase is payable by you in the same way that you pay for postage.

(b) The USPS is solely responsible for its services.

(c) We are not responsible for any malfunctions of any part of the communication link connecting the IntelliLink® Control Center with the USPS data system.

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

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

4. EMBEDDED SOFTWARE AND SUBSCRIPTION SERVICES

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

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

4.2 Subscription Services. We may offer certain on-demand services to you on a subscription basis as indicated in the applicable Order. Upon payment of any applicable subscription fees, we grant you a non-exclusive, non-transferable license to access and use the subscription services for the term set forth in the Order for your internal business purposes only. You may not provide access to the subscription services to any third party, or use the subscription services on behalf of any third party absent our written consent. You will comply with all applicable laws, rules and regulations governing your use of the subscription services, including any data protection or privacy laws. You will not use the services to send or store infringing, obscene, threatening or unlawful material or disrupt the use by others of the subscription services, network service or network equipment, and you will not reverse engineer, decompile or disassemble the subscription services. If the subscription services you purchased come with their own terms of use, your use of those subscription services will be governed by those terms. Maintenance and technical support for any on-demand services will be provided in accordance with a separate agreement covering the same.

5. INTERNET ACCESS POINT

5.1 The Connect+™ and SendPro P series mailing systems 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+™ and SendPro P series mailing systems and the internet and for no other purpose. You agree to pay all costs associated with use of the access point in violation of this restriction.

6. ENDING THIS AGREEMENT.

6.1 Your right to use the Meter, or Value Based Services is limited in duration to the Initial Term and to any subsequent extensions of the Initial Term.

6.2 After the Initial Term, you or we may cancel this Agreement, in whole or in part, upon 30 days prior written notice.

6.3 We reserve the right to recover or disable the Meter and terminate this use at any time if in violation of the terms of use under the Federal Regulations.

6.4 After cancellation or termination of this Agreement, you must return the Meter to us in the same condition as you received it, reasonable wear and tear excepted.

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 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 your Reserve Account .

UI.2 To the extent you deposit funds in advance of the use of any evidence of postage, you may 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 clients. 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.

The Pitney Bowes Bank, Inc.

PURCHASE POWER TERMS AND CONDITIONS

The following provisions apply to the optional Purchase Power Program (the "Program"). Additionally, you will receive from us a set of more specific provisions within thirty (30) days of the date of this Agreement.

P1.1 General. (a) In order to participate in the Program, you must provide the information described in Section P1.8. (b) The Purchase Power credit line is a product of 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 those relating to: (i) transaction fees, if applicable; (ii) if transaction fees are inapplicable, overage fees; (iii) your failure to pay in a timely manner; (iv) your exceeding your credit line; and (v) fees attributable to the return of any checks.

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 may deliver any statement electronically to the email address that is then on file for you. (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, 2013, 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 limit.

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 (including by electronic notice via the email address that is then on file for you). 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 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.

PBSMARTPOSTAGE™ TERMS AND CONDITIONS

If you have ordered pbSmartPostage™, your use of that product will be subject to the Terms of Use which are available at <http://www.pitneybowes.com/us/license-terms-of-use/smart-postage-terms-and-conditions.html> and which are incorporated by reference. Your use of pbSmartPostage is entirely governed by the pbSmartPostage Terms of Use and any other provisions of the Pitney Bowes Terms will not apply.

SENDPRO™ TERMS AND CONDITIONS

If you are acquiring a SendPro subscription: (i) without SendKit equipment, your Terms Of Use are available at <http://www.pitneybowes.com/us/license-terms-of-use/sendpro-subscription.html>; and (ii) with SendKit equipment, your Terms Of Use are available at <http://www.pitneybowes.com/us/license-terms-of-use/sendpro-term.html>. Your use of the SendPro application is entirely governed by the SendPro Terms of Use and any other provisions of the Pitney Bowes Terms will not apply.

ATTACHMENT A-2

SUMMARY OF LEASING/RENTAL PROGRAMS UNDER ADSP016-169697

Pitney Bowes Global Financial Services offers a variety of equipment leasing and lease/rental programs to enable your agency to acquire the equipment it needs with the innovative financing solution that works best for you. This Agreement cannot be used for the DMT Product line, for Production Equipment Categories (Folders-Inserters Production, Inserters-Production, Pre-sorting Equipment Production and Software License and Subscriptions applicable to DMT Production Mail Equipment awarded under ADSP016-00006328- to Pitney Bowes Inc.

FAIR MARKET VALUE LEASE - Option C

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

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

MONTHLY LEASE RATES	
TERM	LEASE RATE FACTOR
36	0.0342
48	0.0277
60	0.0237

MONTHLY LEASE PAYMENT BASED ON		
TERM	EQUIPMENT PAYMENT	
36	\$	342.00
48	\$	277.00
60	\$	237.00

*Monthly payment excludes any Sales and or Purchase Tax. Sales and/or Purchase Tax will be charged, if required under Your State

OPTION C -- NASPO VALUEPOINT FAIR MARKET VALUE LEASE TERMS AND CONDITIONS:

Pitney Bowes Global Financial Services LLC will serve as a sub-contractor under ADSP016-169897 and will be the Lessor under this Fair Market Value Lease Terms and Condition Agreement. PBGFS does not warrant, service or otherwise support the equipment. Those services are provided by Pitney Bowes Inc. (PBI). Due to federal regulations, only PBI can own a Meter. This Agreement cannot be used for Production Equipment Categories (Production Ink Jet Envelope Addressing System, Production Tabbers, Inserter Production, Production Folder-Inserter, Pre-Sorting Equipment) awarded under ADSP016-00006328- to Pitney Bowes Inc.

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

Monthly Rate Factors:

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

Total Value of the Order multiplied by the applicable Monthly Rate Factor = Monthly Equipment Lease Payment, plus applicable monthly meter rental and value based service fees, plus the monthly cost of service maintenance for years 2 thru end of initial term, plus any applicable taxes, multiplied by three (3) months = equals the Quarterly Payment.

For further clarification a 36 month lease based on a \$10,000 equipment order would equal a \$342.00 monthly equipment lease payment multiplied by 3 months equaling a \$1,026 quarterly lease payment. Applicable quarterly cost of service maintenance for years 2 thru end of initial term, quarterly meter rental and value based services fees, plus any taxes, if applicable, would be added to the Quarterly payment.

L1. DEFINITIONS**L1. DEFINITIONS**

L1.1 The following terms mean:

Agreement - the Order, your State's Participating Addendum, the NASPO ValuePoint Master Agreement ADSP016-169897, these terms and conditions, and any attached exhibits.

Bank - The Pitney Bowes Bank, Inc.

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

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

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 Meter, and any standalone software and SendKit equipment.

Initial Term - the lease period listed on the Order

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

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

Lease - the Order and this NASPO ValuePoint Fair Market Value Lease Terms and Conditions.

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

Master Agreement - NASPO ValuePoint Master Agreement ADSP016-169897 Mail Room Equipment, Supplies and Maintenance contract administered by the State of Arizona and shall consist of: the solicitation as amended, any requests for clarifications and/or best and final offers, the proposal submitted by us, our responses to any requests for clarifications and/or our best and final offer.

NASPO ValuePoint - NASPO ValuePoint Cooperative Purchasing Organization LLC, a wholly owned subsidiary of National Association of State Procurement Officials (NASPO).

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

PBGFS - Pitney Bowes Global Financial Services LLC.

PBI - Pitney Bowes Inc.

Pitney Bowes - PBGFS and its subsidiaries, and PBI.

Postage Meter Rental Agreement - an agreement governing the use and rental of a Meter you enter into with us.

SLA - the Service Level Agreement.

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

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

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

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

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

L2. AGREEMENT

L2.1 You are leasing the Equipment listed on the Order.

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

L2.3 If you do not pay the fees when due or you do not comply with the Agreement and fail to cure the same within thirty (30) days of receipt of written notice thereof, we may disable the Meter, terminate the Agreement, retake the Equipment and Meter, and collect from you all fees due for the remainder of the Initial Term, or if after the Initial Term, all fees then due, plus interest at the maximum rate allowed by the Texas Prompt Payment Act, Texas Government Code Chapter 2251.

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

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 statement of work attached to the Order. You will make each Quarterly Payment by the due date according to the Texas Prompt Payment Act, Texas Government Code Chapter 2251.

L3.2 Your Quarterly Payment may include an origination fee, amounts carried over from a previous unexpired lease, SLMA fees and other charges.

L3.3 Any Meter rental fees and SLA fees (collectively "PBI Payments"), will be included with your Quarterly Payment and begin with the start of the Lease Term (as defined below). After the Initial Term, your Quarterly Payment will increase if your PBI Payments increase.

L4. EQUIPMENT OWNERSHIP

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

L5. LEASE TERM

The Lease term is the number of months stated on the Order ("Lease Term"). The Lease Term will commence on the date the Equipment is delivered, if we do not install the Equipment. If we install the Equipment, the Lease Term will commence on the installation date.

L6. END OF LEASE OPTIONS

L6.1 During the 90 days before your Lease ends, 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 and Meter in its original condition, reasonable wear and tear excepted and pay us our then applicable processing fee. If you return the Equipment and Meter, you will, as specified by us, either properly pack and return them to us in the return box and with the shipping label provided by us or furnish them to such service carrier as we specify to pick up and ship them to us.

L6.2 If you do not select one of the options in Section L6.1, you will be deemed to have agreed to enter into month to month extensions of the term of this Agreement. You may choose to cancel the automatic extensions by giving us 60 days prior written notice before the Lease expires (unless the law requires the notice period to be shorter). 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 PBGFS AND THE BANK MAKE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR FREEDOM FROM INTERFERENCE OR INFRINGEMENT.

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

- (a) PBI warrants that the Equipment will be free from defects in material and workmanship and will perform according to the equipment user guide for a period of one year (360) days from the date of acceptance (the "Warranty Period").
- (b) PBI warrants that the Maintenance Service provided will be performed in a professional and workmanlike manner.
- (c) Your remedy in the event of any warranty claim is as provided within the Master Agreement.
- (d) A "defect" does not include the failure of rates within a rate update to conform to published rates.
- (e) There is no warranty for Equipment requiring repair or replacement because of your negligence, usage which exceeds PBI's recommendations, damage in transit, virus contamination or loss of data, misuse, external forces, loss or fluctuation of power, fire, flood, or other natural causes, or service by anyone other than PBI. There is no warranty for Equipment arising from the use of third party supplies (such as ink) that results in: (i)

damage to PBI Equipment; (ii) poor indicia, text, or image print quality; (iii) indicia readability failures; or (iv) a failure to print indicia, text, or images.

- (f) The print engine(s), print engine components, structural components and printed circuit board assemblies supplied with the PBI Equipment may be reclaimed, reconditioned or remanufactured. Any such item is warranted to perform according to the same standards as the equivalent new item.
- (g) The warranty does not cover Consumable Supplies.

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

L8. EQUIPMENT OBLIGATIONS

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

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

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

L9. RISK OF LOSS AND VALUEMAX® PROGRAM

L9.1 Risk of Loss.

- (a) You bear the entire risk of loss to the Equipment from the date of delivery by PBI until the Equipment is returned to, and received by, us, 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 any Loss.

L10. NON-APPROPRIATION

L10.1 See Master Agreement – Section 7.2 State of Arizona Uniform Terms and Conditions, Par 4.4. Availability of Funds for the Next State fiscal year and Par 4.5. Availability of Funds for the current State fiscal year.

L11. EARLY TERMINATION

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

L12. MISCELLANEOUS

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

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

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

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

L12.5 If there is a conflict between any of the terms and conditions in this Agreement, your State's Cooperative Contract Participation Agreement and the Master Agreement ADSP016-169897, the Cooperative Contract Participation Agreement, together with Attachment A, shall prevail.

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

- L12.7 Our Equipment may contain embedded software. You agree:
- (i) that PBI and its licensors own the copyrights and other intellectual property in and to the embedded software;
 - (ii) that you do not acquire any right, title or interest in or to the embedded software;
 - (iii) only to use the embedded software with our Equipment in which the embedded software resides;
 - (iv) that you may not copy the embedded software;
 - (v) that you may neither modify nor create derivative works of the embedded software;
 - (vi) that you may neither distribute nor disclose the embedded software (or any portion thereof) to any other person;
 - (vii) that you may not translate, de-compile, disassemble, or otherwise attempt to unbundle, reverse engineer or create derivative works of the embedded software, except as permitted by applicable law; and
 - (viii) that you may not export the embedded software in contravention of applicable export control laws.
- The embedded software contains third party software. Notwithstanding the above, this section does not modify any terms that may accompany such third party software.
- L 12.8 The Connect+ and SendPro P or C Series mailing system 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+ and SendPro P or C Series mailing system 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.
- L 12.9 We will provide you with a welcome letter by email.

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