

THE COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE FOR ADMINISTRATION AND FINANCE

# OPERATIONAL SERVICES DIVISION

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ONE ASHBURTON PLACE, 10<sup>TH</sup> FLOOR, ROOM 1017, BOSTON, MASSACHUSETTS 02108-1552



## Request for Response (RFR)

**Document Title: Postage and Mail Processing Equipment,  
Accessories, Service & Supplies**

**Agency Document Number: OFF39**

**COMMBUYS Bid#: BD-15-1080-OSD01-OSD10-00000003630**

**Date: April 7, 2015 with Amendments as of 5/6/15**

Please Note: This is a single document associated with a complete Bid (also referred to as Solicitation) that can be found on [www.COMMBUYS.com](http://www.COMMBUYS.com). All Bidders are responsible for reviewing and adhering to all information, forms and requirements for the entire Bid, which are all incorporated into the Bid. Bidders may also contact the COMMBUYS Helpdesk at [COMMBUYS@state.ma.us](mailto:COMMBUYS@state.ma.us) or the COMMBUYS Helpline at 1-888-MA-STATE. The Helpline is staffed from 8:00 AM to 5:00 PM Monday through Friday Eastern Standard or Daylight time, as applicable, except on federal, state and Suffolk county holidays.

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## 1 RFR INTRODUCTION AND GENERAL DESCRIPTION

### 1.1 Procurement Scope and Description

The Commonwealth of Massachusetts and the OFF39 Postage and Mail Processing Equipment, Accessories, Service and Supplies Strategic Sourcing Services Team (SSST) are soliciting Bidders for the acquisition of new digital postage equipment, related accessories and supplies, and new and/or refurbished mail handling equipment, related accessories and supplies as well as maintenance for new and predecessor equipment in each category. The resulting Contract will be the primary Statewide Contract used by Executive Agencies of the Commonwealth for the goods and services covered by the Contract. The Statewide Contract will also be available for use by other eligible entities listed below. Each Commonwealth Agency and eligible entity is responsible for executing its own purchase orders and paying its own invoices for goods and/or services acquired from this Statewide Contract. Contractors will be responsible for marketing their goods and/or services to Commonwealth Agencies and other eligible entities.

### 1.2 Background information

This RFR is to create the successor contract to OFF37 Postage and Mail Processing Equipment, Accessories, Service and Supplies statewide contract.

### 1.3 Applicable Procurement Law

This Bid is issued under MGL c. 7, § 22; c. 30, § 51, § 52; and 801 CMR 21.00 (Goods and Services)

### 1.4 Number of awards

The target maximum number of Contractors is 5. This is a target number; the SSST may award more or fewer Statewide Contracts if it is in the best interests of the Commonwealth to do so.

### 1.5 Adding Contractors after initial Statewide Contract award

If, over the life of the Contract, the SSST determines that additional Contractors should be added, these may first be drawn from qualified companies which responded to this Bid but were not awarded contracts. If necessary to meet the requirements of the Commonwealth, the Bid may be reopened to obtain additional Quotes.

The SSST also reserves the right to suspend the review of additional submissions for specific regions or close the Bid for new Quotes entirely if it deems that the number of Contractors awarded at that point adequately meets the needs of eligible entities. If, subsequent to such a decision, the SSST determines that additional Contractors should be added, these may first be drawn from qualified companies which responded to this Bid but were not awarded contracts. If necessary to meet the requirements of the Commonwealth, the Bid may be reopened to obtain additional Quotes.

### 1.6 Eligible Entities

Any Contract resulting from this Bid will be open for use by the following types of entities:

1. Cities, towns, districts, counties and other political subdivisions;
2. Executive, Legislative and Judicial Branches, including all Departments and elected offices therein;
3. Independent public authorities, commissions and quasi-public agencies;
4. Local public libraries, public school districts and charter schools;

5. Public hospitals owned by the Commonwealth;
6. Public institutions of higher education;
7. Public purchasing cooperatives;
8. Non-profit, UFR-certified organizations that are doing business with the Commonwealth;
9. Other states and territories with no prior approval by the State Purchasing Agent; and
10. Other entities when designated in writing by the State Purchasing Agent.

Each eligible entity is responsible for executing its own purchase orders and paying its own invoices for goods and/or services acquired from this Contract. Contractors will be responsible for marketing their goods and/or services to Commonwealth Agencies and other eligible entities.

### **1.7 Technological Advancements**

In the event that future technology represents a significant enhancement that creates a situation in which new equipment is not available on OFF39 then the OSD Contract Manager reserves the right to modify or create a category and/or sub-category at any time during the contract term and negotiate with the current contractors or allow an open enrollment for the category(ies) and/or sub-category(ies) for new bid submissions.



**1.8 Acquisition Method(s)**

The acquisition method(s) to acquire goods and/or services from this Bid are outright purchase, Term Lease, Fee for Service, Rental (Not to exceed 6 months).

**1.9 Contract Duration**

The initial term of this Contract is 5 year(s). In addition, this Contract has 5 one-year options to renew with a maximum Contract term of 10 years (including the initial term and all possible renewal options).

**1.10 Performance and payment time frames which exceed Contract duration**

All term leases, rentals, maintenance or other agreements for services entered into during the duration of this Contract and whose performance and payment time frames extend beyond the End Date of this Contract shall remain in effect for performance and payment purposes (limited to the time frame and services established per each written agreement). No written agreement shall extend more than 5 years. No new leases, rentals, maintenance or other agreements for services may be executed after the Contract has expired.

**1.11 Estimated Value of the Contract**

The estimated value of purchase(s) resulting from this Bid is \$2,000,000.00 The Commonwealth makes no guarantee that any commodities or services will be purchased from any Contract resulting from this Bid. Any estimates or past procurement volumes referenced in this Bid are included only for the convenience of Bidders, and are not to be relied upon as any indication of future purchase levels.

**1.11.1 Basis for estimated dollar value for this Statewide Contract  
(including all options to renew)**

The "Estimated Value (US\$)" for this Bid was based on the following: This Estimated Value was derived by reviewing MMARS reports to Commonwealth of Massachusetts eligible entities for FY13 and FY14.

The members of the SST perform several functions in regard to this RFR and the subsequent awarded Contracts with the Bidder(s). The functions include research, product evaluation, contract management/execution and performance management.

**2 ESTIMATED PROCUREMENT CALENDAR**

<b>EVENT</b>	<b>DATE</b>
<b>Announcement of Intent to Procure</b>	October 2, 2014
<b>Bid Release Date</b>	April 7, 2015
<b>Deadline for submission of written questions through COMMBUYS "Bid Q&amp;A"</b>	April 14,2015
<b>Official answers for Bid Q&amp;A published (Estimated)</b>	April 17, 2015

<b>Training for Online Submission</b>	<p><u>Dates, times, options available:</u> Please reference these instructions for guidance in submitting bid responses.</p> <p>In Person Training -- Locate and Respond to COMMBUYS Bids This training will take bidders through the process of locating and replying to Bids (Solicitations) in COMMBUYS. An overview of each step will be presented as well as a follow-up period with hands on exercises. <a href="#">Register</a></p> <p>The following additional resources are provided to assist Bidders in submitting Quotes: An online job aid on choose <a href="#">How to Create a Quote</a></p> <p>Webcast video on <a href="#">How to Find Bids (Solicitations) and Submit Quotes (Responses) through COMMBUYS.</a></p> <p>Instructions are also available in "Section 5" of this RFR</p>
<b>Deadline for Bid Responses ("Bid Opening Date/Time" in COMMBUYS)</b>	<del>April 30, 2015</del> <b>May 21, 2015 by 3pm</b>
<b>Notification of Apparent Successful Bidder(s) (Estimated)</b>	May 27, 2015
<b>Final Negotiation (Estimated)</b>	June 1, 2015
<b>Estimated Contract Start Date</b>	July 1, 2015

Times are Eastern Standard/Daylight Savings (US), as displayed on the COMMBUYS system clock displayed to Bidders after logging in. If there is a conflict between the dates in this Procurement Calendar and dates in the Bid's Header, the dates in the Bid's Header on COMMBUYS shall prevail. Bidders are responsible for checking the Bid record, including Bid Q&A, on COMMBUYS for Procurement Calendar updates.

**2.1 Written questions via the Bid Q&A on COMMBUYS**

The "Bid Q&A" provides the opportunity for Bidders to ask written questions and receive written answers from the SSST regarding this Bid. All Bidders' questions must be submitted through the

Bid Q&A found on COMMBUYS (See "[Locating Bid Q&A](#)," below). Questions may be asked only prior to the Deadline for Submission of Questions stated in the Estimated Procurement Calendar. The issuing department reserves the right not to respond to questions submitted after this date. It is the Bidder's responsibility to verify that the questions entered into the Bid Q&A are recorded in COMMBUYS and appear on the Bid Q&A page.

Please note that any questions submitted to the SSST using any other medium (including those that are sent by mail, fax, email or voicemail, etc.) will not be answered. To reduce the number of redundant or duplicate questions, Bidders are asked to review all questions previously submitted to determine whether the Bidder's question has already been posted.

Bidders are responsible for entering content suitable for public viewing, since all of the questions are immediately accessible to the public. Bidders must not include any information that could be considered personal, security sensitive, inflammatory, incorrect, collusory, or otherwise objectionable, including information about the Bidder's company or other companies. The SSST reserves the right to edit or delete any submitted questions that raise any of these issues or that are not in the best interest of the Commonwealth or this Bid.

**All answers are final when posted. Any subsequent revisions to previously provided answers will be dated.**

It is the responsibility of the prospective Bidder and awarded Contractor to maintain an active registration in COMMBUYS and to keep current the email address of the Bidder's contact person and prospective contract manager, if awarded a contract, and to monitor that email inbox for communications from the Purchasing Department, including requests for clarification. The Purchasing Department and the Commonwealth assume no responsibility if a prospective Bidder's/awarded Contractor's designated email address is not current, or if technical problems, including those with the prospective Bidder's/awarded Contractor's computer, network or internet service provider (ISP) cause email communications sent to/from the prospective Bidder/Awarded contractor and the Purchasing Department to be lost or rejected by any means including email or spam filtering.

## **2.2 Locating Bid Q&A**

Log into COMMBUYS, locate the Bid, acknowledge receipt of the Bid, and scroll down to the bottom of the Bid Header page. The "Bid Q&A" button allows Bidders access to the Bid Q&A page.

### 3 SPECIFICATIONS

Additional required terms appear in the Appendices to this RFR and as an attachment on COMMBUYS <https://www.commbuys.com/bsso/login.sdo>.

#### 3.1 Bidder Qualifications

To be considered for award bidders must meet all the qualifications as stated within this RFR.

##### 3.1.1 Qualification of Original Equipment Manufacturer for Equipment

For the purposes of the purchase, lease and rental of **equipment**, responses must be submitted **only** by the Original Equipment Manufacturer (hereinafter referred to as "OEM). **Only OEMs will be awarded contracts for equipment.**

##### 3.1.2 Qualification of OEM for Service or Supplies or Authorized Dealer for Service/Maintenance or Supplies

For Bidders submitting a bid for either Category 1 or 2, the following qualifications are required:

For the purposes of the purchase of OEM supplies and service/maintenance, responses must be submitted only by the Original Equipment Manufacturer (hereinafter referred to as "OEM") or a qualified OEM designated authorized dealer. Only OEMs or a qualified company authorized by the OEM will be awarded contracts for supplies and/or service/maintenance.

Bidders submitting a response to this RFR must submit written certification on the official letterhead of the OEM(s) which is signed by an authorized official of the company for each manufacturer having product represented in the response stating:

1. The bidder is authorized by the OEM to sell supplies and/or provide service/maintenance and is able to conduct business statewide consistent with the terms & specifications of OFF39 RFR.
2. The OEM manufacturer has agreed to provide product support for all equipment purchased, leased or rented from this contract to the authorized dealer to satisfy the requirements of this contract.

The certification must identify the bidder and the bid identification number: OFF39. Failure to comply with the certification requirement may result in the rejection of the response for each manufacturer not certified.

The Commonwealth reserves the right to ask for documentation from each Bidder verifying their service technician's training, including those components relating to energy efficiency and environmental benefits of the equipment.

##### 3.1.3 Authorization letters from Manufacturers or Dealers

All authorization letters from manufacturers MUST be submitted with bid response for award consideration. Letters must be written certification on official letterhead of the OEM(s), signed by an authorized official of the company.

Please indicate if you are providing letters as part of your Response in appropriate section in the "Bidders Response Form".

### **3.2 Company Certifications and Attestations:**

#### **Federal Standards:**

The Code of Federal Regulations (CFR) is an annual codification of the general and permanent rules published in the Federal Register by the executive departments and agencies of the Federal Government. Title 39 - POSTAL SERVICE is composed of one volume. The contents of this volume represent all current regulations codified under this title of the CFR as of July 1<sup>st</sup>, annually. All Contractors that submit a bid agree that they are aware of these standards and attest that they and their company fully adhere to all the federal regulations and will continue to do so during the life of their contract.

Please indicate if you are providing an attestation as part of your Response in appropriate section in the "Bidders Response Form".

#### **3.2.1 Company experience**

Bidders MUST submit on the Bidder's Response Form a brief description of their business that includes the number of years in business.

All Bidders **must** have been in business for at least **five (5) years** preceding the release date of the RFR.

Please provide this information in the "Bidders Response Form".

#### **3.2.2 Organizational chart**

**All bidders must provide a regional organizational chart reflecting all staff associated with this bid and possible award of this contract. At a minimum, this must include contact names and information for the following: account manager, reports (such as sales reports, administration fee reports), billing, service, and sales.**

Please provide this information in the "Bidders Response Form".

#### **3.2.3 References and reference information and/or requirements**

At a minimum three (3) letters of reference MUST be submitted with bid response from an institutional account, or from the largest customers in MA if available. A "Reference Form" is also available on COMMBUYS <https://www.commbuys.com/bsa/login.sdo> as an attachment that MUST also be completed with three (3) business reference.

Please acknowledge this information in the "Bidders Response Form" and complete the Reference Form.

### **3.3 Commodity Specifications**

All specifications in this section apply to all equipment awarded under any contract resulting from this RFR. The responses, as submitted, must meet or exceed all of the required specifications contained within this RFR. If a Bidder can exceed minimum requirements, points may be assessed, per category, depending on the level of added value.

Only current production equipment can be included. Bids for discontinued equipment not being actively marketed by the OEM for domestic sales are not to be offered, and will not be considered. The Commonwealth reserves the right to require OEM documentation to confirm equipment eligibility under this contract.

Equipment under this contract shall be new and include at least a one (1) year warranty on all parts and labor. All equipment must also offer a maintenance agreement available for a period of at least seven (7) years from date of acceptance with the exception of postage meter devices, loaner or rental equipment which can be either new or pre-owned. All equipment shall be in excellent working condition and shall include new OEM equipment guarantee.

State agencies using this contract will select equipment that is most appropriate to each agency's actual needs, and according to each machine and model's specified performance. Price and other factors will determine which equipment best suits agency needs. Other factors include, but are not limited to, ease of operation, equipment performance, past experience with equipment, space requirements, equipment diagnostics, configuration, and favorably priced additional available accessories.

**Upon approval from the OSD Contract Manager, Eligible Entities may have the option of choosing refurbished equipment so long as the vendor will support this equipment with supplies and maintenance for at least 5 years from the date of acceptance.**

#### **3.3.1 Functional description**

The SST has established two (2) categories for this bid. The bidder must submit their complete product line for each category that they would like to submit a bid.

##### **Category 1: Postage and Mailing Systems Equipment, Accessories, Supplies and Service:**

Equipment within the scope of Category 1 includes the full line of new digital postage equipment including related accessories, software and supplies as well as new and predecessor equipment maintenance and supplies. All equipment, accessories and supplies must be new in the box, the most current version and not discontinued by the manufacturer.

Only United States Postal Service (USPS) authorized postage meter manufacturers may submit a bid for postage meters.

##### **Category 2: Mail Handling Equipment, Accessories, Supplies and Service:**

Equipment within the scope of Category 2 includes the full product line of new equipment for Folding and/or Inserting, Sorting, Tabbing, Letter Opening, Pressure Sealing, Check Imprinting,

Endorsing and Bursting including related accessories and supplies as well as new and predecessor equipment maintenance and supplies. All equipment, accessories and supplies must be new in the box, the most current version and not discontinued by the manufacturer, or refurbished.

### **3.4 Eligible commodities**

Mailroom Equipment shall include, but is not limited to, the following equipment: Postage Metering Equipment, Accessories for Mailroom or Mailing Equipment, Electronic Scales, Mail Inserting & Sealing Equipment, Mail Addressing Equipment, Folding Equipment, Mail Accounting Systems, Miscellaneous Equipment such as: Mail Slots, Simple Time Clocks, Date Stamps, Decollators, Bursters, Check Finishing Equipment, and Letter Openers.

**Note: Only furniture specifically designed to hold the equipment in this bid will be allowed.**

#### **Category 1 Postage and Mailing Systems Equipment, Accessories, Service and Supplies:**

Equipment within the scope of Category 1 includes the full product line for digital postage meters, mailing systems, scales, mailroom furniture and related accessories (e.g. software, print output devices), service and supplies.

Only authorized postage meter manufacturers may submit a bid for postage meters.

The following is a detailed list of minimum functional specifications for all Category 1 products:

**Equipment:** Mailing systems must include accessories that allow the Eligible Entity the ability to mix weight and size pieces and must be included as an accessory item on the appropriate equipment models on the Category 1 cost sheet.

**Scales and Accessories:** All scales must provide accurate weight and postage rates with all various weight capacities within a manufacturer's product line. Scales must be able to interface with the appropriate mailing systems within the manufacturer's product line and be able to be updated with the current and future postal rates with all appropriate software tools necessary for the new rates. Software updates are the responsibility of the Vendor to integrate with current equipment and future USPS postal regulations.

**Furniture.** Mailroom furniture and accessories must be appropriate for a mailroom operation. Mailroom work tables, free standing mail sorter tables and bins must be constructed of wood, steel or plastic bases with steel, laminate or wood tops that can support the daily use and weight of mailroom product and equipment.

All accessories related to Category 1 equipment configurations must be identified on the equipment cost sheets (Attachment 1) for each equipment model, manufacturer suggested retail price (MSRP) with the associated percentage % discount(s) off the manufacturer's suggested retail price.

**Services.** All bidders must provide the following service plans for the Eligible Entities to utilize;

- Plan A – Yearly Service Plan during normal business hours (8:00 AM – 5:00 PM) or mutually agreed upon by the Eligible Entity and Vendor,

- Plan B – Time and Material Discount Plan during normal business hours (8:00 AM – 5:00 PM) or mutually agreed upon by the Eligible Entity and Vendor,
- Time and Materials – Hourly Rate weekend business hours, % off Parts,
- Time and Materials – Hourly Rate holiday business hours, % off Parts,
- Time and Materials – Hourly Rate 24x7 business hours, % off Parts,
- Time and Materials – Hourly Rate 2 hour emergency response normal business hours, % off Parts,
- Optional Service Plans – One or more of the optional service plans detailed on each cost sheet per Category are **highly desirable**.  
Plan A and B Service plans will be utilized for both new and predecessor equivalent equipment models.

Vendor must indicate the yearly rate, hourly rates, dated catalog and percentage (%) off in the appropriate cost sheets.

**Supplies:** All related equipment supplies and costs must be provided on the appropriate equipment cost sheets. The costs must include the dated catalog, supply description, manufacturer brand, part number, yield per ink cartridge; manufacturer suggested retail price (MSRP) and the percentage (%) discount for each supply cost.

The percentage (%) off the dated catalog will also include all predecessor supplies for equipment currently utilized that are no longer manufactured.

The lease of postage meters shall include unlimited resets at no charge to the Eligible Entity during the term of the lease.

Vendors shall update or replace any postage meters, which do not meet United States Postal Service (USPS) regulations or are defective at **no charge** to the Eligible Entity and will bill the Eligible Entity only at the current meter lease rates. Suppliers shall be responsible for notifying all Eligible Entities of meter updates required by the USPS.

Vendors shall modify any leased equipment, which can be modified, to accept new or updated postage meters at no charge to Eligible Entity.

Vendors shall modify owned equipment, which can be modified, at the contract costs for the appropriate accessories in order for the equipment to accept new or updated postage meters.

### **Category 2, All Other Equipment, Accessories, Service and Supplies**

**New and Refurbished** Equipment within the scope of Category 2 includes the full product line for Folding & Inserting, Folding, Tabbing, Sorting, Mail and Letter Opening, Pressure Sealing, Check Imprinting, Endorsing and Bursting Equipment and related accessories, services and supplies.

The following is a detailed list of **minimum** functional specifications for Category 2:

#### **Equipment:**



- Desktop folding equipment must be able to fold documents with a minimum of one fold type and must be able to adjust to various sized envelopes for mailing.
- Production folding/inserting equipment must have multiple folding options and it is (highly) desirable if the equipment can be customized with additional stackers, if required by the Eligible Entity.
- Desktop through production tabbing equipment must apply the selected tab on non-envelope, self-mailers required by the United States Postal Service (USPS) in order to receive discounted postal rates.
- Tabbing equipment must have a feeder stacker capable of accepting various sized documents for tabbing. It is **highly desirable** that production tabbing equipment have a post-production conveyer stacker accessory indicated on the cost sheet attachment for large volume jobs.
- Sorting equipment must have the ability to sort various sizes of envelopes, flats and packages at various rates of speed from low through production high sorting speeds.
- Desktop through production mail/letter opening equipment that slice open the various envelope sizes in a minimum of one location while protecting the internal documents. The mail/letter opener must be able to handle mixed-mail during processing.
- Desktop through production pressure sealing equipment that creates a single piece mailer from a full range of stock or custom forms with a continuous seal formed to assure security and confidentiality. Equipment models must be able to detect when “double documents” are processed or documents jam during production.
- Desktop through production check imprinting/endorsing equipment that utilized both cut sheet and continuous style documents. The equipment models must be able to provide a variety of options with regards to signatures, date stamps, seals and logos on various locations on the document. It is desirable if the equipment has both a counter that can be reset and non-reset for audit purposes. It is desirable if the equipment offers tri-color and ultraviolet ink roll options.
- Desktop through production bursting equipment that can burst vertically at the pinfeed perforations and stack sequentially, and burst continuous multipart documents at the horizontal perforations. It is highly desirable if the equipment can burst various locations of perforations for production equipment.

**Accessories:**

All accessories must be appropriate for the equipment’s operation for all equipment allowed on statewide contract, such as:

- All equipment furniture accessories must be appropriate for the equipment’s operation. e.g., work tables, height adjustable tables with shelves and doors with or without locks, constructed of wood, steel or plastic bases with a steel, laminate or wood tops that can support the daily use and weight of the equipment.

All accessories related to Category 2, equipment configurations must be identified on the equipment cost sheets (Bid Response Form) for each equipment model with the associated (%) percentage discount(s) off the manufacturer's suggested retail price.

**Services:**

All bidders must provide the following service plans A and B for the Eligible Entities to utilize;

- Plan A – Yearly Service Plan during normal business hours (8:00 AM – 5:00 PM) or mutually agreed upon by the Eligible Entity and Contractor,
- Plan B – Time and Material Discount Plan during normal business hours (8:00 AM – 5:00 PM) or mutually agreed upon by the Eligible Entity and Contractor,
- Optional Service Plans – One or more of the optional service plans detailed on each cost sheet per Category and Sub-Category are **highly desirable** and not required if the bidder cannot provide one or more of the optional service plans.

Plan A and B Service plans will be utilized for both new and predecessor equivalent equipment models.

Insert the proper requested yearly rate, hourly rates, dated catalog and percentage (%) off in the appropriate cost sheets.

All Maintenance Plan cost must include all materials necessary to repair and maintain equipment. Transportation and travel costs will not be reimbursed by the Eligible Entity.

The Contractor **must** respond within **two (2) hours** after it receives written or oral notice of a service call for a breakdown in the equipment.

**The Contractor must send a service technician to repair the Equipment within (4) hours of the service call and must make every effort to repair the Equipment on the same business day if the call is placed before 12:00 P.M. E.S.T., and if replacement parts are necessary for the repair of the Equipment, they must be obtained by the next business day for installation, regardless of geographic location.**

**It is at the Eligible Entities discretion to opt for an 8 hour service plan instead of the 4 hours, but they must receive a reduced rate for an 8 hour plan.**

**All return service calls and onsite responses shall be made during Eligible Entity business hours unless otherwise specified by the Eligible Entity.**

~~The Contractor must send a service technician to repair the equipment within four (4) hours of the service call and must repair the Equipment on the same business day if the call is placed before 1:00 P.M. E.S.T. or provide replacement parts for the Equipment by the next business day, regardless of geographic location. All return service calls and onsite responses shall be made during Eligible Entity business hours unless otherwise specified by the Eligible Entity.~~

Standard business hours are 8:00 A.M. to 5:00 P.M. E.S.T. Monday through Friday. After Hour Service (after 5:01 P.M. E.S.T. Monday-Friday, Weekends and Holidays).

All payments for maintenance service will be made to the Contractor.

**Supplies:**

All related equipment supplies and costs must be provided on the appropriate equipment cost sheets. The supply costs information must include the dated catalog, supply description, manufacturer brand, part number, yield per ink cartridge (if applicable), manufacturer suggested retail price (MSRP) and the percentage (%) discount for each item or category of items.

The percentage (%) off the dated catalog will also include all predecessor supplies for equipment currently utilized that are no longer manufactured.

**Pricing Adjustments/Updates**

The Percentage (%) Off the suggested retail price for equipment, accessories and supplies will remain fixed for the term of the contract. All dated suggested retail price lists utilized in the bid submission may **not** be increased for the initial **twelve (12) months** of the contract award.

For equipment under a Term Lease or Rental, no escalation in the amount of the lease, rental, maintenance or supply payments will be permitted for the length of the term lease or rental.

Any increased percentage (%) off or decreased suggested retail price which results in a cost decrease is encouraged at any time during the term of the contract but must be reviewed and accepted by the OSD Contract Manager prior to implementation. Once approved, the cost decrease must be made available to all Eligible Entities.

**3.4.1 Brand name or equal**

Unless otherwise specified in this Bid, any reference to a particular trademark, trade name, patent, design, type, specification, producer or supplier is not intended to restrict this Bid to any manufacturer or proprietor or to constitute an endorsement of any commodity or service, and the department may consider clearly identified offers of substantially equivalent commodities and services submitted in response to such reference.

**3.4.2 Contractor Certification that Equipment is Time Date Functional**

By executing a Contract under this Statewide Contract the Contractor certifies and warrants that the Information Technology for any equipment provided for Outright Purchase, Term Lease or Rental under this Statewide Contract is time date functional. Time date functional compliance means Information Technology that accurately processes date/time data (including, but not limited to, calculating, comparing, and sequencing) including leap year calculations. Furthermore, time date functionality compliant Information Technology, when used in combination with other Information Technology, shall accurately process date/time data if the other Information Technology properly exchanges date/time data with it. This warranty shall

survive the expiration or termination of this Statewide Contract. This warranty is in addition to all other Contractor generated warranties, disclaimers, or remedies to Contractor Programs, Media, and Services

#### **3.4.3 Operational, electrical, environmental and other requirements**

- All software for equipment and accessories must be appropriate for the equipment operation and functionality dependent upon the configuration. The Contractor is responsible for software upgrades for purchased or leased equipment to ensure complete functionality of the equipment.
- It is the responsibility of the Contractor and Eligible Entity to ensure, where applicable that configurations of equipment or equipment attached to another piece of equipment as an accessory can effectively operate as designed.
- Design layout services, if required by an Eligible Entity, must be provided at no cost by the Contractor from whom the Eligible Entity is purchasing the furniture and equipment.
- 
- Americans with Disability Act (ADA) - The Bidder **must** identify if the proposed equipment being submitted for bid meets the current Federal 508 Standards. Bidders must indicate on the appropriate equipment cost sheet per model whether the proposed equipment meets the Federal 508 Standards and is readily accessible for use by individuals with disabilities.
- Power Protection - Bidders must include as part of their available accessories the ability to provide surge and ground noise protection product for all categories and sub-categories of equipment. Power Protection products shall be [ESP QC Power Protection](#) or equal. Eligible Entities are encouraged to consider power protection, especially for high volume equipment. It is at the discretion of the Eligible Entity whether or not to purchase any Power Protection products at the time of purchase.

#### **3.4.4 Performance specifications, durability, disclosures and recalls**

All equipment and supplies available under this contract must perform to the manufacturer's specifications. If there are any recalls for any piece of equipment or supplies during the term of the contract the Strategic Sourcing Lead and Eligible Entities must be notified in writing.

#### **3.4.5 Approvals and standards (UL, CE, FCC, FDA, ASTM, IEEE)**

- All electrical equipment furnished must be UL approved or equivalent.
- Determination of capability/connectivity shall be the responsibility of both the Contractor and the Eligible Entity.
- Warranties and service contracts must not preclude the use of recycled paper and/or the use of generic and/or remanufactured supplies under this contract. Contractors may not fault the use of such recycled paper and/or supplies for equipment failures.
- Contractors are prohibited from affixing warning labels to equipment regarding the use of generic supplies and remanufactured supplies. Agents of the equipment Contractor must not communicate to any end user that a supply product selected on this contract should not be used, is inconsistent or will cause a problem in any way. Comments based on opinion or conjecture related to the quality or effectiveness of non-OEM supplies must be avoided.
- In their submissions, Bidders must identify, on all equipment cost sheets, equipment that requires supplies containing so called "smart chips," any computer code or any other design element that would:

- 1) Disable the equipment or impair in any way its operation based on elapsing of a period of time, exceeding an authorized number of copies, advancement to a particular date or other numeral, or any other self-destruct mechanism; or
- 2) Permit access to the equipment to cause disablement or impairment.
- All Contractors must inform Eligible Entities about the above-mentioned equipment features prior to equipment sale.
- It is highly desirable that all Contractors offer equipment that requires supplies without any impediments for their remanufacturing by third parties.

#### **3.4.6 Warranties and guarantees**

**Warranties** are to be based on commercial use. A minimum of one (1) year commercial use warranty is required; it is desirable that the bidder offer more than one (1) year, at no additional cost. Additional warranty options must be addressed in narrative form in the response submission. Special Warranty issues on products or product lines should be outlined in bidders' response.

**Extended Warranty:** Bidders must offer an extended warranty on all products at a discounted rate. The discount rate should be clearly identified in the bid response.

**Service Parts & Warranties: Bidders must offer warranty on all service parts at a discounted rate. The discount rate should be clearly identified in the bid response.**

It is highly desirable that Contractors offer a warranty period greater than the minimum at no additional cost. All manufacturer warranties will be passed through and shall be available to the Eligible Entity. A Contractor hereby irrevocably appoints a contracting Eligible Entity its agent and attorney in fact during the Term Lease or Rental Term of every item of equipment, so long as the Eligible Entity shall not be in default hereunder, for the sole purpose of asserting from time to time whatever claims and rights, including warranties of the Equipment, which the Contractor may have against the manufacturer of the equipment. Rented equipment may be new, used or remanufactured. However, if the rented equipment is used or remanufactured, the rented equipment shall meet all manufacturer's published performance standards, and all other performance standards in this RFR.

The contractor acknowledges that the Uniform Commercial Code applies to this statewide contract. In general, the contractor warrants that: (a) the product will do what the salesperson said it would do, (b) the product will live up to all specific claims that the manufacturer makes in their advertisements, (c) the product will be suitable for the ordinary purposes for which such product is used, (d) the product will be suitable for any special purposes that the Eligible Entity has relied on the contractor's skill or judgment to consider when it advised the Eligible Entity about the product, (e) the product has been properly designed and manufactured, and (f) the product is free of significant defects or unusual problems about which the Eligible Entity has not been warned.

#### **3.4.7 Availability guarantees of service, service parts, accessories and supplies**

Manufacturers directly or through the designated authorized reseller must guarantee the availability of service, service parts and supplies for all models proposed for a minimum period of seven (7) years from the last date of manufacture.

#### **3.4.8 Distribution of Advertising Literature, Manuals, Catalogs and Price Lists**

Bidders awarded any Contract resulting from this RFR **must** submit all advertising literature with regards to OFF39, including but not limited to, brochures, catalogs, and price lists to the OSD Strategic Sourcing Lead for review and approval prior to it being provided to any Eligible Entity. Non-compliance with this requirement will result in a penalty assessment to be determined by the OSD Strategic Sourcing Lead. It is **desirable** if a bidder agrees to use a minimum of 30% post-consumer recycled content (PCRC) in all printed marketing materials and other literature for OFF39.

#### **3.4.9 Upgrades & upgradeability**

**Equipment Substitutions** After award of contract, equipment that is subsequently discontinued from a manufacturer's line may be substituted without approval by the OSD Contract Manager. All pricing, terms and conditions of discontinued model will apply to new equipment. Substituted equipment **must** meet or exceed the performance specification of the discontinued model. Additional fixed accessories can be accepted at no extra cost. Supplies and accessories pricing **must** be identical **or less** than pricing for discontinued equipment. All equipment offered and placed for Eligible Entities shall be in excellent working order. All equipment will be expected to perform in an efficient manner with minimum downtime. The user will report equipment that requires an excessive number of service calls to the OSD Contract Manager for review and possible replacement.

The substitution guidelines are subject to change by the OSD Contract Manager throughout the term of the contract.

#### **Equipment Additions**

New Products or services means a new or improved product or service within the scope of the OFF39 statewide contract, that is not currently available under another statewide contract but provides a new service, function, task, or attribute that may provide a more economical or efficient means for State agencies and Eligible Entities to accomplish their work / mission. It may significantly improve an existing service or product. It may be a service or product existing in the commercial market, but not yet introduced to State Government.

(b) Awarded Vendors are encouraged to introduce new services or products. A new or improved service or product can be offered at any time.

(c) A technical review may be requested and if so the Awarded Vendor agrees to provide all requested information in order for the Strategic Sourcing Lead to make a determination to include new products or services. Awarded Vendors may be required to demonstrate that the service or product can provide a more economical or efficient means to accomplish their objective. The Strategic Sourcing Lead has the sole discretion to determine whether a product or service will be accepted as a new product under the OFF39 statewide contract

After award of contract, equipment that is subsequently added to a manufacturer's line may be added without approval by the OSD Contract Manager. All pricing, terms and conditions of the

contract will apply to new equipment. All equipment offered and placed for Eligible Entities shall be in excellent working order. All equipment will be expected to perform in an efficient manner with minimum downtime. The user will report equipment that requires an excessive number of service calls to the OSD Contract Manager for review and possible replacement.

The addition & substitution guidelines are subject to change by the OSD Contract Manager throughout the term of the contract.

**Special Projects/Outside the Scope of this RFR:**

Additional equipment, accessories and/or supplies that are not specifically covered in this RFR, but are related to the overall contract may be offered by a Contractor if the Strategic Sourcing Lead approves such request. The Contractor's Contract Manager will need to provide a written request along with the price sheet with percentage (%) discounts off. The Strategic Sourcing Lead will review and may request additional information before making a decision. If approved, new equipment, accessories and /or supplies must be made available to all Eligible Entities.

**3.5 Equipment Installation**

All equipment prices **must** include delivery and installation statewide. The Contractor must coordinate the delivery of **both** their equipment and related start up supplies necessary to operate the equipment, to arrive simultaneously or within a mutually agreed upon time frame. All start up supplies must be labeled as "Start Up Supplies" and reference the eligible entity's purchase order number.

Contractor **must** affix a label or a decal to the equipment at the time of installation showing warranty period by dates, and the name, address, and telephone number of the OEM or Authorized Dealer responsible for warranty service of the equipment. The label should also identify the Model Number and the serial number/machine ID number and be legible.

It will be the Contractor's responsibility prior to delivery, to survey and review the particular installation location to ensure the existing proposed location meet the manufacturer's established installation criteria. If special installation is required, such as but not limited to rigging, the Contractor and Eligible Entity must negotiate and agree on a cost for the special installation and note it on the equipment confirmation form prior to releasing a purchase order. Should the proposed installation location not meet established installation criteria, the Contractor and the ordering Eligible Entity will attempt to locate an alternate mutually agreeable location for the equipment at the particular site.

In the event that a mutually agreeable location for the equipment, meeting the manufacturer's established installation criteria, is not available, the Contractor must not deliver the equipment and will request the Eligible Entity to cancel the order with no further obligations. Contractors not familiar with any location are strongly advised to personally view those locations prior to delivery. A lack of familiarity with a delivery location will in no way relieve a Contractor from its responsibility to fulfill its contractual obligations.

**All equipment identified as EnergyStar compliant must be delivered and installed with the EnergyStar or similar power management features enabled.**

**3.5.1 Design and Pre-Installation requirements**

The Eligible Entity and Contractor must discuss and confirm in writing if there is a need for any type of special site preparation prior to delivery of equipment. (e.g. electrical outlet, dedicated line for proper performance, ventilation, space requirements for equipment and service, etc.)

**3.5.2 Post-installation**

The Contractor is responsible to ensure that the location where equipment was installed is cleared of any materials utilized for packing or shipping, and that such materials are recycled by the Contractor per the requirements in this RFR, unless mutually agreed upon by the Contractor and Eligible Entity.

**3.5.3 Operating Manual**

Manufacturer's operating manual(s) should be provided with delivery of equipment at no charge (one per machine). If additional operating manuals are needed Awarded Contractors must accommodate the Eligible Entities needs.

**3.5.4 Training & Technical Support Services**

Upon delivery and installation of specified equipment, Contractor and/or authorized dealer must agree to provide training to personnel designated by the Eligible Entity. Operational Training must be provided to the designated personnel within an Eligible Entity until the personnel are able to operate the equipment independently. The amount of training is determined by the complexity of the equipment purchased or leased by the Eligible Entity.

The bidder must provide the current number of authorized sales support, service technicians and customer support personnel that would be utilized in support of this contract statewide in the Bidder Response Form. The OSD Contract Manager may require an updated list at any time during the term of the contract.

Any education and training conducted by the Contractor **must** include information on all environmental features of each item. The education and training **must** include but not limited to: efficient use of supplies, extent to which any supplies and/or packaging may be returned for recycling, remanufacturing and the environmental and economic benefits of these features. It is **desirable** that Contractors develop a fact sheet and/or brochure to leave with Eligible Entities concerning these environmental and other training issues.

**3.6 Service Specifications**

The Bidder **must** offer **Service Maintenance** options as detailed on each cost sheet. All Maintenance Plan cost **must** include all materials necessary to repair and maintain equipment as detailed below. Transportation and travel costs will not be reimbursed by the Eligible Entity.



The Contractor **must** respond to the request within **two (2) hours** after it receives written or oral notice of a service call for a breakdown in the equipment.

The Contractor **must** send a service technician to repair the equipment within **four (4) hours** of the service call and **must** repair the Equipment on the same business day if the call is placed before 1:00 P.M. E.S.T. or provide replacement parts for the Equipment by the next business day, regardless of geographic location. All return service calls and onsite responses shall be made during Eligible Entity business hours unless otherwise specified by the Eligible Entity.

#### **Next Day Service Response Plan**

The Contractor **must** send a qualified service technician to repair the equipment within the **next business day** of the service call and provide replacement parts for the Equipment by the following business day, regardless of geographic location. All return service calls and on-site responses shall be made during Eligible Entity business hours unless otherwise specified by the Eligible Entity.

Standard business hours are 8:00 A.M. to 5:00 P.M. E.S.T. Monday through Friday. After Hours Service (after 5:01 P.M. E.S.T. Monday through-Friday, Weekends and Holidays).

Routine consumable supplies must be billed separately from service maintenance payments.

If the OSD Contract Manager receives written complaints of non-compliance with the service requirements then the OSD Contract Manager reserves the right to address with the Contractor, a reasonable penalty, based upon the degree of the non-compliance. The following penalties are examples that the OSD Contract Manager may implement:

- Free Service maintenance for the Eligible Entities affected by the poor service response for a period of time and value determined by the OSD Contract Manager.
- Negotiated financial penalty for recurring incidents of non-performance.
- Free Supplies for the Eligible Entities affected by the poor service response for a period of time and value determined by the OSD Contract Manager.
- The OSD Contract Manager reserves the right to make additional awards in a category or sub-category if it is determined that current Contractors are not providing adequate service maintenance as determined by the OSD Contract Manager.
- The OSD Contract Manager reserves the right to suspend or terminate the contract.

#### **3.6.1 Tax Exempt Lease Purchase (TELP)**

State agencies must utilize the TELP statewide contract, currently PRF54, in order to procure TELP financing of products and services under this statewide contract OFF39. Other Eligible Entities must procure TELP financing in accordance with the requirements of their jurisdiction.

#### **3.6.2 Equipment Performance**

In the event that any equipment is inoperative due to equipment failure, through no fault or negligence of the Eligible Entity and the total number of hours of downtime exceeds five percent (5%) of the total productive use of time for three consecutive calendar months, the Eligible Entity reserves the right to require a Contractor to replace the equipment or terminate the order with no termination or removal charges being assessed to the Eligible Entity. The

Contractor will be notified in writing of the deficiency. After such notice, the Contractor must remove and replace the defective product(s) within ten (10) business days, at no cost to the Eligible Entity. Failure to respond in good faith may result in termination of the contract.

The effectiveness level for any equipment is computed by the formula: subtract the total number of downtime hours divided by the total productive time in the month. Total productive time shall be computed by multiplying 8 hours per day by the number of business days in the month (weekends, Federal and State Holidays excluded). Bidder shall supply a complete repair history on an as needed basis to the Commonwealth Eligible Entity using the equipment.

**The Contractor shall grant a credit to the Eligible Entity for any equipment, which fails to perform at an effectiveness level of ninety five percent (95%) during any month, or out of service for more than three consecutive days. The credit shall be mutually agreed upon by the Eligible Entity and Contractor.**

It is understood that equipment failure may not be attributed to the use of recycled paper and/or recycled/remanufactured supplies, as long as those products meet the specifications set by the Commonwealth.

### **3.6.3 Emergency response plans/preparedness**

In a declared state of emergency where the safety and wellbeing of Commonwealth citizens are at risk, contractors may be asked to supply the Commonwealth with the commodities and/or services under the Statewide Contract on a priority basis. The Bidder's Quote should include the following:

- **Indicate whether there is a written Continuity of Operations Plan (COOP) that describes how the company will continue to do business in case of an emergency.**
- **A list of emergency contact information including name, position/title, phone, email and cell phone.**
- **A list of the Bidder's building location (s) that would be available to serve the Commonwealth during an emergency.**
- **A description of the areas of Massachusetts that the Bidder could supply in the event of an emergency (e.g., Entire State, Specific City or Region).**

This information will not be considered in the evaluation of the Quote.

### **3.6.4 Equipment, Supply, and New/Predecessor Price Lists**

All bidders **must** submit with their bids a dated manufacturer price list covering each item being bid. Each price list **must** be clearly identified with the name, address, telephone, and fax number of the submitting bidder. All references in this RFR to price list shall refer exclusively to manufacturer issued price lists.

The awarded bidder(s) shall, within forty-five (45) calendar days after receipt of the bidder award notice, publish a "Massachusetts Price List." Such price list shall contain the

manufacturers list price, model #, net prices to the Commonwealth, possible volume discount prices, Contractor's name, contact person, telephone numbers and **must** be submitted to the OSD Contract Manager for approval by the SSST **prior to its issuance** to Eligible Entities.

The Contractor shall provide, with a delivery or within ten (10) business days of a request by an Eligible Entity, hard copies of operating manuals, catalogs or price lists complete with the contract number, contact name and specific directions on how to order.

### **3.6.5 Purchase, Lease or Rental of Equipment, Services and Supplies**

- Purchase – All Categories and Sub-Categories - Equipment, Supplies and Services
- Term Lease: Category 1A and Category 2A Only - 36, 48 & 60 months – Equipment, Supplies and Services all Categories
- Rental: Six- (6) month maximum (non-renewable) – Category 1A and Category 2A Only - Equipment, Supplies and Services all Categories.

### **3.6.6 Loaner Equipment**

Eligible Entities have the option to exercise the request for loaner equipment if the existing downed equipment necessitates off-site repair. The loaner equipment **must** be of comparable or better production capability and **must** be available, delivered, installed and configured for equipment that cannot be repaired on site, at no charge, including the return of the loaner equipment to the Contractor. Delivery, installation, configuration and basic training **must** be completed within one (1) business day or a timeframe mutually agreed upon between the Eligible Entity and Contractor if custom equipment needs to be provided from the time a service technician determines that the equipment cannot be repaired on site. Loaners will remain in place until the equipment has been repaired, reinstalled and confirmed operational by the Eligible Entity. If equipment is not available for loan due to custom configuration, the Contractor must provide an alternate piece of equipment for the Eligible Entity to continue operation.

### **3.6.7 Relocation of Leased Equipment**

An Eligible Entity will not move or relocate equipment without prior notice to and approval by the Contractor, which shall not be unreasonably withheld. The Contractor and Eligible Entity shall negotiate whether the Eligible Entity or Contractor shall move the equipment, provided however; that the Contractor's approved movement of the equipment by the Eligible Entity shall not void or affect any warranties or other responsibilities of the Contractor under this Contract. The Eligible Entity shall be responsible for any costs for restoring the equipment to its original performance including payments to the Contractor if the Contractor requires performance of on-site installation. The Eligible Entity shall not be responsible for damage caused by the Contractor during relocation of the equipment by the Contractor and the Contractor shall be responsible for any additional costs associated with restoring the equipment to its original performance.

### **3.6.8 Personal Property, Use and Inspection**

All Term Lease or Rented equipment under this Contract shall at all times be and remain, personal property notwithstanding that the equipment or any part thereof may be, or may

hereafter become, in any manner affixed or attached to real property. A Contractor hereby covenants that its agents and assignees will not interfere with all Eligible Entity's use of the equipment during the Term Lease or Rental so long as the Eligible Entity is not in default under a Term Lease or Rental. A Contractor shall have the right by appointment at a reasonable time during business hours to enter into and upon the property of an Eligible Entity for the purpose of inspecting the equipment.

### **3.6.9 Title, Liability, Risk of Loss and Insurance**

An Eligible Entity shall not hold title to equipment under a Term Lease or Rental. The Contractor (and its insurers, if any) shall bear all risk of loss to the equipment. The Contractor shall hold title to all items of equipment and be fully responsible for the risk of loss and insurance costs for any loss, damage or liability associated with the equipment. The Eligible Entity shall be liable for loss or damage to the equipment due to the negligence of the Eligible Entity, theft by a state employee or for damage due to nuclear reaction, nuclear radiation or radioactive contamination arising out of the use by an Eligible Entity of radioactive materials. The Commonwealth is self-insured and an Eligible Entity shall not be obligated to purchase separate insurance for any Term Lease or Rental. Limitations of liability contained in any documentation submitted by a Bidder or a Contractor under this RFR or under any Term Lease or Rental executed by an Eligible Entity shall be deemed void.

### **3.6.10 Replacement or Repair of Defective Equipment**

The Contractor agrees that all Outright Purchase, Term Lease or Rented Equipment shall be operational and perform in accordance with standard equipment performance specifications and warranties for the equipment.

The Contractor also agrees that since the equipment purchased, Leased or Rented is essential for Eligible Entity operations, that neither an Eligible Entity nor the Commonwealth will have any obligation to continue to pay Term Lease or Rental payments for defective Equipment that can not be repaired or replaced by the Contractor within the required periods outlined in this RFR.

Contractors shall repair any defective equipment in accordance with standard performance specifications and warranties for that equipment. Contractors shall be responsible for all repair and equipment defects and failures during the term of the Term Lease or Rental. In addition to this coverage, all equipment shall be covered by the manufacturer's standard warranties for that equipment. If the equipment cannot be repaired within the required periods outlined in this RFR, the Contractor shall immediately replace the equipment with identical or comparable equipment. The Contractor shall be responsible for all transportation, shipping, delivery, installation costs and other costs associated with the replacement of defective equipment. The Contractor may not charge a fee, penalty or increase the Term Lease or Rental payments for replacement of defective equipment with identical or comparable equipment. If the equipment replacement must be different equipment due to a defect in the model of the original equipment, then it is the responsibility of the Contractor to honor the original Term Lease, Rental or Purchase cost of the original equipment.

If the Contractor is unable to provide identical or comparable replacement equipment for the defective equipment within a reasonable time, the Eligible Entity may terminate the Term Lease or Rental and negotiate the Term Lease or Rental of Equipment from another Contractor. The Contractor shall be obligated to remove the defective equipment at no cost to the Eligible Entity. The Contractor may not penalize the Eligible Entity, accelerate Term Lease or Rental payments or make any additional charges for the termination of a Term Lease or Rental of defective equipment that cannot be repaired or replaced by the Contractor.

Equivalent loaner equipment of comparable or better production capability **must** be available, delivered, installed and configured for equipment that cannot be repaired on site, at no extra charge. Delivery, installation, configuration and basic training **must** be completed within one (1) business day from the time a service technician determines that the equipment cannot be repaired on site. Loaners will remain in place until the equipment has been repaired, reinstalled and confirmed operational by the Eligible Entity. If equipment is not available for loan due to postal regulations or custom configuration, the Contractor must provide an alternate piece of equipment for the Eligible Entity to continue operation.

#### **3.6.11 Upgrade or Replacement of Non-Defective Equipment During Term Lease or Rental**

During the period of a Term Lease or Rental, an Eligible Entity and the current Contractor may negotiate an upgrade to or replacement of equipment with a newer model, higher performance or equipment better suited to the Eligible Entity's business needs. The upgrade or replacement of equipment must be an existing OFF39 contract item. The Eligible Entity shall not be charged any penalties, an acceleration of Term Lease or Rental fees, or other charges for a negotiated upgrade or replacement of contract equipment. If there is a balance on the term lease or rental of the current equipment prior to an upgrade or replacement request, the Eligible Entity and the current Contractor must negotiate the "buyout" cost that would be incorporated in the term lease or rental payment of the upgrade or replacement equipment. If all parties agree to the "buyout" costs and the "buyout" costs are depicted on the equipment confirmation form of the upgrade or replacement equipment then it is accepted. The removal of the existing equipment and the delivery of the upgrade or replacement equipment will be at no charge to the Eligible Entity.

The Eligible Entity and the current Contractor **may not** negotiate (even if requested by an Eligible Entity), as part of a Term Lease or Rental, for an "option" for an upgrade or replacement which requires the Eligible Entity to pay a higher Term Lease or Rental price or a premium for the availability of the "option" during the Term Lease or Rental Term than the Eligible Entity would have paid without the option. Failure of the current Contractor to adhere to this requirement shall be considered a material breach and the current Contractor shall be required to reimburse to the Eligible Entity or the Commonwealth any amounts paid for such an option that exceeded the amount of the Term Lease or Rental payments without such an option.

#### **3.6.12 Modification or Alteration of Equipment By Eligible Entity**

Upon prior written approval of the Contractor, an Eligible Entity shall have the right at its own cost and expense (which may be included under the Term Lease or Rental) of making

additions, modifications or improvements to the equipment which will be included under the terms of the Term Lease or Rental as part of the equipment, provided, however that:

- such remodeling, additions, modifications or improvements shall not in anyway damage the equipment, cause the equipment to be used for purposes other than those authorized under the constitutional provisions and laws applicable to Eligible Entity, or adversely affect the Contractor's title to, or the validity or perfection of any security interest of the Contractor in, the Equipment; and
- the equipment, as improved (or altered upon completion of remodeling, additions or modifications made) shall be of a value not less than the value of the equipment immediately prior to the remodeling or the making of such additions, modifications or improvements; and
- an Eligible Entity may not permit any mechanic's or other lien to be established or remain against the equipment for labor or materials furnished in connection with any remodeling, substitutions, additions, modifications or improvements so made by Eligible Entity or for any other reason without the Contractor's prior written consent; and
- the equipment warranties on the original equipment must remain valid and;
- the Eligible Entity and Contractor shall renegotiate any modifications to the Term Lease or Rental payment amounts to reflect the additions, modifications or improvements.

#### **3.6.13 Prohibition of Term Lease Renewals and Return of Equipment at End of Term**

At the termination of a Term Lease the Term Lease **may not** be renewed or otherwise extended under its original terms and rates. In the rare event that a Term Lease needs to be extended for any reason, the Contractor and Eligible Entity **must** renegotiate a short term, Term Lease that reflects the depreciated value of the equipment. A Contractor's renewal of a Term Lease, even at the request of an Eligible Entity, without re-negotiation and reduction of the Term Lease price shall be considered a material breach by the Contractor and the Contractor shall be obligated to reimburse the Commonwealth for all Term Lease payment amounts made by an Eligible Entity which exceed the amounts that would have been charged under a re-negotiated and reduced Term Lease. It is presumed that all Term Leases negotiated under this RFR are temporary and that all Leased equipment will be returned at the end of the Term Lease. It is the responsibility of the Eligible Entity to schedule the return of the equipment and it is the Contractor's responsibility to pick-up the equipment within 10 business days of the scheduled return at no cost to the Eligible Entity. If the equipment is not picked-up within 10 business days of the scheduled return, a charge of **\$50 per business day** will be assessed upon the Contractor for each day the equipment remains on the Eligible Entity's premises, which the Eligible Entity may deduct from any outstanding charges or collect if no outstanding charges exist.

#### **3.6.14 Prohibition of Rental Renewals and Return of Equipment at End of Term**

At the termination of a Rental Term which has run a maximum of six (6) total accrued months, that Rental **may not** be renewed or otherwise extended under its original terms and rates. In the rare event that a Rental Term needs to be extended for any reason, the Contractor and Eligible Entity must renegotiate the Rental as a short term, Term Lease which reflects the value

of the equipment, and which represents a reduced rate as compared to the Rental rate. A Contractor's renewal of a Rental Term past the maximum of six (6) total accrued months, even at the request of an Eligible Entity, without re-negotiation and reduction of the Rental price to a short term Term Lease price shall be considered a material breach by the Contractor and the Contractor shall be obligated to reimburse the Eligible Entity for all Rental payment amounts made by an Eligible Entity which exceed the amounts that would have been charged under a re-negotiated short term, Term Lease. It is presumed that Rentals negotiated under this RFR are temporary and that all Rented equipment will be returned to the Contractor at the end of the Rental Term. . It is the responsibility of the Eligible Entity to schedule the return of the equipment and it is the Contractor's responsibility to pick-up the equipment within 10 business days of the scheduled return at no cost to the Eligible Entity. If the equipment is not picked-up within 10 business days of the scheduled return, a charge of **\$50 per business day** will be assessed upon the Contractor for each day the equipment remains on the Eligible Entity's premises, which the Eligible Entity may deduct from any outstanding charges or collect if no outstanding charges exist.

It is presumed that all Term Lease negotiated under this RFR are temporary and that all Term Leased equipment will be returned to the Contractor at the end of the Term Lease. Early buy-out or purchase options during the period of the Term Lease may not be negotiated as part of any Term Lease. However, in the rare event the Eligible Entity wishes to purchase the equipment during the Term Lease, or at the end of the Term Lease, instead of returning the equipment, the Contractor and Eligible Entity may negotiate the **fair market value** of the equipment at the time of purchase. The Eligible Entity shall not be obligated to pay any additional Term Lease payments, fees, acceleration of payments, penalties or other charges in addition to the fair market value of the equipment.

### **3.6.15 Appropriation/funding of term lease or rental payments**

Appropriation/Funding for expenditures by Eligible Entities of the Commonwealth, and authorizations to spend for particular purposes, are made on a fiscal year basis. The fiscal year of the Commonwealth is a twelve-month period ending June 30th of each year. The obligations of the Eligible Entities under this Term Lease or Rental for each and every fiscal year following the fiscal year in which a Term Lease or Rental is executed are subject to the appropriation to the Eligible Entities of funds sufficient to discharge the Eligible Entities' obligations which accrue in that fiscal year, and authorization to spend such funds for the purposes of the Term Lease or Rental. The Commonwealth will not be obligated to appropriate funds for payment of Term Lease or Rental payments.

An Eligible Entity seeking to terminate a Term Lease due to non-appropriation is required to notify the Contractor with written notice in a timely manner detailing the funding situation. The following are some points the Eligible Entity may want to address within the written notice to the Contractor:

- Eligible Entity has exhausted all funds legally available from other sources for the payment of all or Term Lease Payments with respect to such equipment;
- Eligible Entity properly and in a timely manner requested sufficient funds to satisfy the obligation due under the Term Lease with respect to such equipment in the fiscal period

for which funds were not appropriated and Eligible Entity diligently pursued and exercised best efforts to obtain such funds from the governing body which controls such appropriation;

- Funds have not been budgeted or appropriated to Eligible Entity and funds will not be extended by Eligible Entity during the first fiscal period following an event of non-appropriation for which funds have not been appropriated hereunder to Term Lease or otherwise acquire equipment or services performing functions similar to that of the terminated equipment.

Upon occurrence of such non-appropriation, and the satisfaction of all of the conditions to Eligible Entities right of termination, including written notice of termination, an Eligible Entity shall not be obligated to make payment of any Term Lease Payments with respect to the terminated equipment through any fiscal period for which funds have not been so appropriated.

An Eligible Entity agrees to make reasonable efforts to obtain funding and all necessary authorizations, and to notify the Contractor promptly when it appears certain these will not be obtained. An Eligible Entities obligation under a Term Lease or Rental is severable and the cancellation of an Eligible Entities obligations under a particular Term Lease or Rental due to non-appropriation shall not affect the obligations of the remaining Eligible Entities, nor will such cancellation affect such Eligible Entities obligations under any other Term Lease or Rentals to which it is a party.

It is the responsibility of the Eligible Entity to schedule the return of the equipment and it is the Contractor's responsibility to pick-up the equipment within 10 business days of the scheduled return at no cost to the Eligible Entity. If the equipment is not picked-up within 10 business days of the scheduled return, a charge of **\$50 per business day** will be assessed upon the Contractor for each day the equipment remains on the Eligible Entity's premises, which the Eligible Entity may deduct from any outstanding charges or collect if no outstanding charges exist.

### **3.6.16 Term Lease or Rental Obligations Not A Debt**

A Contractor and an Eligible Entity understand and intend that the obligation of the Eligible Entity to make Term Lease or Rental payments shall constitute a current expense from lawfully appropriated funds or other legally available funds and shall not in any way be construed to be a debt of the Eligible Entity or the Commonwealth in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by Eligible Entities, nor shall anything contained herein constitute a pledge of tax revenues or funds of the Eligible Entity or the Commonwealth.

The term for a Term Lease or Rental shall terminate upon the earliest of the following events:

- Full payment of all Term Lease or Rental payments. Following the termination of a Term Lease or Rental an Eligible Entity shall make arrangements to have the equipment returned to the Contractor at no cost to the Eligible Entity, or in the alternative negotiate an outright purchase of the equipment at a negotiated fair market value price as a separate transaction from the Term Lease or Rental.



- A default by the Eligible Entity or the Contractor and a decision by the other party to terminate the Term Lease or Rental.
- Termination by the Commonwealth as provided in the Commonwealth's Terms and Conditions.
- It is the responsibility of the Eligible Entity to schedule the return of the Term Leased or Rental equipment and it is the Contractor's responsibility to pick-up the equipment within 10 business days of the scheduled return at no cost to the Eligible Entity. If the equipment is not picked-up within 10 business days of the scheduled return, a charge of **\$50 per business day** will be assessed upon the Contractor for each day the equipment remains on the Eligible Entity's premises, which the Eligible Entity may deduct from any outstanding charges or collect if no outstanding charges exist.

### **3.6.17 Conditions for Eligible Entities Early Termination of Rental**

It is presumed under this Statewide Contract that Rentals of equipment shall be made on a monthly basis and can be cancelled at will, without penalty, by an Eligible Entity upon proper notice to the Contractor. An Eligible Entity may terminate a Rental without cause prior to the scheduled end of the Rental Term by providing prior written notice of at least fifteen (15) calendar days to the Contractor. The notice shall specify the date that the Contractor can remove the equipment during normal business hours or a timeframe mutually agreed upon by the Eligible Entity and Contractor. The Eligible Entity shall be responsible for all rental payments prior to the pick-up date specified in the notice for equipment removal. It is the responsibility of the Eligible Entity to schedule the return of the equipment and it is the Contractor's responsibility to pick-up the equipment within 10 business days of the scheduled return at no cost to the Eligible Entity. If the equipment is not picked-up within 10 business days of the scheduled return, a charge of **\$50 per business day** will be assessed upon the Contractor for each day the equipment remains on the Eligible Entity's premises, which the Eligible Entity may deduct from any outstanding charges or collect if no outstanding charges exist.

### **3.6.18 Replacement of Equipment After A Default**

In the event an Eligible Entity defaults under a Term Lease or Rental and returns the equipment to the Contractor, the Eligible Entity shall not be prohibited from acquiring the same or similar equipment from another Contractor during the period of the former Term Lease or Rental agreement. It is recommended that the Eligible Entity offer the opportunity to the Contractor, for which they defaulted, the first opportunity to present a more cost effective equipment option.

### **3.6.19 No Credit Application**

The Eligible Entities, for credit ratings related to Term Lease or Rental under this Contract, will make no application, nor may a Contractor seek such ratings from the Eligible Entities.

### **3.6.20 Securitization**

A Contractor may not sell the note for any Term Lease or Rental agreement but may borrow against the value of the note during the term lease or rental period as long as it does not effect the status of the note during the Term Lease or Rental period.

### 3.6.21 Assignability

The Contractor may assign its payment interests in a Term Lease or Rental, with prior approval from the OSD Contract Manager and SSST, but may not assign its duties, responsibilities or liabilities under a Term Lease or Rental. The Contractor agrees that any assignment of interest will be limited so that it does not constitute a public offering. Regardless of any such assignment, the Contractor will continue to act as principal with regard to carrying out all responsibilities and duties under the contract. Upon prior approval of the Contractor, which shall not be unreasonably withheld, an Eligible Entity may assign the equipment and its duties under a Term Lease or Rental to another Eligible Entity, provided the assignee Eligible Entity can demonstrate that it can assume all the duties and fiscal responsibilities under the Term Lease or Rental and the Eligible Entities execute the necessary documentation to transfer the equipment and Term Lease or Rental obligations and payments.

### 3.6.22 Security Interest in Equipment

In addition to title in the equipment that is held by the Contractor until all payments are made by an Eligible Entity, the Eligible Entity grants to the Contractor the ability to purchase security interest in the equipment and any additions, attachments or improvements. An Eligible Entity shall execute such additional documentation to establish and maintain the Contractor's security interest in the equipment provided such documentation has received prior review and approval by the OSD Contract Manager and SSST.

### 3.6.23 Technical Support

The Bidder must offer both yearly and time and material service maintenance plans. All yearly maintenance plan cost must include all materials necessary to repair and maintain equipment as detailed below.

The Contractor must respond within **two (2) hours** after it receives written or oral notice of a service call for a breakdown in the equipment.

The Contractor **must** send a service technician within one of the following mutually agreed upon timeframes; **four (4) hours, eight (8) hours, or twenty four (24) hours** of the service call and provide replacement parts for the Equipment by the next business day, regardless of geographic location. All return service calls and onsite responses shall be made during Eligible Entity business hours unless otherwise specified by the Eligible Entity.

Standard business hours are 8:00 A.M. to 5:00 P.M. Monday through Friday. After Hour Service (after 5:01 P.M. Monday-Friday, Weekends and Holidays).

If the entity has a yearly service maintenance plan, all parts that needs to be maintained by a service technician are to be included and considered part of the yearly service maintenance plan, and must be replaced at no charge to the Eligible Entity. Routine consumable supplies shall be billed separately from service maintenance payments.

If the equipment includes licensed software, the Contractor shall provide software support. All payments for maintenance service will be made to the Contractor.

If the OSD Contract Manager and the SSST receive written complaints of non-compliance with the service requirements then the OSD Contract Manager and the SSST reserve the right to negotiate with the Contractor, a reasonable penalty, based upon the degree of the non-compliance. The following penalties are examples that the OSD Contract Manager and SSST have, at their disposal, to negotiate with the Contractor:

- Written warning to the Contractor with the Contractor providing the Eligible Entity(ies) with an apology letter with an action plan detailed to prevent non-compliance of service.
- Free Service maintenance for the Eligible Entities affected by the poor service response for a period of time and value determined by the OSD Contract Manager and SSST.
- Negotiated financial penalty for recurring incidents of non-performance.
- Free Supplies for the Eligible Entities affected by the poor service response for a period of time and value determined by the OSD Contract Manager and SSST.
- The OSD Contract Manager and SSST reserve the right to make additional awards in a category or sub-category if it is determined that current Contractors are not providing adequate service maintenance as determined by the OSD Contract Manager and SSST.
- The OSD Contract Manager and SSST reserve the right to terminate the contract

### **3.7 Environmental Specifications**

#### **3.7.1 Executive Order 515, Establishing an Environmental Purchasing Policy**

Products and services purchased by state agencies must be in compliance with Executive Order 515, issued October 27, 2009. Under this Executive Order, Executive Departments are required to reduce their impact on the environment and enhance public health by procuring environmentally preferable products and services (EPPs) whenever such products and services perform to satisfactory standards and represent best value, consistent with 801 CMR 21.00. In line with this directive, all contracts, whether departmental or statewide, must comply with the specifications and guidelines established by OSD and the EPP Program. EPPs are considered to be products and services that help to conserve natural resources, reduce waste, protect public health and the environment, and promote the use of clean technologies, recycled materials, and less toxic products. Questions concerning the EO or the appropriate specifications may be directed to OSD's EPP Procurement Program, [www.mass.gov/epp](http://www.mass.gov/epp). The Order can be seen at <http://www.mass.gov/governor/docs/executive-orders/executive-order-515.pdf>.

#### **3.7.2 Environmental plan**

Beginning the first year of the Statewide Contract and throughout the life of the Statewide Contract, awarded Bidders must agree to work with OSD and the SSST to examine the feasibility of implementing an environmental plan. The objective of this requirement is to actively encourage suppliers to incorporate sustainable practices throughout their business operations and further market such practices to Contract users. Such a plan may include, but not be limited to, the following:

- Implementing energy efficiency initiatives at the corporate level in line with Executive Order 484, such as lighting retrofits, purchase of energy from

renewable sources, use of bio-heat fuel, and other energy reduction technologies.

- Encouraging environmental initiatives at a corporate and/or manufacturing level for the purpose of reducing the impact of manufacturing on the environment; such as clearly identifying recycled content of packaging on the packaging, providing product life cycle assessments, working toward the elimination of ozone depleting chemical usage in the manufacturing or refining process (where applicable), and conducting internal environmental auditing related to pollution control.
- Adopting standards and/or obtain certifications, where applicable, for product development and manufacturing processes such as but not limited to LEED, ISO 14001, Cradle to Cradle (C2C) Protocol, Green Seal, Environmental Choice and others.
- Using alternative fuel vehicles for delivery or transportation purposes and/or vehicles equipped with diesel emission control devices and operating such vehicles with guidance on anti-idling initiatives.
- Working with the SSST to develop and distribute information and/or materials to Commonwealth customers on the Awarded Bidder's environmental practices and initiatives throughout the term of the Contract.
- Developing a plan to implement the recycling of materials used or produced in normal business operations.
- The SSST may award points to Bidders who provide evidence that measures and initiatives such as these are already in place within their operations, and/or for written proposals submitted with their Quote detailing a commitment to action contingent upon receipt of a Contract award. (See the Additional Environmentally Preferable Products / Practices form on COMMBUYS).

### **3.8 License Agreements and Service/Maintenance Agreements**

Every item under this contract **must** include one (1) year full warranty. This warranty **must** include parts, material and labor. Maintenance agreements after the initial year will be at the discretion of the Eligible Entity and must be included on the invoice, unless other arrangements have been made and agreed upon between the parties.

Compensation Structure/Pricing Invoices shall be directly from the OEM Manufacturer or approved by the OSD Contract Manager.

- Billing for Maintenance/Service **must** be done at a minimum monthly, and it is **highly desirable** if it can be done quarterly, semi-annually or annually upon the Eligible Entities request.
- Bidders may be required to provide, upon request of the Eligible Entity, consolidated billing. All equipment, supplies and service invoices **must** have a separate line item within the invoice for all three elements or a separate invoice for each of the three elements.

- Invoices for purchases and software fees are not due and payable until successful completion of any applicable acceptance testing. Invoices for services are not due and payable until after services are rendered.
- Reset fees are not allowed.

### **3.8.1 Cost tables**

Compensation will be based solely on the cost tables or catalogs supplied by the Bidder and accepted by the SSST and incorporated into a catalog on COMMBUYS. MSRP (Manufacturer's Suggested Retail Price) Cost tables must contain all goods and services to be provided on this Statewide Contract. Compensation will be based on these cost tables, which will form the basis for the Contractor's catalog in COMMBUYS.

#### **Volume purchase discounts (VPD)**

A bidder may receive additional evaluation points if the bidder offers a volume purchase discount percentage (%) off based upon the total dollar size or a total quantity size for an order with one delivery location.

#### **Dock Delivery Discounts (DDD)**

Dock Delivery is defined as a one drop ship. A bidder may receive additional evaluation points if the bidder offers a dock delivery discount equal to or greater than 2%. If dock delivery is exercised by the eligible entity then the discount must be reflected on the invoice upon billing.

#### **Prompt Payment Discounts (PPD)**

All Bidders must agree to offer discounts through participation in the Commonwealth Prompt Payment Discount (PPD) initiative for receiving early and/or on-time payments, unless the Bidder can provide compelling proof that it would be unduly burdensome.

Bidders must submit agreeable terms for Prompt Payment Discount unless otherwise specified by the SSST. The SSST will review, negotiate or reject the offering as deemed in the best interest of the Commonwealth.

The requirement to offer a PPD may be waived by the SSST on a case-by-case basis if participation in the program would be unduly burdensome on the Bidder. If a Bidder is claiming that this requirement is a hardship or unduly burdensome, the specific reason must be documented in the Bidder's Quote.

#### **Statewide Contract Administration Fee**

This Statewide Contract is subject to a 1% Contract Administration Fee, which is created pursuant to MGL c. 7, § 3B, 801 CMR 4.02. For information on the Statewide Contract Administration Fee, please see the "[Statewide Contract Administration Fee and Report](#)" section in the "[Requirements for Doing Business After a Contract Has Been Awarded](#)" section below.

#### **Fuel surcharge provisions**

Any bidder(s) awarded a contract as a result of this RFR will not charge any additional fuel surcharges on any order received from departments. Departments will NOT be required to pay any additional fuel surcharges upon receipt of contractor invoicing.

### **Shipping FOB Destination**

All quotations shall be FOB destination. The term FOB destination shall mean delivered and unloaded to all the Commonwealth Departments, cities, towns and/or Political Subdivisions within the Commonwealth of Massachusetts, with all charges for transportation and unloading prepaid by the Bidder.

At the discretion of the Commonwealth, shipping charges may be negotiated and allowed under **extenuating circumstances** including, but not limited to: rush shipping requests by the Commonwealth Agency, oversized or heavy items being repaired, etc. This exception will only be allowed with an Agency request. Vendors are not allowed to request an exception for shipping charges.”

### **3.8.2 Statewide Contract Administration Fee**

This Statewide Contract is subject to a 1% Contract Administration Fee, which is created pursuant to MGL c. 7, § 3B, 801 CMR 4.02. For information on the Statewide Contract Administration Fee, please see the [“Statewide Contract Administration Fee and Report”](#) section in the [“Requirements for Doing Business After a Contract Has Been Awarded”](#) section below.

### **3.8.3 Pricing Adjustments/Updates**

The Percentage (%) Off the suggested retail price for equipment, accessories and supplies will remain fixed for the term of the contract. All dated suggested retail price lists utilized in the bid submission may **not** be increased for the initial **twelve (12) months** of the contract award.

For equipment under a Term Lease or Rental, no escalation in the amount of the lease, rental, maintenance or supply payments will be permitted for the length of the term lease or rental.

Any increased percentage (%) off or decreased suggested retail price which results in a cost decrease is encouraged at any time during the term of the contract but must be reviewed and accepted by the OSD Contract Manager prior to implementation. Once approved, the cost decrease must be made available to all Eligible Entities.

### **3.8.4 Travel expenses and all other expenses**

Travel, meals, lodging, incidental and other expenses will **not** be reimbursed.

### **3.9 Supplier Diversity Program (SDP) Plan**

Massachusetts Executive Order 524 established the Supplier Diversity Program within the Supplier Diversity Office of the Operational Services Division in order to promote the award of State Contracts in a manner that develops and strengthens Minority and/or Women Business Enterprises (M/WBEs). More recently, Executive Order No. 546 established the Service-Disabled Veteran Owned Business Enterprise Program (“SDVOBE Program”), which is designed to promote access and equity of opportunity to Commonwealth business opportunities to SDVOBE

qualifying businesses. As a result, M/WBEs and SDVOBEs are strongly encouraged to submit Quotes in response to this Bid, either as prime vendors, joint venture partners or subcontractors. All Bidders, regardless of their certification status, are required to submit a completed SDP Plan Form #1 – SDP Plan Commitment as part of their Quote for evaluation. It is required that Supplier Diversity Program participation accounts for no less than 10% of the total points in the evaluation.

The SSST requires Bidders to make a significant commitment to partner with certified Minority-, Women-, and Service-Disabled Veteran-Owned Businesses in order to be awarded a Contract. Bidders must identify a commitment in the form of a specific percentage of sales made under the resulting contract that will be spent with a Certified Partner(s), using SDP Plan Form #1 – SDP Plan Commitment. This percentage commitment will extend for the life of any resulting contract. **Please note that no Bidder will be awarded a Contract unless and until they submit a completed SDP Plan Form #1.**

After contract execution, if any, Contractors must submit a completed SDP Plan Form #2 – Declaration of SDP Partners, which can be found under the Terms and Conditions tab of the Bid in COMMBUYS, identifying a Certified Partner(s) no later than 30 days after contract execution. Contractors may defer identification of their SDP Partner(s) by checking the box in Part II, thereby acknowledging their SDP Plan commitment. Failure to submit a completed SDP Plan Form #2 by the deadline may result in penalties including contract suspension, termination, and/or award to the next apparent successful bidder.

An SDO-certified (formerly SOMWBA-certified) Bidder may not list itself or an affiliate as being a Supplier Diversity Partner to its own company.

Once an SDP Plan is submitted, negotiated and approved, the SSST will then monitor the Contractor's performance.

Resources available to assist Prime Bidders in finding potential Minority Business Enterprises (MBE) and Women Business Enterprises (WBE) partners can be found at: [www.mass.gov/sdp](http://www.mass.gov/sdp)

Resources available to assist Prime Bidders in finding potential Service-Disabled Veteran-Owned Business Enterprise (SDVOBE) partners can be found on the SDO webpage at: [www.mass.gov/sdo](http://www.mass.gov/sdo)

The Supplier Diversity Program offers training on the SDP Plan requirements. The dates of upcoming trainings can be found at: <http://www.mass.gov/anf/budget-taxes-and-procurement/procurement-info-and-res/osd-events-and-training/osd-training-and-outreach.html> In addition, the SDP Webinar can be located on the SDP website at [www.mass.gov/SDP](http://www.mass.gov/SDP).

### **3.9.1 Supplier Diversity Program Subcontracting Policies**

In addition to the Subcontracting Policies (See [Subcontracting Policies](#) section below and see Section 9, Subcontracting By Contractor, in the Commonwealth Terms and Conditions) that apply to all subcontracted services, agencies may define specific required deliverables for a contractor's SDP Plan, including, but not limited to, documentation necessary to verify subcontractor commitments and expenditures with Minority- or Women-Owned Business Enterprises (M/WBEs) and Service-Disabled Veteran-Owned Business Enterprises (SDVOBE) for the purpose of monitoring and enforcing commitments made in a contractor's Supplier Diversity Program (SDP) Plan.

### **3.10 Participation in the OSD's Annual Marketing Event, MASSbuys**

OSD hosts an annual marketing and training trade show, usually in late April or early May, to educate public purchasers and contract end-users on the commodities and services available on statewide contracts, highlight innovative environmentally preferable (green) products and provide marketing and networking opportunities to the business community. The event, recently renamed *MASSbuys*, represents the blending of two highly successful long running OSD trade shows, the Statewide Training And Resource (STAR) Exposition and the Environmentally Preferable Products (EPP) Vendor Fair and Conference.

The attendees at these events have included public purchasers and contract end users representing all Commonwealth agencies, cities and towns across the state, independent authorities, higher education and eligible not for profit human and social service organizations. The venue for *MASSbuys* has significant marketing value and is extremely cost effective as it provides exceptional opportunities for statewide contractors to market directly to thousands of attendees.

The *MASSbuys* Exposition is scheduled each year at either the Boston Convention & Exhibition Center (BCEC) or the DCU Center in Worcester and is 100% supported by statewide contractors as exhibitors. The cost to exhibit is approximately \$1100. OSD believes that the show is important because it provides public purchasers and end users with an opportunity to meet over 300 statewide contractors and receive important information on new products, particularly those that save energy, conserve water or other resources, reduce waste as well as the use of toxic substances and may also contain recycled materials. It provides statewide contractors with the unparalleled opportunity to establish and renew business relationships with existing customers and to market their business to approximately 2,000 attendees, many of whom represent potential new customers.

Please note that exhibiting at the *MASSbuys* Exposition is not required and no points will be awarded to those Bidders who commit to participate. However, Bidders who indicate their willingness to exhibit at *MASSbuys* in their Quotes will be required to honor their commitment for the duration of their contract, if awarded a contract.

### **3.11 Requirements for Doing Business after a Contract Has Been Awarded**

The requirements below are specific to the Statewide Contract, if any, awarded as a result of this Bid. Awarded Bidders (Contractors) must also comply with the requirements stated in [Terms and Requirements Pertaining to Awarded Statewide Contracts](#).

#### **3.11.1 Statewide Contract Administration Fee and Report**

This Statewide Contract is subject to a 1% Contract Administration Fee, which is created pursuant to MGL c. 7, § 3B, 801 CMR 4.02 and the Transaction Fee section in this Bid and/or incorporated by reference into Statewide Contracts with the Operational Services Division (OSD). The price stated in any Bidder's Quote price and any Contractor's Statewide Contract shall be inclusive of this fee and Contractors shall not reflect this fee as a separate line item on customer invoices.



This fee will be based on 1% of the total dollar amounts, adjusted for credits or refunds, paid by Eligible Entities to the Statewide Contractor based on your statewide contract. All "Statewide Contracts" awarded and all purchase orders and purchases made pursuant to this RFR are subject to this fee regardless of whether the contract was awarded for statewide or regional coverage. Eligible entities include, but are not limited to: a) Cities, towns, districts, counties and other political subdivisions; b) Executive, Legislative and Judicial Branches, including all departments and elected offices therein; c) Independent public authorities, commissions, and quasi-public agencies; d) Local public libraries, public school districts, and charter schools; e) Public hospitals owned by the Commonwealth; f) Public institutions of higher education; g) Public purchasing cooperatives; h) Non-profit, UFR-certified organizations that are doing business with the Commonwealth; i) Other states and territories with no prior approval by the State Purchasing Agent required; and j) Other entities when designated in writing by the State Purchasing Agent. For a list of other entities that are eligible to use your specific Statewide Contract see Section 1 of this RFR.

Note that if the 1% Administration Fee is deductible as a business expense for federal income tax purposes, it is also deductible as an expense for Massachusetts tax purposes.

**Quarterly Fee Payment:**

For each Payment Period, Statewide Contractor shall pay to OSD a fee equal to one percent (1%) of the total payments (adjusted for credits or refunds) received from all Eligible Entities that have purchased from the Statewide Contractor pursuant to this Agreement. All payments will be based on full calendar quarters (Payment Periods) and must be received by OSD on or before 45 days after the last day of the Payment Period (as specified below) or a Contractor will be considered in breach of contract:

Quarter	Payment Period	Quarterly Payment Due Date
First Quarter	January 1st – March 31st	May 15th
Second Quarter	April 1st – June 30th	August 15th
Third Quarter	July 1st – September 30th	November 15th
Fourth Quarter	October 1 – December 31st	February 15th



Quarterly payments will include any periods less than a full calendar quarter if a contract does not start at the first day of a quarter or end on the last day of the quarter.

Payments are to be made through a web-based secure payment center, which can be accessed through a link provided to Statewide Contractors by OSD. All Administration Fee payments are to be made directly through the secure payment center. The secure payment center allows payments to be made via Automatic Clearing House (ACH) or by using one of the following credit cards: American Express, Discover, MasterCard and/or Visa.

**Please note that there is no charge to vendors to use ACH as OSD covers the nominal fee charged by the secure payment center for using the ACH payment method. OSD will NOT cover the convenience fee for selecting to pay by credit card. This is a fee the contractor is responsible for paying and is non-refundable;**

**the fee is over and above the 1% Administration Fee and it is calculated at 2.49% of the 1% Administration Fee to be paid.** Prior to the due date for the Statewide Contractor's Administration Fee payment, the Statewide Contractor will receive an e-mail communication from OSD that includes all required information the Statewide Contractor must use to submit payments via the secure payment center. Electronically submitting your payment, which is comprised of the 1% administration fee of the total payments received by the Contractor from all Eligible Entities for the Quarter, will serve as the Statewide Contractor Administration Fee Report. If the total Administration Fees due for the Payment and Reporting Period are less than \$50, a Statewide Contractor may carry over that balance to the next Payment and Reporting Period until the cumulative amount owed is \$50 or greater (see Quarterly Reporting below for instructions).

**Quarterly Reporting:**

Contractor shall submit one [Statewide Contractor Administration Fee Report](#)   for each Statewide Contract for each Payment Period. If an amount greater than \$50 is due for the Payment Period, then the electronic submission of the payment shall serve as submission of the Statewide Contractor Administration Fee Report, as referenced in the Quarterly Fee Payment section above. However, if the total Statewide Contractor Administration Fee due is between \$0 and \$50, then the Contractor must submit one Statewide Contractor Administration Fee Report for each Statewide Contract for each Payment Period. If you are submitting this report, it must be completely filled out, signed by the Statewide Contractor via electronic signature under the pains and penalties of perjury and emailed to [osdfadministrator@massmail.state.ma.us](mailto:osdfadministrator@massmail.state.ma.us).

**Audit:**

During the term of this Agreement and for a period of six years thereafter, the Operational Services Division, its auditors, the Office of the Inspector General or other authorized representatives shall be afforded access at reasonable times to Contractor's accounting records, including sales information on any system, reports or files, in order to audit all records relating to goods sold or services performed pursuant to this Agreement. If such an audit indicates that Contractor has materially underpaid OSD, then the Contractor shall remit the underpayment and be responsible for payment of any costs associated with the audit.

**Other Terms:**

- Contractors are responsible for compliance with all other contract reporting requirements including, but not limited to, contract detailed spend, Supplier Diversity Program (SDP) and other contract reports, as required by this contract.
- All amounts payable by the Contractor to OSD under this Agreement that are not received by the due date specified shall bear simple interest from the date due until paid. The Late Payment Interest Rate is set by the Office of the State Comptroller on an annual basis and can be found by selecting the fiscal year in question on the [Comptroller's Fiscal Year Updates](#) webpage.
- In the event of the Contractor's breach of this policy including, but not limited to, non-reporting, non-payment, late reporting/payment, under-

reporting/payment, the Commonwealth reserves the right to pursue any and all recourse and penalties available including, but not limited to, contract suspension and contract termination. The Commonwealth is allowed to suspend, terminate or debar pursuant to [Massachusetts General Laws Chapter 29, Section 29F](#), as amended, and pursuant to Section 4 of the [Commonwealth Terms and Conditions](#). In addition, in the event the Contractor fails to make any payment when due, the Contractor shall be liable to the Commonwealth for all expenses, court costs, and attorneys' fees (including inside counsel) incurred in enforcing the terms and conditions of this Agreement.

### **3.11.2 Continued qualification based on performance**

The SSST reserves the right to terminate or suspend any contract if it is determined that the contractor(s) is not performing the contractual obligations as stated within this RFR.

### **3.11.3 Security and confidentiality**

The Contractor shall comply fully with all security procedures of the Commonwealth and Commonwealth Agencies in performance of the Statewide Contract. The Contractor shall not divulge to third parties any confidential information obtained by the Contractor or its agents, distributors, resellers, subcontractors, officers or employees in the course of performing Contract work, including, but not limited to, security procedures, business operations information, personally identifiable information, or commercial proprietary information in the possession of the Commonwealth Agency.

### **3.11.4 Contract Management (Contractor's interface with Commonwealth's Contract Manager)**

The individual listed in the Purchaser field in the Header Information section of the Master Blanket Purchase Order is the Commonwealth Contract Manager.

Timely responses (24 hours) will be required when contacted by the Contract Manager to address any clarifications, complaints, issues that are being brought to the attention of the contractor. The SSST reserves the right to suspend any vendor that does not respond or comply with this request.

### **Commonwealth Contract Manager**

During the life of the contract, all Statewide Contract questions must be directed to the Commonwealth Contract Manager. The SSSL shall have the final authority in all operational matters pursuant to the Contract. The SSSL must approve in advance any proposed modifications to this Contract. The SSSL can add, delete, and/or make any changes to items on this Contract at any time during the contract term. Changes may include but are not limited to the following:

- Adding, deleting, or modifying items available for purchase, lease or maintenance;
- Providing written warnings and/or enforcing financial penalties for Contract violation(s);
- Modifying the terms and conditions of the Contract due to a change in circumstances.

- The capacity to remove a Contractor from this Contract for poor/non-performance or for a contract violation
- The capacity to modify the terms and conditions of the contract if it is in the best interest of the Commonwealth

### **3.11.5 Change notification**

Changes to the Contractor's contact information, company name, legal address, payment address, tax identification number, authorized signatories, SDO-certification status, or EFT information must be promptly reported via email to the Commonwealth Contract Manager. In some cases additional paperwork will be required to effect the change.

### **3.11.6 Contractor account team**

#### **Single Point of Contact (Contractor Contract Manager)**

The individual named on the Standard Contract Form as "Contract Manager" will be responsible for the proper operation and administration of the Contract.

#### **Replacement of Contractor staff**

If the Contractor's Contract Manager leaves the employment of the Contractor, or ceases to perform that role relative to the Contract, the Contractor must offer a replacement to the Commonwealth Contract Manager within ten (10) business days.

It is the Contractor's responsibility to ensure continuity of Contract Management role. If the Contractor's Contract Manager leaves, email and phone calls should be forwarded to someone knowledgeable about the Contract until a replacement is appointed. The Contractor is also responsible for maintaining a copy of the Contract, for submitting reports as required, and otherwise remaining in compliance with the Contract.

The SSST may require the Contractor to relieve the Account Manager if in their opinion it appears that:

- The Account Manager does not perform at the applicable skill level specified in the Contract;
- The Account Manager does not deliver work which conforms to the performance standards of the Contract; or
- Personality conflicts with the SSST hinders the effective functioning of the Contract.

#### **Adding commodities and/or services to the Statewide Contract**

In order to request an addition of commodities or services to the contract you must send in a letter requesting what you would like which must include at a minimum the reason for addition and the price including discount (%) off. If approved, all other contract requirements will apply to this commodity and/or service and the discount off (%) will remain fixed for the term of the contract.

#### **Environmentally Preferable Products and Services**

The department and Contractor(s) may establish a preference for Environmentally Preferable Products (EPPs) and/or negotiate during the Contract term to permit the substitution or addition of EPPs to the Contract when such products are readily available at a competitive cost and satisfy the department's performance needs.

### **Report requirements & due dates**

The Bidder must agree that if awarded a Contract resulting from this RFR, the Contractor will submit quarterly reports to the Commonwealth Contract Manager that includes all of the information requested in the format in which it is requested. The Commonwealth Contract Manager reserves the right to change the frequency and format to any of the required reports. Also, at any time during the life of the contract, the reporting requirements and format may change or new reports may be added, so the Contractor agrees by submitting a bid that they will provide all the reports requested of them.

### **3.11.7 Catalogs**

Prior to the Contract Start Date, the Contractor will establish and enable a COMMBUYS-compatible online catalog, which may be hosted in COMMBUYS or by the Contractor. The catalog must utilize the Commonwealth commodity codes based on the United Nations Uniform Product and Service Code (UNSPSC) and must provide Eligible Entities with the capability to order only those products and/or services authorized by the vendor's contract with the Commonwealth from the Contractor using COMMBUYS. The Contractor is required to maintain the catalog for the duration of the contract and must receive prior approval from the SSL before posting any updates or changes to the catalog, which must be consistent with the terms of the contract

### **Report Templates will be published on COMMBUYS**

A report template will be provided for report submission. The report must be submitted in spreadsheet format or as directed in the template, rather than as a PDF or any file type other than as directed in the template. Completion and submission instructions will be included in the template.

### **Statewide Contract Administration Fee Quarterly Report**

This Statewide Contract is subject to a 1% Contract Administration Fee, which is created pursuant to MGL c. 7, § 3B, 801 CMR 4.02 and the Transaction Fee section in this solicitation and/or incorporated by reference into Statewide Contracts with the Operational Services Division (OSD). The price stated in any Bidder's bid price and any Contractor's Statewide Contract shall be inclusive of this fee and Contractors shall not reflect this fee as a separate line item on customer invoices. For additional information on the Statewide Contract Administration Fee, please see the "Statewide Contract Administration Fee and Report" section in the "Requirements for Doing Business After a Contract Has Been Awarded" section.

The Bidder must agree that the report content will include the following information: Contract number (OFF39), Company name, Contractor Manager's name, address, phone, and email address must be included. For each item purchased, Bidders must report the Contract Category, the invoice date, unit of measure, the quantity ordered, the unit price, the extended price, the type of item, the item description, the manufacturer, the manufacturer's part number, the manufacturer's SKU, the EPP status (recycled or environmentally preferable), the percentage of PCRC (where applicable), the delivered weight for any paper products, and the Eligible Entity name and code. A three digit code will be provided for all Eligible Entities except municipalities. For municipalities, a list of the 351 cities and towns in the Commonwealth will be provided.

At any time during the life of the contract, the reporting requirements and format may change or reports may be added, so the Contractor agrees by submitting a bid that they will provide all reports requested of them, regardless of what is asked and when it is required.

**Contractor Revenue report, Engagement report, and Supplier Diversity Program Expenditure report**

Reports will be expected throughout the term of the contract. These reports may be Revenue Reports, Engagement Reports, and/or the Supplier Diversity Report. The details and expectations of each report will be presented to the Awarded Contractor.

The Bidder must agree that the report content will include the following information:

Contract number (OFF36), Company name, Contractor Manager's name, address, phone, and email address must be included.

For each item purchased, Bidders must report the Contract Category, the invoice date, unit of measure, the quantity ordered, the unit price, the extended price, the type of item, the item description, the manufacturer, the manufacturer's part number, the manufacturer's SKU, the EPP status (recycled or environmentally preferable), the percentage of PCR (where applicable), the delivered weight for any paper products, and the Eligible Entity name and code. A three digit code will be provided for all Eligible Entities except municipalities. For municipalities, a list of the 351 cities and towns in the Commonwealth will be provided.

At any time during the life of the contract, the reporting requirements and format may change or reports may be added, so the Contractor agrees by submitting a bid that they will provide all reports requested of them, regardless of what is asked and when it is required.

**3.12 Customer Survey**

All Awarded Bidders will be required to answer a survey that the OSD Contract Manager will send at least once a year.

All Eligible Entities that utilize this contract will also be sent a survey, multiple times a year to assist in the contract management of this contract. The surveys will assist in the evaluation of a Contractor's performance during the term of the contract.

**Late report penalties**

Companies which do not submit reports as required by the report due dates will be subject to financial assessments, unless they have requested and obtained an extension. Each week the report is late may incur an assessment of up to \$500. Unless otherwise specified by the Commonwealth Contract Manager, the amount of the assessment will be credited by the Contractor towards purchases by an Eligible Entity. Repeated or protracted delays in reporting may result in Contract termination.

### Audit requirements

At any time during the life of the contract and beyond, OSD reserves the right to request and receive copies of purchase orders, invoices, maintenance agreements and any other document that was exchanged for products and/or services from an Eligible Entity.

### Orders (Contractor's Interface with Commonwealth Agencies)

#### Closed Bids based on the Master Blanket Purchase Orders

Commonwealth Agencies are required to place purchase orders via the COMMBUYS online procurement system. Contract users may obtain quotes from multiple Statewide Contractors prior to issuing a Purchase Order. This will be done by issuing Closed Bids in COMMBUYS to awarded Contractors. Contractors will be required to use COMMBUYS to submit quotes in response to said Closed Bids. Resulting purchase orders under this contract will be based on awarded Quotes.

Invoices shall be directly from the OEM Manufacturer, Authorized Reseller with a direct pay relation, approved by the OSD Contract Manager and SSST as the Prime Contractor.

- Billing for Leasing and Maintenance/Service **must** be combined on the total monthly bill. It is **highly desirable** if it can be done quarterly, semi-annually or annually upon the Eligible Entities request. All equipment, supplies and service invoices **must** have a separate line item within the invoice for all three elements.

#### **3.12.1 Alternatives**

Contractors may propose alternatives for equivalent, better or more cost effective performance than specified under the Contractor's original Quote at any time during the life of the Statewide Contract.

#### **3.12.2 Failure to perform contractual obligations**

Failing to perform contractual obligations could result in the following:

- Termination
- Suspension
- Adding additional contractors
- Cover/Replacement Costs
- Liquidated Damages

## 4 EVALUATION CRITERIA

Bidder scores will be used to rank Bidders and will determine which Bidders will proceed to subsequent stages of the evaluation and/or enter into negotiations with the Commonwealth to receive a Contract award.

### 4.1 Mandatory requirements

All specifications are mandatory unless otherwise stated. Mandatory specifications must be met in order for a Bid to be evaluated. Failure to meet all mandatory requirements could result in a Bid disqualification. In addition, certain mandatory specifications have desirable components that may be evaluated by the SSST. Points will not be awarded for meeting the minimum mandatory requirements. The SSST reserves the right, in its discretion, to determine if non-compliance with a Mandatory Specification is insignificant or can be easily corrected.

Bid sections that include terms such as: “must”, “shall”, “will” and “required” are “mandatory.” Failure to meet the requirements of a mandatory specification without providing an alternate that is acceptable to the evaluators may result in the disqualification of a Bidder’s proposal.

### 4.2 Alternatives

A Quote which fails to meet any material term or condition of the Bid, including the submission of required attachments, may lose points or be deemed unresponsive and disqualified. Unless otherwise specified, Bidders may submit Quotes proposing alternatives which provide equivalent, better or more cost effective performance than achievable under the stated Bid specifications. These alternatives may include related commodities or services that may be available to enhance performance during the period of the Contract. The Quote should describe how any alternative achieves substantially equivalent or better performance to that of the Bid specifications.

The SSST will determine if a proposed alternative method of performance achieves substantially equivalent or better performance. The goal of this Bid is to provide the best value of commodities and/or services to achieve the goals of the procurement.

### 4.3 Evaluation Components

The following components will be some of the criteria considered by the team when evaluating each Quote:

#### 4.3.1 Price

Please note that price will carry a significant weight in the evaluation process.

Price components that may be evaluated include:

- Product price list discounts, as indicated for each category on Price Sheet
- Service and labor pricing
- Prompt Payment Discounts (PPD)
  - A Bidder must participate in the prompt payment discount program by completing the **“Prompt Payment Discount Form” (which is included in the Bidder Response Form)**. A Bidder may receive additional evaluation points if the Bidder offers a prompt payment discount of 2% or greater for the 20 day period.



**4.3.2 Customer Service**

**4.3.3 Supplier Diversity Plan (formerly Affirmative Market Plan) (minimum of 10% weight)**

**4.3.4 References and reference information and/or requirements**

**4.3.5 Volume Discounts**

**4.3.6 Other desirable or optional specifications**

## 5 HOW TO SUBMIT A QUOTE / RESPOND TO THIS BID

All Bidders may begin creating and compiling Quote materials as soon as the Bid with all attachments is in the Sent document status. Bidders are instructed not to submit Quotes before the Bid Amendment Deadline has been reached (See [Estimated Procurement Calendar](#)).

### 5.1 Quote Submission Method

Online Quote Submission via COMMBUYS is required to eliminate direct and indirect costs associated with the production, delivery/receipt, storage and management of traditional paper bids incurred by Bidders, the Operational Services Division, and the Commonwealth of Massachusetts. Bids submitted via COMMBUYS tools also promote environmental conservation and preservation by eliminating printed materials as well as fossil-fuel consumption associated with delivery. All Bidders must submit Quotes online using tools available only to Sellers registered in COMMBUYS.

COMMBUYS provides Seller registration functionality at no charge. To register, go to [www.COMMBUYS.com](http://www.COMMBUYS.com) and click on the "Register" link on the front page. All Bidders who are awarded a contract resulting from this Bid, if any, will be required to maintain an active account during the duration of the Contract, by reviewing their registration information regularly and maintaining its accuracy.

### 5.2 COMMBUYS Quote Submission Training and Instructions

The following resources are provided to assist Bidders in submitting Quotes:

- **Appendix 4, Instructions for Vendors Responding to Bids Electronically through COMMBUYS, which is part of this document;**
- Training sessions focused on online Quote submission, if offered, are noted in the [Estimated Procurement Calendar](#);
- An online job aid on [How to Create a Quote](#);
- Webcast video on [How to Find Bids \(Solicitations\) and Submit Quotes \(Responses\) through COMMBUYS](#).

### 5.3 COMMBUYS Support

Technical assistance is available during the procurement process. Every effort is made to respond to inquiries within one business day.

**Website:** Go to [www.mass.gov/osd/commbuys](http://www.mass.gov/osd/commbuys) and select the COMMBUYS Resource Center link offered under Key Resources.

**Email:** Send inquiries to the COMMBUYS Helpdesk at [COMMBUYS@state.ma.us](mailto:COMMBUYS@state.ma.us)

**Telephone:** Call the COMMBUYS Help Desk at 1-888-MA-STATE (1-888-627-8283). The Help Desk is staffed from 8:00 AM to 5:00 PM Monday through Friday Eastern Standard or Daylight time, as applicable, except on federal and state holidays.

Bidders are advised that COMMBUYS will be unavailable during regularly scheduled maintenance hours of which all users will be notified.

#### **5.4 Bid Opening Date/Time**

All Bids must be received by the Operational Services Division before the specified date, month, year and time displayed as the Bid Opening Date/Time in the Header Information section of the Bid in COMMBUYS. Times are Eastern Standard/Daylight Savings (US), as applicable. All Bidders are advised to allow adequate time for submission by considering potential online submission impediments like Internet traffic, Internet connection speed, file size, and file volume. OSD is not responsible for delays encountered by Bidders or their agents, or for a Bidder's local hardware failures, such as computers or related networks, associated with bid compilation or submission. Bids submitted via COMMBUYS are time stamped by the COMMBUYS system clock which is considered the official time of record.

#### **5.5 Quote Contents**

Bidders must comply with the requirements below.

##### **5.5.1 RFR Submission Checklist**

Strategic Sourcing Services Teams seek to reduce the number of Bidder disqualifications based on incomplete submissions. Therefore, Bidders must complete and submit the RFR Submission Checklist and all documents referenced in the Checklist. The Checklist can be found on the first page of the Bidder Response Form.

##### **5.5.2 Price Sheet**

All Bidders must complete the Price Sheet provided on COMMBUYS for this Bid in order to be evaluated.

##### **5.5.3 Bidder Response Form**

All Bidders must complete the Bidder Response Form provided on COMMBUYS for this Bid in order to be evaluated. Items on the Bidder Response Form will represent mandatory and desirable specifications. The Bidder Response Form includes the Supplier Diversity Form #1 (SDP), Prompt Payment Discount Form (PPD), and Environmentally Preferable Products/Practices Form (EPP). Most items within the Bidder Response Form will be scored to determine the apparent successful bidders. The SSST does not want and will not read, consider or evaluate a line by line response or any other response to this RFR.

##### **5.5.4 Additional attachments**

Bidders may submit additional attachments in pdf format for consideration. Examples of an attachment would be the Company Certifications (Section 3.1.2).

#### **Prohibition regarding contract terms**

Bidders must not, as part of their Quote, propose additional contractual terms, or supplemental or clarifying language pertaining to contractual terms, even if the proposed additions/clarifications are not in conflict with the Commonwealth Terms and Conditions, the Standard Contract Form, or other documents comprising this RFR. It is essential for Contracting Departments that all contractors' Statewide Contracts can be depended upon to incorporate the same terms and only those terms. Contractors who wish to propose additional non-conflicting contractual terms, or supplemental or clarifying language, may do so ONLY on a case-by-case basis, negotiated for each specific engagement and memorialized in the Project Statement of Work.

## **5.6 Quote Materials**

### **5.6.1 Electronic Signatures**

Quotes submitted via COMMBUYS must be signed electronically by the Bidder or the Bidder's Agent by accepting the terms and conditions of the bid on the "Terms & Conditions" tab of the Bid in COMMBUYS. By selecting "Save & Continue" on the "Terms and Conditions" tab after accepting the terms and conditions of the bid, the submitter attests that s/he is an agent of the Bidder with authority to sign on the Bidder's behalf, and that s/he has read and assented to each document's terms.

### **5.6.2 Ink Signatures**

Original ink signatures are required only after contracts have been awarded. The Commonwealth of Massachusetts requires Contractors to submit original ink-signature versions of the following forms:

- Standard Contract Form
- Commonwealth Terms and Conditions
- Contractor Authorized Signatory Listing
- Request for Taxpayer Identification and Verification (Mass. Substitute W9 Form)
- Electronic Funds Transfer Sign Up Form

Successful Bidders who agreed to the terms and conditions of these forms electronically via COMMBUYS online Quote submission tool must still submit the above forms with ink signatures within seven (7) calendar days of award notification or their contract may not be executed by the Commonwealth. Bidders who have previous contract(s) with the Commonwealth and have up-to-date, ink-signature versions of the Commonwealth Terms and Conditions and Request for Taxpayer Identification and Verification (Mass. Substitute W9 Form) on file with the Office of the State Comptroller may submit copies of the signed forms. However, a new Standard Contract Form and Contractor Authorized Signatory Listing with original ink signatures must be submitted for each new contract with the Commonwealth.

## **5.7 Limits and Restrictions**

### **5.7.1 File Naming Conventions**

Files submitted via COMMBUYS must follow the file naming convention as specified on the Checklist within the Bidder Response Form. The Description entered during the file upload process ensures each file is readily identified by Company Name and content. The File Name assigned by the Bidder as stored on their computer or network must be structured such that each file can be processed by the upload tool. The upload tool will reject any file name that includes spaces or symbols, like the brackets [ ] some systems apply when files are downloaded from the Internet.

### **5.7.2 File Size Limits**

The SSST will not accept files that approach or exceed 5 MB. If, when submitting your quote, a large file fails to upload, bidders must break up the file and append \_Part1, \_Part2 to the end of the Description and File Name.

### **5.7.3 File Format Restrictions**

All scanned documents must be in .pdf or .gif format, and must be scanned in such a way that they can be read on a computer monitor and printed on 8 1/2" x 11" paper, unless otherwise specified. Forms provided for the Bidder to complete, with the exception of the forms requiring ink signatures, must be completed and submitted in their original formats, NOT scanned and submitted as PDF or other file types.

## **5.8 Withdrawing a Quote**

### **5.8.1 Prior to Bid Opening Date/Time**

Quotes may be withdrawn using the "Withdraw Quote" button offered under the Summary tab of a submitted Quote.

### **5.8.2 After Bid Opening Date/Time**

No Quote can be withdrawn after the Bid Opening Date/Time. If the Bidder wants to remove a Quote from consideration, contact the Strategic Sourcing Services Lead for guidance.

## **6 APPENDIX 1 – REQUIRED TERMS FOR ALL STATEWIDE RFRS**

The terms of [801 CMR 21.00](#): Procurement of Commodities and Services are incorporated by reference into this RFR. Words used in this RFR shall have the meanings defined in 801 CMR 21.00. Additional definitions may also be identified in this RFR. Unless otherwise specified in this RFR, all communications, Quotes, and documentation must be in English and all cost proposals or figures in U.S. currency. All Quotes must be submitted in accordance with the specific terms of this RFR.

### **6.1 General Procurement Information**

#### **6.1.1 Alterations**

Bidders may not alter (manually or electronically) the Bid language or any Bid component files, except as directed in the RFR. Modifications to the body of the Bid, specifications, terms and conditions, or which change the intent of this Bid are prohibited and may disqualify a Quote.

#### **6.1.2 Bidder's Contact Information**

It is the Bidder's responsibility to monitor the email address provided in the Quote for the Bidder's contact person. The SSST may need to contact the Bidder's contact person with clarification requests or for other reasons. The SSST and the Commonwealth assume no responsibility if a Bidder's designated email address is not current, or if technical problems, including those with the Bidder's computer, network or internet service provider (ISP), cause e-mail communications between the Bidder and the SSST to be lost or rejected by any means including email or spam filtering.

#### **6.1.3 COMMBUYS Market Center**

COMMBUYS is the official source of information for this Bid and is publicly accessible at no charge at [www.commbuys.com](http://www.commbuys.com). Information contained in this document and in COMMBUYS, including file attachments, and information contained in the related Bid Questions and Answers (Q&A), are all components of the Bid, as referenced in COMMBUYS, and are incorporated into the Bid and any resulting contract.

Bidders are solely responsible for obtaining all information distributed for this Bid via COMMBUYS. Bid Q&A supports Bidder submission of written questions associated with a Bid and publication of official answers.

It is each Bidder's responsibility to check COMMBUYS for:

- Any amendments, addenda or modifications to this Bid, and
- Any Bid Q&A records related to this Bid.

The Commonwealth accepts no responsibility and will provide no accommodation to Bidders who submit a Quote based on an out-of-date Bid or on information received from a source other than COMMBUYS.

#### **6.1.4 COMMBUYS Subscription**

Bidders may elect to obtain a free COMMBUYS Seller subscription which provides value-added features, including automated email notification associated with postings and modifications to COMMBUYS records. However, in order to respond to a Bid, Bidders must register and maintain an active COMMBUYS Seller subscription account.

All Bidders submitting a Quote (previously referred to as Response) in response to this Bid (previously referred to as Solicitation) agree that, if awarded a contract: (1) they will maintain an active seller account in COMMBUYS; (2) they will, when directed to do so by the procuring entity, activate and maintain a COMMBUYS-enabled catalog using Commonwealth Commodity Codes; (3) they will comply with all requests by the procuring entity to utilize COMMBUYS for the purposes of conducting all aspects of purchasing and invoicing with the Commonwealth, as added functionality for the COMMBUYS system is activated; (4) Bidder understands and acknowledges that all references to the Comm-PASS website or related requirements throughout this RFR, shall be superseded by comparable requirements pertaining to the COMMBUYS website; and (6) in the event the Commonwealth adopts an alternate market center system, successful Bidders will be required to utilize such system, as directed by the procuring entity. Commonwealth Commodity Codes are based on the United Nations Standard Products and Services Code (UNSPSC).

The COMMBUYS system introduces new terminology, which bidders must be familiar with in order to conduct business with the Commonwealth. To view this terminology and to learn more about the COMMBUYS system, please visit the [COMMBUYS Resource Center](#).

#### **6.1.5 Multiple Quotes**

Bidders may not submit Multiple Quotes in response to a Bid unless the RFR authorizes them to do so. If a Bidder submits multiple quotes in response to an RFR that does not authorize multiple responses, only the latest dated quote submitted prior to the bid opening date will be evaluated.

#### **6.1.6 Quote Content**

Bid specifications for delivery, shipping, billing and payment will prevail over any proposed Bidder terms entered as part of the Quote, unless otherwise specified in the Bid.

#### **6.1.7 Costs**

Costs which are not specifically identified in the Bidder's Quote, and accepted by the SSST as part of a Statewide Contract, will not be compensated under any Statewide Contract or engagement awarded pursuant to this RFR. The Commonwealth will not be responsible for any costs or expenses incurred by Bidders responding to this RFR.

#### **6.1.8 Electronic Funds Transfer (EFT)**

All Bidders must agree to participate in the Commonwealth Electronic Funds Transfer (EFT) program for receiving payments. A link to the EFT application can be found on the OSD Forms page ([www.mass.gov/osd](http://www.mass.gov/osd)). Additional information about EFT is available on the Comptroller's [VendorWeb](#) site located at: <https://massfinance.state.ma.us/VendorWeb/vendor.asp>.

Upon notification of award, Contractors are required to enroll in EFT by completing and submitting the "Authorization for Electronic Funds Payment Form" to the SSST for review, approval and forwarding to the Office of the Comptroller, unless already enrolled in EFT. A link to the EFT application can be found on the Comptroller's VendorWeb site (see above link). This form, and all information contained on this form, shall not be considered a public record and shall not be subject to public disclosure through a public records request.

#### **6.1.9 Minimum Quote Duration**

Bidders' Quotes to this RFR must remain in effect for at least 90 days from the date of Quote submission.

#### **6.1.10 Ownership of Submitted Quotes**

OSD and the SSST shall be under no obligation to return any Quotes or materials submitted by a Bidder in response to this RFR. All materials submitted by Bidders become the property of the Commonwealth of Massachusetts and will not be returned to the Bidder. The Commonwealth reserves the right to use any ideas, concepts, or configurations that are presented in a Bidder's Quote, whether or not the Quote is selected for Contract award.

Quotes stored on COMMBUYS in the encrypted lock-box are the file of record. Bidders retain access to a read-only copy of this submission via their COMMBUYS account, as long as their account is active. Bidders may also retain a traditional paper copy or electronic copy on a separate computer or network drive or separate media, such as CD or DVD, as a backup.

#### **6.1.11 Prohibitions**

Bidders are prohibited from communicating directly with any employee of the procuring Department or any member of the SSST regarding this RFR except as specified in this RFR, and no other individual Commonwealth employee or representative is authorized to provide any information or respond to any question or inquiry concerning this RFR. Bidders may contact the contact person using the contact information provided in the Header Information this Bid in the event that this RFR is incomplete or information is missing. Bidders experiencing technical problems accessing information or attachments stored on COMMBUYS should contact the [COMMBUYS Helpdesk](#) (see the document cover page for contact information).

In addition to the certifications found in the Commonwealth's Standard Contract Form, by submitting a Quote, the Bidder certifies that the Quote has been arrived at independently and has been submitted without any communication, collaboration, or without any agreement, understanding or planned common course or action with, any other Bidder of the commodities and/or services described in the RFR.

#### **6.1.12 Public Records Law**

All Quotes and information submitted in response to this RFR are subject to the Massachusetts Public Records Law, M.G.L., Chapter 66, Section 10, and to Chapter 4, Section 7, Subsection 26. Any statements in submitted Quotes that are inconsistent with these statutes shall be disregarded.

#### **6.1.13 Reasonable Accommodation**

Bidders with disabilities or hardships that seek reasonable accommodation, which may include the receipt of RFR information in an alternative format, must communicate such requests in writing to the contact person. Requests for accommodation will be addressed on a case by case basis. A Bidder requesting accommodation must submit a written statement which describes the Bidder's disability and the requested accommodation to the contact person for the RFR. The SSST reserves the right to reject unreasonable requests.

### **6.2 Evaluation – Best Value Selection and Negotiation**

The SSST may select the Quotes(s) which demonstrates the best value overall, including proposed alternatives, that will achieve the goals of the procurement. The SSST and a selected



Bidder may negotiate a change in any element of Contract performance or cost identified in the original RFR or the selected Bidder's Quote which results in lower costs or a more cost effective or better value than was presented in the selected Bidder's original Quote.

### **6.3 Terms and Requirements Pertaining to Awarded Statewide Contracts**

#### **6.3.1 Commonwealth Tax Exemption**

Payment vouchers or invoices submitted to Massachusetts government entities must not include sales tax.

#### **6.3.2 Contractor's Contact Information**

It is the Contractor's responsibility to keep the Contractor's Contract Manager information current. If this information changes, the Contractor must notify the Contract Manager by email immediately, using the address located in the Header Information of the Purchase Order or Master Blanket Purchase Order on COMMBUYS.

The SSST and the Commonwealth assume no responsibility if a Contractor's designated email address is not current, or if technical problems, including those with the Contractor's computer, network or internet service provider (ISP), cause e-mail communications between the Bidder and the SSST to be lost or rejected by any means including email or spam filtering.

#### **6.3.3 Contractual Status of Orders and Service Contracts**

Each order or service contract placed under the Statewide Contract established as a result of this RFR shall be considered a separate Contract between the Contracting Department and the Contractor, and shall be deemed to incorporate all of the terms and conditions of the Statewide Contract. Nothing contained in any order or service contract shall amend or vary the terms of the Statewide Contract. Additional terms which do not conflict with the Commonwealth's Terms and Conditions, the Massachusetts Standard Contract Form, this RFR and any amendments, or the Bidder Quote, may be included in an order or service contract, if mutually agreed upon by the contractor and the Eligible Entity.

#### **6.3.4 Emergency Standby Commodities and/or Services**

Contractors may be called upon during a declared state of emergency to supply and/or deliver to the Commonwealth on a priority basis commodities and/or services which are currently under Statewide Contract.

To accommodate such requests, Contractors may be asked, and must make every effort to service, these requests from regular sources of supply at the rates set forth in any Statewide Contract resulting from this RFR.

#### **6.3.5 HIPAA: Business Associate Contractual Obligations**

Bidders are notified that any Department meeting the definition of a Covered Entity under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) will include in the RFR or RFQ and resulting contract sufficient language establishing the successful Bidder's contractual obligations, if any, that the Department will require in order for the Department to comply with HIPAA and the privacy and security regulations promulgated thereunder (45 CFR Parts 160, 162, and 164) (the Privacy and Security Rules). For example, if the Department determines that the successful Bidder is a business associate performing functions or activities involving protected health information, as such terms are used in the Privacy and Security Rules, then

the Department will include in the RFR and resulting contract a sufficient description of business associate's contractual obligations regarding the privacy and security of the protected health information, as listed in 45 CFR 164.314 and 164.504 (e), including, but not limited to, the Bidder's obligation to: implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the protected health information (in whatever form it is maintained or used, including verbal communications); provide individuals access to their records; and strictly limit use and disclosure of the protected health information for only those purposes approved by the department. Further, the Department reserves the right to add any requirement during the course of the contract that it determines it must include in the contract in order for the department to comply with the Privacy and Security Rules.

The above information pertains to contracts with Departments which are entered into under the Statewide Contract. This Bid itself does not fall under HIPAA.

### **6.3.6 Pricing: Federal Government Services Administration (GSA) or Veteran's Administration Supply**

The Commonwealth reserves the right to request that the Contractor provide initial pricing schedules and periodic updates available under their GSA or other federal pricing contracts. In the absence of proprietary information being part of such contracts, compliance for submission of requested pricing information is expected within 30 days of any request. If the Contractor receives a GSA or Veteran's Administration Supply contract at any time during the term of the Statewide Contract, the Contractor must notify the Commonwealth Contract Manager.

### **6.3.7 Pricing**

Statewide Contractors may be asked to offer (and are encouraged to make available) special discounted pricing opportunities to Eligible Entities within the terms of their Statewide Contract. Such price discounts may come in the form of periodic aggregate purchases by Eligible Entities, whereby such entities will request further discounted prices from the Contractor(s) for guaranteed quantities to be purchased. The Statewide Contractor must report to the Strategic Sourcing Services Lead (SSSL) prior to any such price reductions or discounts, or other more favorable terms, being offered to any Eligible Entity beyond those in their Statewide Contract. The SSSL reserves the right to approve all price adjustments.

### **6.3.8 Publicity**

Any Statewide Contractor awarded a contract under this RFR is prohibited from selling or distributing any information collected or derived from the Statewide Contract, including lists of participating Entities, Commonwealth employee names, telephone numbers or addresses, or any other information except as specifically authorized by the SSST.

### **6.3.9 SaveSmart Program (\$ave\$mart)**

The OSD \$ave\$mart Program is a partnership between OSD and Statewide Contract Vendors. The purpose of the program is to create additional cost savings and opportunities for all Eligible Entities utilizing Statewide Contracts. These opportunities could be in the form of reduction in cost for a limited time, free training opportunities, and other offerings.

Contractors should notify the Commonwealth Contract Manager of any price reductions they are willing to provide, including those which are time- or quantity-limited, as a promotional or

competitive strategy, an inventory reduction initiative, or for any other reason. If suitable, the cost savings will be showcased in the \$ave\$mart section of OSD's website.

#### **6.3.10 Statewide Contractor Marketing Requirements**

Statewide Contractors awarded under this RFR must adhere to the following sales/marketing requirements and limitations regarding their Contract: Contractors may only sell those goods and/or services for which they are awarded a Statewide Contract pursuant to this RFR; marketing information must be factual in nature in order to promote those goods and/or services for which the Contractor has a Statewide Contract and must not be critical of other Statewide Contractors; and Contractors must not display the Commonwealth of Massachusetts Seal for commercial purposes because use of the coat of arms and the Great Seal of the Commonwealth for advertising or commercial purposes is prohibited by law. During the life of the Contract, the SSST reserves the right to require Contractors to seek and receive prior written approval before distributing marketing information to eligible entities.

#### **6.3.11 Subcontracting Policies**

Prior approval of the department is required for any subcontracted service of the Contract. Contractors are responsible for the satisfactory performance and adequate oversight of their subcontractors.

#### **6.3.12 Transaction Fee**

In the event the Operational Services Division determines that it is necessary to adopt an alternative funding mechanism for its procurements in the future, including, but not limited to, a transaction fee, the Operational Services Division hereby reserves the right to renegotiate the inclusion and implementation of such a fee and/or other alternative funding mechanisms with the awarded contractors.

## 7 APPENDIX 2 - INSTRUCTIONS FOR EXECUTION AND SUBMISSION OF COMMONWEALTH STANDARD FORMS

The purpose of this appendix is to provide guidance to Bidders on the Commonwealth Standard forms to be submitted (in addition to the other forms and documents required) and how they must be executed and submitted. Please note that these instructions are meant to supplement the Instructions found on each of these forms. It is advisable to print this document first so that it may be referenced when filling out these forms.

Some of the forms listed below can be electronically signed by the Bidder, see [Electronic Signatures](#). However, online Bidders must, if notified of Contract award, submit the following four (4) forms on paper with original ink signatures unless otherwise specified below, within the timeframe referenced in the RFR section entitled [Ink Signatures](#): the Commonwealth Standard Contract Form, the Commonwealth Terms and Conditions, the Request for Taxpayer Identification Number and Certification (Mass. Substitute W9 Form) and the Contractor Authorized Signatory Listing.

### 7.1 Commonwealth Standard Contract Form

Sign electronically as described above; **if notified of Contract award**, complete as directed below and submit on paper with original ink signature and date.

By executing this document or signing it electronically, the Bidder certifies, under the pains and penalties of perjury, that it has submitted a Quote to this RFR that is the Bidder's Offer as evidenced by the execution of its authorized signatory, and that the Bidder's Quote may be subject to negotiation by the SSST. Also, the terms of the RFR, the Bidder's Quote and any negotiated terms shall be deemed accepted by the Operational Services Division and included as part of the Statewide Contract upon execution of this document by the State Purchasing Agent or his designee.

If the Bidder does not have a Vendor Code beginning with "VC," or does not know what their Vendor Code is, the Bidder should leave the Vendor Code field blank. The Bidder should NOT enter a Vendor Code assigned prior to May 2004, as new Vendor Codes have been assigned to all companies since that time.

Signature and date MUST be handwritten in ink, and the signature must be that of one of the people authorized to execute contracts on behalf of the Contractor on the Contractor Authorized Signatory Listing (See below).

### 7.2 Commonwealth Terms and Conditions

Sign electronically as described above; **if notified of Contract award**, complete as directed below and submit on paper with original ink signature and date, or submit a copy of a previously executed, up-to-date copy of the form as directed below.

If the Bidder has already executed and filed the Commonwealth Terms and Conditions form pursuant to another RFR or Contract, a copy of this form may be included in place of an original. If the Bidder's name, address or Tax ID Number have changed since the Commonwealth Terms and Conditions form was executed, a new Commonwealth Terms and Conditions form is required. The Commonwealth Terms and Conditions are hereby incorporated into any Contract executed pursuant to this RFR.

This form must be unconditionally signed by one of the authorized signatories (see Contractor Authorized Signatory Listing, below), and submitted without alteration. If the provisions in this document are not accepted in their entirety without modification, the entire Proposal offered in response to this Bid may be deemed non-responsive.

The company's correct legal name and legal address must appear on this form, and must be identical to the legal name and legal address on the Request for Taxpayer Identification and Certification Number (Mass. Substitute W9 Form).

### **7.3 Request for Taxpayer Identification Number and Certification (Mass. Substitute W9 Form)**

Sign electronically as described above; **if notified of Contract award**, complete as directed below and submit on paper with original ink signature and date, or submit a copy of a previously executed, up-to-date copy of the form as directed below.

If a Bidder has already submitted a Request for Taxpayer Identification and Certification Number (Mass. Substitute W9 Form) and has received a valid Massachusetts Vendor Code, an original W-9 form is not required. A copy of the form as filed may be included in place of an original. If the Bidder's name, address or Tax ID Number have changed since the Mass. Substitute W9 Form was executed, a new Mass. Substitute W9 Form is required. The information on this form will be used to record the Bidder's legal address and where payments under a State Contract will be sent. The company's correct legal name and legal address must appear on this form, and must be identical to the legal name and legal address on the Commonwealth Terms and Conditions. Please do not use the U.S Treasury's version of the W9 Form.

### **7.4 Contractor Authorized Signatory Listing**

Sign electronically as described above; **if notified of Contract award**, complete as directed below and submit on paper with original ink signature and date.

In the table entitled "Authorized Signatory Name" and "Title," type the names and titles of those individuals authorized to execute contracts and other legally binding documents on behalf of the Bidder. Bidders are advised to keep this list as small as possible, as Contractors will be required to notify the Procurement Manager of any changes. If the person signing in the signature block on the bottom of the first page of this form will also serve as an "Authorized Signatory," that person's name must be included in the typed table.

With regard to the next paragraph, which begins "I certify that I am the President, Chief Executive Officer, Chief Fiscal Officer, Corporate Clerk or Legal Counsel for the Contractor..." if your organization does not have these titles, cross them out and handwrite the appropriate title above the paragraph.

The signature and date should be handwritten in ink. Title, telephone, fax and eMail should be typed or handwritten legibly.

The second page of the form (entitled "Proof of Authentication of Signature") states that the page is optional. However, the "optional" aspect of the form is that Commonwealth Departments are not required to use it. In the case of Statewide Contracts, this page is REQUIRED, not optional. The person signing this page must be the same person signing the Standard Contract Form, the Commonwealth Terms and Conditions, and the RFR Checklist.

Please note that in two places where the form says “in the presence of a notary,” this should be interpreted to mean “in the presence of a notary or corporate clerk/secretary.” Either a notary or corporate clerk/secretary can authenticate the form; only one is required.

Organizations whose corporate clerks/secretaries authenticate this form are not required to obtain a Corporate Seal to complete this document.

**7.5 Supplier Diversity Program (SDP) Plan Form #2 – Declaration of SDP Partners**

Sign electronically as described above; **if awarded a Contract**, complete as directed below and submit on paper with original ink signature and date.

Download this form, complete, and submit by the deadline specified in the Supplier Diversity Program (SDP) requirements for this procurement, located earlier in this document.

A certified Bidder may not list itself as being a Supplier Diversity Program Partner to its own company. This form is NOT the same as the SDO certification of the Bidder’s company.

**7.6 Supplier Diversity Program (SDP) Plan Form #1 – SDP Plan Commitment**

Download this form and complete as directed; include with online submission. Ink signature is not required.

The specific Supplier Diversity Program (SDP) requirements for this procurement can be found earlier in this document.

**7.7 Additional Environmentally Preferable Products / Practices**

In line with the Commonwealth’s efforts to promote products and practices which reduce our impact on the environment and human health, Bidders are encouraged to provide information regarding their environmentally preferable/sustainable business practices as they relate to this Contract wherever possible. Bidders must complete this form and submit it with their Quote.

**7.8 Prompt Payment Discount Form**

Download this form and complete as directed below; include with online submission. Ink signature is not required.

Pursuant to the Prompt Payment Discount terms set forth in the RFR Required Specifications for Statewide Contracts and on the Prompt Payment Discount Form itself, all Bidders must execute this form. After entering the “Bidder Name” and “Date of Offer for Prompt/Early Payment Discount”, the Bidder must identify the prompt payment discount(s) terms by indicating the “Percentage Discount off of the Proposed Pricing” and the “Turn-around-time for Payments.” In the event of a hardship that prevents the Bidder from offering a prompt payment discount, the Bidder must document this fact and provide supporting information.

If awarded a contract, the final negotiated Prompt Payment Discounts should be reflected on the Commonwealth Standard Contract Form.

**7.9 Business Reference Form**

This form is part of the Bidder’s Response Form and must be included with the online submission. Ink signature is not required.

Bidders must provide all requested information on this form for three (3) business references. In completing this form, note that the "Bidder" is the name of the company submitting a Quote in response to this Bid and the "RFR Name/Title" and the "RFR Number" can be found on the cover of the RFR document and in the Short Description field of the Header Information section of the Bid on COMMBUYS. Also, please note that: "Reference Name" is the name of the organization (if not applicable, then name of the individual) that is providing the reference; "Contact" is the name of the individual inside the organization that will provide the reference; and the "Address," "Phone #" and "Fax/Internet Address" are those of the "Contact" so that the SSST may be able to reach them.

## 8 APPENDIX 3 - INSTRUCTIONS FOR VENDORS RESPONDING TO BIDS ELECTRONICALLY THROUGH COMMBUYS

### Introduction

COMMBUYS refers to all solicitations, including but not limited to Requests for Proposals (RFP), Invitations for Bid (IFB), Requests for Response (RFR), Requests for Quote (RFQ), as "Bids." All responses to Bids are referred to as "Quotes."

### Steps for Bidders to Submit a Quote

1. Launch the COMMBUYS website by entering the URL ([www.COMMBUYS.com](http://www.COMMBUYS.com)) into the browser.
2. Enter Bidder login credentials and click the **Login** button on the COMMBUYS homepage. Bidders must be registered in COMMBUYS in order to submit a Quote. Each Vendor has a COMMBUYS Seller Administrator, who is responsible for maintaining authorized user access to COMMBUYS.
3. Upon successful login, the Vendor home page displays with the Navigation and Header Bar as well as the Control Center. The Control Center is where documents assigned to your role are easily accessed and viewed.
4. Click on the **Bids** tab
5. Clicking on the Bid tab opens four sections:
  - a. Request for Revision
  - b. Bids/Bid Amendments
  - c. Open Bids
  - d. Closed Bids
6. Click on the blue **Open Bid** hyperlinks to open and review an open bid
7. A new page opens with a message requesting you acknowledge receipt of the bid. Click **Yes** to acknowledge receipt of the bid. Bidders should acknowledge receipt to receive any amendments/updates concerning this bid.
8. After acknowledgement, the bid will open.

The top left half of the page contains the following information:

- a. Purchaser
- b. Department
- c. Contact for this bid
- d. Type of purchase
  - i. Open Market
  - ii. Blanket
- e. Pre-Bid Conference details (if applicable)
- f. Ship-to and Bill-to addresses

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**Document Sensitivity Level: High** during development; **Low** once published.



- g. Any attachments to the bid, which may include essential bid terms, response forms, etc. The top right half of the bid includes the following information:
  - h. Bid Date
  - i. Required Date
  - j. Bid Opening Date – date the bid closes and no further quotes will be accepted
  - k. Informal Bid Flag
  - l. Date goods/services are required
- 9. The lower half of the page provides information about the specific goods/services the bid is requesting.
- 10. Click **Create Quote** to begin.
- 11. The General tab for a new quote opens. This page is populated with some information from the bid. Fields available to update include:
  - a. Delivery days
  - b. Shipping terms
  - c. Ship via terms
  - d. Is “no” bid – select if you will not be submitting a quote for this bid
  - e. Promised Date
  - f. Info Contact
  - g. Comments
  - h. Discount Percent
  - i. Freight Terms
  - j. Payment Terms

It is important to note that the bid documents (RFR and attachments) may specify some or all of these terms and may prohibit you from altering these terms in your response. Read the bid documents carefully and fill in only those items that are applicable to the bid to which you are responding.

Update these fields as applicable to the bid and click **Save & Continue** to save any changes and create a Quote Number.

- 12. The page refreshes and messages display. Any message in **Red** is an error and must be resolved before the quote can be submitted. Any message in **Yellow** is only a warning and will allow processing to continue.
- 13. Click the **Items** tab. The Items tab displays information about the items requested in the bid. To view additional details about an item, click the item number (blue hyperlink) to open.
- 14. The item opens. Input all of your quote information and click **Save & Exit**.
- 15. Click on the **Attachments** Tab. Follow the prompts to upload and name all required attachments and forms and bid response documents in accordance with the instructions contained in the solicitation or bid documents. After uploading each individual file or form, click **Save & Continue**. After you have uploaded all required documents click **Save & Exit**. Be sure to review your attachments to make sure each required document has been submitted.

16. Click on the **Terms & Conditions** Tab. This tab refers to the terms and conditions that apply to this bid. The terms and conditions must be accepted before your quote can be submitted. If your acceptance is subject to any exceptions, those exceptions must be identified here. Exceptions cannot contradict the requirements of the RFR, or required Commonwealth standard forms and attachments for the bid. For instance, an RFR may specify that exceptions may or will result in disqualification of your bid.
17. Click the Summary tab. Review the information and update/correct, as needed. If the information is correct, click the **Submit Quote** button at the bottom of the page.
18. A popup window displays asking for verification that you wish to submit your quote. Click **OK** to submit the quote.
19. The Summary tab redisplay with an updated Status for the quote of **Submitted**.
20. Your quote submission is confirmed only when you receive a confirmation email from COMMBUYS. If you have submitted a quote and have not received an email confirmation, please contact the COMMBUYS Help Desk at [COMMBUYS@state.ma.us](mailto:COMMBUYS@state.ma.us).

If you wish to revise or delete a quote after submission, you may do so in COMMBUYS: (1) for a formal bid, prior to the bid opening date, or (2) for an informal bid (which may be viewed upon receipt), prior to the opening of your quote by the issuing entity or the bid opening date, whichever is earlier.

Bidders may not submit Multiple Quotes in response to a Bid unless the Bid authorizes Multiple Quote submissions. If you submit multiple quotes in response to a bid that does not allow multiple quotes, only the latest submission prior to the bid opening date will be evaluated.

## 9 GLOSSARY

In addition to the definitions found in 801 CMR 21.00, which apply to all procurements for goods and services, the definitions found below apply to this Bid. Those definitions below designated with an asterisk (“\*”) are quoted directly from 801 CMR 21.00 and are included below for quick reference purposes.

**Agency** – See Department

**Bid** – While a bid may generally refer to an offer or response submitted in response to a Solicitation or Request for Response (RFR), in COMMBUYS, a “bid” refers to the solicitation, RFR or procurement.

**Bidder \*** - An individual or organization proposing to enter into a Contract to provide a Commodity or Service, or both, to or for a Department or the State.

**Commonwealth Contract Manager** – See Strategic Sourcing Services Lead

**Contract \*** - A legally enforceable agreement between a Contractor and a Department. ANF, OSD and CTR shall jointly issue Commonwealth Terms and Conditions, a Standard Contract Form and other forms or documentation that Departments shall use to document the Procurement of Commodities or Services, or both. COMMBUYS refers to Contract records as “Purchase Orders” or “Blanket Purchase Orders.”

**Contractor \*** - An individual or organization which enters into a Contract with a Department or the State to provide Commodities or Services, or both.

**Contractor Contract Manager** – The individual designated by the Contractor to interface with the Commonwealth.

**Department** - For the purposes of this Solicitation, the terms “Department,” “Eligible Entity,” “Agency,” “Commonwealth Agency,” and “Contracting Department” include all entities listed in the Eligible Entities section of this RFR. COMMBUYS refers to such entities as “Organizations.”

**Eligible Entity** – See Department

**Environmentally Preferable Product (EPP)** - A product or service that has a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. Such products or services may include, but are not limited to, those which contain recycled content, minimize waste, conserve energy or water, and reduce the amount of toxic materials either disposed of or consumed.

**Evaluation** – The process, conducted by the Strategic Sourcing Team, of reviewing, scoring and ranking the submitted Quotes related to this Bid.

**FY** – See Fiscal Year

**Fiscal Year** - The year beginning with July first and ending with the following June thirtieth as defined in M.G.L. Chapter 4, Section 7. This may also be referred to as the "State Fiscal Year."

**Organization** – See Department

**Procurement Team Leader (PTL)** – See Strategic Sourcing Services Lead

**PTL** – See Procurement Team Leader

**Purchasing Entity** – Same as “Eligible Entity.”

**Quote or Response** - generally refers to the offer submitted in response to a Bid or Request for Response (RFR).

**Request for Response (RFR)** \* – The mechanism used to communicate Procurement specifications and to request Quotes from potential Bidders. An RFR may also be referred to as a “Bid” or “Solicitation.”

**Response** – The Bidder’s complete submission (or “Quote” as referenced in COMMBUYS) in response to a Solicitation, in other words, a “Bid” or “Proposal.”

**Solicitation** – See Request for Response (RFR)

**SSST** – See Strategic Sourcing Services Team

**SSSL** – See Strategic Sourcing Services Lead

**Strategic Sourcing Team (SST)** – Representatives from various eligible entities and interested stakeholders that design procurements, develop specifications, conduct Solicitations, evaluate responses to Bids and award Statewide or Department Contracts. The SSST also monitors Contractor performance through performance measures and the level of customer satisfaction throughout the life of the Contract. In some agencies, SSSTs are referred to as “Procurement Management Teams (SSST).”

**Strategic Sourcing Services Lead (SSSL)** – Individual designated by the procuring Department to lead the Strategic Sourcing Team and the solicitation and resulting contract. In some agencies SSSLs are referred to as “Procurement Team Leads (PTL).” COMMBUYS Refers to the SSSL in the Header Information section of a Bid as the “Purchaser.”



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Seller Administrator

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Robert Mailo

## Open Market Bid BD-15-1080-OSD01-OSD10-00000003630

### Current Q & A for this bid:

Question #	Created Date	User Created	Question Subject	Question	Answer
1	04/02/2015	Maryellen Osborne		When can I submit my questions?	Questions can be submitted anytime after the posting of this bid.
2	04/02/2015	Maryellen Osborne		What is the deadline for asking questions?	REVISED ANSWER: The last question has to be submitted before April 24, 2015.
3	04/02/2015	Maryellen Osborne		Where can I go for help with Commbuys?	You can send an email to: Commbuys commbuys@massmail.com or by calling them at 617-720-3197. Please also visit their website at <a href="http://www.mass.gov/anf/budget-taxes-and-procurement/procurement-info-and-res/conduct-a-procurement/commbuys/">http://www.mass.gov/anf/budget-taxes-and-procurement/procurement-info-and-res/conduct-a-procurement/commbuys/</a> for additional help.
4	04/14/2015	Eric Schmude/Pitney Bowes Inc.	Extension Request	This solicitation requires a comprehensive internal review, and the time limits established within the RFR are difficult to meet. Based on the complexity of the RFR, we respectfully ask for an extension of a minimum one week for submission of questions and a corresponding extension of the April 30 due date of an additional two weeks to May 14, 2015. We are not yet ready to submit the questions related to the RFR requirements which determine our ability to meet the RFR submission date. The extension allows for us to fully prepare our response and navigate the new COMMBUYS online submission procedure. We hope this is considered a reasonable request in light of the extension of our current contract OFF37	Q&A extended to April 24, 2015. Bid submissions also extended, the new due date is now May 14, 2015.

				and the reasons indicated here. Thank you for this opportunity to participate in the RFR and support the Commonwealth of Massachusetts in this commodity. I look forward to your response and appreciate your consideration.	
7	04/14/2015	Eric Schmude/Pitney Bowes Inc.	Price % discounts	Is the vendor limited in the % discount offered per category found in the Cost_Sheet_April_2015 document? The commonwealth will benefit with overall lower prices if we may offer multiple discounts per category. for example, in Inserters and Accessories, we would like to offer some products at xx% discount and others at yy% discount	You are allowed to offer any discount.
5	04/14/2015	Eric Schmude/Pitney Bowes Inc.	Newly Manufactured Equipment	Section 1.1 states the bid is for new and/or refurbished equipment, however section 3.3 states equipment must be new. Please clarify	Category 1 is new only Category 2 can be new or refurbished
6	04/14/2015	Eric Schmude/Pitney Bowes Inc.	Authorized Reseller Offer	As an OEM of products, we also provide a select number of 3rd party products to complement our overall product offering. Will the Commonwealth allow the purchasing entity to enter into a separate agreement pursuant to 3rd party products as long as they comply with the Commonwealth contract terms and conditions?	Any software necessary to run any of the equipment should not have a separate agreement with the 3rd party, if software is being purchased separately then we will review and consider this agreement if you submit this "agreement" with your bid response.
9	04/14/2015	Eric Schmude/Pitney Bowes Inc.	Software License	Will the Commonwealth allow the purchasing entity to enter into a mutually agreeable software license agreement when applicable as in OFF37?	Yes, and engagement terms such as acceptance criteria or software licenses that are not otherwise governed by the Commonwealth's Terms & Conditions, Standard Contract Form, or RFR PRF54 may be negotiated on a case by case basis, buy may not conflict with the Commonwealth's contract documents. In the event a vendor proposes to execute its own standard contract documents with eligible entities, those must be negotiated iwth the OSD's contract manager prior to use with eligible entities.
8	04/14/2015	Eric Schmude/Pitney Bowes Inc.	Prompt Payment Discount	Please confirm the Prompt Payment Discount will not apply for lease agreements. These contracts are	Prompt payment discounts will not be allowed for lease agreements.

				invoiced in arrears on a monthly or quarterly basis depending on customer preference, and the state has the 45 day payment period which we accept in lieu of our standard 30 day payment requirement.	
10	04/14/2015	Eric Schumde/Pitney Bowes Inc.	Para 3.6 Service Specifications	In lieu of a 4 hour response time as mandated in Specifications, the vendor would like to propose and offer an optional lower price service response time agreement of 8 hours (within the next business day) The mandatory 4 hour response time adds extra cost to the Commonwealth contract users and historical performance has not adversely affected customers. The vendor can offer the 4 hour response time at an additional cost if required.	We require the 4 hour response time. You can add the option of an 8 hour response time so that Eligible Entities can choose based on their business need.
12	04/14/2015	Eric Schumde/Pitney Bowes Inc.	3.6.1 Tax Exempt Lease Purchase (TELP)	The RFR indicates state agencies must use the TELP statewide contract. Does the Commonwealth require all equipment lease acquisitions to utilize the TELP contract or may the authorized users select vendor leasing options that are also tax exempt? The Cost Sheet April 2015 appears to provide a provision for the contract vendor designated lease company. (see Col H - M in categories)	The RFR states in order to procure TELP financing of products and services under this statewide contract OFF39, the TELP contract must be used. Yes, you can provide designated leasing companies.
11	04/14/2015	Eric Schumde/Pitney Bowes Inc.	3.6.1 Tax Exempt Lease Purchase (TELP)	Would Contractor be able to assign equipment title and risk of loss to the TELP leasing entity, if a TELP finance option is used by the Eligible Entity?	TELP transactions are governed by the TELP Terms & Conditions so Bidders should consult the TELP Appendix 4 which has been added to the attachments of this RFR.
13	04/16/2015	Patsy Finks/The Finks COMMBUYS Help Desk	Contract OFF39	Will the Close Date and Time be extended for OFF39.	Yes, the close date will be extended as will the time to ask questions. Please watch for the amendment today. Thank you.
14	04/24/2015	Eric Schumde/Pitney Bowes Inc.	Price changes	Section 3.4: The master price agreement indicates prices are to be held firm for 12 months at a time. What is the range of allowing price increase for any vendor at the end of each 12 month period?	There is no range, all price increases are negotiable.

15	04/24/2015	Eric Schmude/Pitney Bowes Inc.	Cost Sheets	The introduction tab of the cost sheet states there are 8 worksheets to be filled out, however there are 10 total (including the intro sheet). Please advise as to the discrepancy of pages.	There are 9 worksheets, not including the "cover page" and I have uploaded a new version of this document.
16	04/24/2015	Eric Schmude/Pitney Bowes Inc.	Post award requirements	3. Will there be any customized order forms required by the Commonwealth that the vendors will have to create, similar to the order forms in the previous OFF08 and OFF22 contracts and will the awarded vendors be allowed to work with the Commonwealth on the creation of these forms?	No, not at this time.
17	04/24/2015	Eric Schmude/Pitney Bowes Inc.	Installation Requirements	Many low end products and software offerings are self-installable and require minimal if any training. Would Commonwealth consider allowing the Contractor to offer a lower cost alternative by allowing the Purchasing Entity to choose between self installation and training or requesting the Contractor to perform the installation and training?	Yes.
19	04/24/2015	Eric Schmude/Pitney Bowes Inc.	Financing Alternatives	Pitney Bowes would like to limit some of its Category 2 listings (Production/folding/inserting equipment and related service), and offer them only for purchase or with financing through TELP. Is it possible to designate certain sub-categories in this way?	Please provide pricing the way the RFR was structured.
18	04/24/2015	Eric Schmude/Pitney Bowes Inc.	Service Standards	The RFR stipulates that the Contractor is required to provide a four (4) hour onsite response time for servicing equipment. This agreement would cover different geographic areas throughout the state where it may not be possible to meet this requirement. Would the Commonwealth consider amending the RFR in consideration of the select zip codes that require additional travel time? In addition, due to enhanced	Please provide pricing for both 4 and 8 hour response times.



				technology and equipment intelligence, many service requests can be resolved remotely over the phone or remote access during the initial service inquiry via phone call or online request. Would the Commonwealth consider amending the RFR to allow the vendor to provide immediate assistance and resolve service requests remotely without an on-site service visit?	
20	04/24/2015	Eric Schmude/Pitney Bowes Inc.	Sections 3.6.6 and 3.6.10 Loaner Equipment	Loaner equipment may not be available for all equipment offered within each of the categories. For example, meters and software-based equipment cannot be implemented on a loaner basis due to postal regulations and custom configuration as well as custom production inserting equipment. Would the Commonwealth allow a Contractor in conjunction with the Purchasing Entity to make a determination if a loaner device is required on a case by case basis and work towards providing alternate solutions should there be a substantial delay due to abnormal circumstances?	Yes, loaner equipment should be provided when appropriate and if not, an alternative should be proposed.
21	04/24/2015	Eric Schmude/Pitney Bowes Inc.	Lease definition	What is the definition of Term Lease and of Rental?	A Term Lease for the purposes of this RFR shall mean an Operational Term Lease for a period longer than six (6) months for the temporary use of Equipment by an Eligible Entity without the intention to gain title, to purchase or to buyout the Equipment. Rental is for 6 months or less.
22	04/24/2015	Brian McAteer/Neopost USA, Inc		Our current government rep is no longer with the organization and we are just now receiving communication for the OFF39 bid. I would like to formally request an extension to return questions of 5 pm on April 28, 2015 to allow us time to properly respond.	Request granted. All questions from all vendors must be received by 5pm on Tuesday, April 28, 2015.
23	04/24/2015	Eric Schmude/Pitney Bowes Inc.	Product Offering	It is (highly) desirable for production folding/inserting equipment to be customized with additional	Yes.

				stackers. Will design time and materials cost of customized equipment be chargeable?	
24	04/24/2015	Eric Schmude/Pitney Bowes Inc.	Custom Built Equipment Category 2A	For custom built equipment under Category 2A, would the Commonwealth consider a lead time requirement of at least 60 days for the Purchasing Entity to notify the Contractor of any changes or termination of an order?	A 30 day lead time should be sufficient. If you need additional or less time this should be approved by the OSD contract manager.
25	04/24/2015	Eric Schmude/Pitney Bowes Inc.	Custom Built Equipment Category 2A	Based on industry standards custom built equipment under Category 2A inspection and rigorous acceptance testing is performed prior to installation based on agreed parameters. Will the Commonwealth consider a 10 day inspection and acceptance testing period from date the equipment is installed on-site to submit written notifications to the Contractor as to any issues with accepting the equipment?	30 day inspection and acceptance testing period should be sufficient. If you need additional or less time this should be approved by the OSD contract manager.
27	04/24/2015	Eric Schmude/Pitney Bowes Inc.	Lease Finance	Can you clarify the Termination Without Cause and without penalty in the Commonwealth Terms and Conditions ? what is the difference between a Term Lease and Rental. The Rental is basically a month-to- month contract that can be canceled. If a Term Lease can terminate without cause and without penalty anytime during the 36, 48, or 60 month term, why would vendor not just offer the Rental?	Please see section 3.6.17 for more information.
26	04/24/2015	Eric Schmude/Pitney Bowes Inc.	Lease Finance	It would appear that the language permitting the termination of a contract in the event of the elimination of an appropriation would be inapplicable for a term lease entered into by certain of the entities specified in Section 1.6 Eligible Entities # 3, 4 7, 8, 9 & 10. Can we limit this right to terminate to entities who obtain appropriations from a legislative body or	Please see section 3.6.15 for more information.

				funding authority?	
28	04/24/2015	Eric Schmude/Pitney Bowes Inc.	OFF39 Mandatory Use	OFF39 will be a primary use state contract (section 1.1). Will OFF39 be a mandatory use contract or will it be a permissive use contract? Will all state agencies be required to use it for purchase, lease and service or will its use be preferred but optional?	Mandatory for Executive departments, for all other Eligible Entities we highly encourage the use of this contract.
30	04/24/2015	Eric Schmude/Pitney Bowes Inc.	Section 3.8	States ?invoices for purchases are not ? payable until successful completion of any applicable acceptance testing.? Will standards for acceptance testing be defined by the Contractor and Eligible Entity in a related Statement of Work (particularly for custom built equipment and software solutions)?	Yes, performance expectations by the Vendor must meet the expected specifications contained in the Statement of Work.
29	04/24/2015	Eric Schmude/Pitney Bowes Inc.	Statement of Work	It is industry standard that a Contractor and Eligible Entity mutually agree upon a Statement of Work when purchasing custom built equipment or software solutions. Will the Commonwealth allow the Eligible Entity to enter into a mutually agreeable Statement of Work with Contractor?	If necessary, yes.
31	04/24/2015	Eric Schmude/Pitney Bowes Inc.	Section 5.5.4	?Contractors who wish to propose additional non-conflicting contractual terms, or supplemental or clarifying language, may do so ONLY on a case-by-case basis, negotiated for each specific engagement and memorialized in the Project Statement of Work.? Will the Contractor and Eligible Entity enter into a Project Statement of Work, which may include supplemental or clarifying language, such as software licenses and specifics about acceptance?	Engagement terms such as acceptance criteria or software licenses that are not otherwise governed by the Commonwealth's Terms & Conditions, Standard Contract Form, or RFR PRF54 may be negotiated on a case by case basis, but may not conflict with the Commonwealth's contract documents. In the event a vendor proposes to execute its own standard contract documents with eligible entities, those must be negotiated with the OSD's contract manager prior to use with eligible entities.
32	04/24/2015	Eric Schmude/Pitney Bowes Inc.	Software License	The Commonwealth has stipulated that the Contractor may offer licensed software (Sections 3.3.1, 3.4, 3.4.3, 3.6.23 and 3.8). Will the Contractor	If necessary, yes.

				and Eligible Entity enter into a mutually agreeable Software License and a Statement of Work, as required?	
33	04/28/2015	Eric Royal/FORMAX, Division of Bescorp Inc	Business references	In regards to references do we need to supply the Business Reference Form along with letters from each of the three businesses listed or is the Business Reference Form sufficient.	The business reference form is sufficient. You do not need to submit letters.
35	04/28/2015	Mark Gagas/Neopost USA, Inc	3.11 Requirement for Business Post Contract Award	Will the following contracts terms be incorporated into the contract as it is today on the OFF 37? Meter rental, lease, and maintenance T&C's.	Yes.
34	04/28/2015	Mark Gagas/Neopost USA, Inc	3.6.19 No Credit Application	Is the intent of the contract to not allow appropriate credit review for noon-state agencies that are allowed to piggy back off of the contract?	The intent is to allow all Eligible Entities to use this contract without the need to submit an application.
36	04/28/2015	Mark Gagas/Neopost USA, Inc	Late Penalty Reporting	Please provide detail of reporting requested if different than what is being provided today.	Sales, SDP Reports and OSD Administration Fee Reports are currently required, however at any time - at the discretion of the Contract Manager, new reports may be incorporated.
37	04/28/2015	Mark Gagas/Neopost USA, Inc	OEM Billing & Collecting	Will payments be made to the awarded contractors and their dealers?	Payments will only be made to the awarded contractors.
38	05/11/2015	Maryellen Osborne	Commbuys document	When using the Bid Print function in Commbuys it produces a document which says ALL BIDS RECEIVED ARE SUBJECT TO THE TERMS AND CONDITIONS ON REVERSE SIDE OF THIS FORM. What does this mean?	Please disregard this statement on the Bid Print Form, it does not pertain to the bid response.
39	05/11/2015	Maryellen Osborne	3rd Party Questions	As an OEM of products, we also provide a select number of 3rd party products to complement our overall product offering. Will the Commonwealth allow the purchasing entity to enter into a separate agreement pursuant to 3rd party hardware or software products as long as they comply with the Commonwealth contract terms and conditions?	It is our intent to make the use of 3rd party software and/or hardware as seamless as possible. Any agreements that are necessary for the software and/or hardware must be submitted with your response for the team to review.
40	05/11/2015	Maryellen Osborne	Updated RFR	What is the latest version of the RFR?	RFR_OFF39_May_06_2015_FINAL_v2.doc

41	05/13/2015	Maryellen Osborne	Uploading response documents	Section 5.7.2 of the OFF39 RFR indicates that we are limited to 5MB/file uploaded. Can we Zip the larger files and submit them this way? I spoke with John at the help desk and he said that you can upload Zipped files but it was up to the OSD contract manager if they would be accepted .	Yes, you can zip them.
42	05/20/2015	Maryellen Osborne	Leases	Equipment Lease Clarification:	Although pursuant to Section 4, Contract Termination or Suspension, of the Commonwealth Terms and Conditions, the Commonwealth is allowed to terminate without cause, the Commonwealth will not exercise the termination without cause provision for equipment leased under this contract. This clarification does not apply to equipment purchased pursuant to this contract.

Exit

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# COMMONWEALTH TERMS AND CONDITIONS

This Commonwealth Terms and Conditions form is jointly issued by the Executive Office for Administration and Finance (ANF), the Office of the Comptroller (CTR) and the Operational Services Division (OSD) for use by all Commonwealth of Massachusetts ("State") Departments and Contractors. **Any changes or electronic alterations by either the Department or the Contractor to the official version of this form, as jointly published by ANF, CTR and OSD, shall be void.** Upon execution of these Commonwealth Terms and Conditions by the Contractor and filing as prescribed by the Office of the Comptroller, these Commonwealth Terms and Conditions will be incorporated by reference into any Contract for Commodities and Services executed by the Contractor and any State Department, in the absence of a superseding law or regulation requiring a different Contract form. Performance shall include services rendered, obligations due, costs incurred, commodities and deliverables provided and accepted by the Department, programs provided or other commitments authorized under a Contract. A deliverable shall include any tangible product to be delivered as an element of performance under a Contract. The Commonwealth is entitled to ownership and possession of all deliverables purchased or developed with State funds. Contract shall mean the Standard Contract Form issued jointly by ANF, CTR and OSD.

**1. Contract Effective Start Date.** Notwithstanding verbal or other representations by the parties, or an earlier start date indicated in a Contract, the effective start date of performance under a Contract shall be the date a Contract has been executed by an authorized signatory of the Contractor, the Department, a later date specified in the Contract or the date of any approvals required by law or regulation, whichever is later.

**2. Payments And Compensation.** The Contractor shall only be compensated for performance delivered and accepted by the Department in accordance with the specific terms and conditions of a Contract. All Contract payments are subject to appropriation pursuant to M.G.L. C. 29, §26, or the availability of sufficient non-appropriated funds for the purposes of a Contract, and shall be subject to intercept pursuant to M.G.L. C. 7A, §3 and 815 CMR 9.00. Overpayments shall be reimbursed by the Contractor or may be offset by the Department from future payments in accordance with state finance law. Acceptance by the Contractor of any payment or partial payment, without any written objection by the Contractor, shall in each instance operate as a release and discharge of the State from all claims, liabilities or other obligations relating to the performance of a Contract.

**3. Contractor Payment Mechanism.** All Contractors will be paid using the Payment Voucher System unless a different payment mechanism is required. The Contractor shall timely submit invoices (Payment Vouchers - Form PV) and supporting documentation as prescribed in a Contract. The Department shall review and return rejected invoices within fifteen (15) days of receipt with a written explanation for rejection. Payments shall be made in accordance with the bill paying policy issued by the Office of the Comptroller and 815 CMR 4.00, provided that payment periods listed in a Contract of less than forty-five (45) days from the date of receipt of an invoice shall be effective only to enable a Department to take advantage of early payment incentives and shall not subject any payment made within the forty-five (45) day period to a penalty. The Contractor Payroll System, shall be used only for "Individual Contractors" who have been determined to be "Contract Employees" as a result of the Department's completion of an Internal Revenue Service SS-8 form in accordance with the Omnibus Budget Reconciliation Act (OBRA) 1990, and shall automatically process all state and federal mandated payroll, tax and retirement deductions.

**4. Contract Termination Or Suspension.** A Contract shall terminate on the date specified in a Contract, unless this date is properly amended in accordance with all applicable laws and regulations prior to this date, or unless terminated or suspended under this Section upon prior written notice to the Contractor. The Department may terminate a Contract without cause and without penalty, or may terminate or suspend a Contract if the Contractor breaches any material term or condition or fails to perform or fulfill any material obligation required by a Contract, or in the event of an elimination of an appropriation or availability of sufficient funds for the purposes of a Contract, or in the event of an unforeseen public emergency mandating immediate Department action. Upon immediate notification to the other party, neither the Department nor the Contractor shall be deemed to be in breach for failure or delay in performance due to Acts of God or other causes factually beyond their control and without their fault or negligence. Subcontractor failure to perform or price increases

due to market fluctuations or product availability will not be deemed factually beyond the Contractor's control.

**5. Written Notice.** Any notice shall be deemed delivered and received when submitted in writing in person or when delivered by any other appropriate method evidencing actual receipt by the Department or the Contractor. Any written notice of termination or suspension delivered to the Contractor shall state the effective date and period of the notice, the reasons for the termination or suspension, if applicable, any alleged breach or failure to perform, a reasonable period to cure any alleged breach or failure to perform, if applicable, and any instructions or restrictions concerning allowable activities, costs or expenditures by the Contractor during the notice period.

**6. Confidentiality.** The Contractor shall comply with M.G.L. C. 66A if the Contractor becomes a "holder" of "personal data". The Contractor shall also protect the physical security and restrict any access to personal or other Department data in the Contractor's possession, or used by the Contractor in the performance of a Contract, which shall include, but is not limited to the Department's public records, documents, files, software, equipment or systems.

**7. Record-keeping And Retention, Inspection Of Records.** The Contractor shall maintain records, books, files and other data as specified in a Contract and in such detail as shall properly substantiate claims for payment under a Contract, for a minimum retention period of seven (7) years beginning on the first day after the final payment under a Contract, or such longer period as is necessary for the resolution of any litigation, claim, negotiation, audit or other inquiry involving a Contract. The Department shall have access, as well as any parties identified under Executive Order 195, during the Contractor's regular business hours and upon reasonable prior notice, to such records, including on-site reviews and reproduction of such records at a reasonable expense.

**8. Assignment.** The Contractor may not assign or delegate, in whole or in part, or otherwise transfer any liability, responsibility, obligation, duty or interest under a Contract, with the exception that the Contractor shall be authorized to assign present and prospective claims for money due to the Contractor pursuant to a Contract in accordance with M.G.L. C. 106, §9-318. The Contractor must provide sufficient notice of assignment and supporting documentation to enable the Department to verify and implement the assignment. Payments to third party assignees will be processed as if such payments were being made directly to the Contractor and these payments will be subject to intercept, offset, counter claims or any other Department rights which are available to the Department or the State against the Contractor.

**9. Subcontracting By Contractor.** Any subcontract entered into by the Contractor for the purposes of fulfilling the obligations under a Contract must be in writing, authorized in advance by the Department and shall be consistent with and subject to the provisions of these Commonwealth Terms and Conditions and a Contract. Subcontracts will not relieve or discharge the Contractor from any duty, obligation, responsibility or liability arising under a Contract. The Department is entitled to copies of all subcontracts and shall not be bound by any provisions contained in a subcontract to which it is not a party.

**10. Affirmative Action, Non-Discrimination In Hiring And Employment.** The Contractor shall comply with all federal and state laws, rules and regulations promoting fair employment practices or prohibiting employment discrimination and unfair labor practices and shall not discriminate in the hiring of any applicant for employment nor shall any qualified employee be demoted, discharged or otherwise subject to discrimination in the tenure, position, promotional opportunities, wages, benefits or terms and conditions of their employment because of race, color, national origin, ancestry, age, sex, religion, disability, handicap, sexual orientation or for exercising any rights afforded by law. The Contractor commits to purchasing supplies and services from certified minority or women-owned businesses, small businesses or businesses owned by socially or economically disadvantaged persons or persons with disabilities.

**11. Indemnification.** Unless otherwise exempted by law, the Contractor shall indemnify and hold harmless the State, including the Department, its agents, officers and employees against any and all claims, liabilities and costs for any personal injury or property damages, patent or copyright infringement or other damages that the State may sustain which arise out of or in connection with the Contractor's performance of a Contract, including but not limited to the negligence, reckless or intentional conduct of the Contractor, its agents, officers, employees or subcontractors. The Contractor shall at no time be considered an agent or representative of the Department or the State. After prompt notification of a claim by the State, the Contractor shall have an opportunity to participate in the defense of such claim and any negotiated



# COMMONWEALTH TERMS AND CONDITIONS

settlement, agreement or judgment. The State shall not be liable for any costs incurred by the Contractor arising under this paragraph. Any indemnification of the Contractor shall be subject to appropriation and applicable law.

12. **Waivers.** Forbearance or indulgence in any form or manner by a party shall not be construed as a waiver, nor in any way limit the legal or equitable remedies available to that party. No waiver by either party of any default or breach shall constitute a waiver of any subsequent default or breach.

13. **Risk Of Loss.** The Contractor shall bear the risk of loss for any Contractor materials used for a Contract and for all deliverables, Department personal or other data which is in the possession of the Contractor or used by the Contractor in the performance of a Contract until possession, ownership and full legal title to the deliverables are transferred to and accepted by the Department.

14. **Forum, Choice of Law And Mediation.** Any actions arising out of a Contract shall be governed by the laws of Massachusetts, and shall be brought and maintained in a State or federal court in Massachusetts which shall have exclusive jurisdiction thereof. The Department, with the approval of the Attorney General's Office, and the Contractor may agree to voluntary mediation through the Massachusetts Office of Dispute Resolution (MODR) of any Contract dispute and will share the costs of such mediation. No legal or equitable rights of the parties shall be limited by this Section.

15. **Contract Boilerplate Interpretation, Severability, Conflicts With Law, Integration.** Any amendment or attachment to any Contract which contains conflicting language or has the effect of a deleting, replacing or modifying any printed language of these Commonwealth Terms and Conditions, as officially

published by ANF, CTR and OSD, shall be interpreted as superseded by the official printed language. If any provision of a Contract is found to be superseded by state or federal law or regulation, in whole or in part, then both parties shall be relieved of all obligations under that provision only to the extent necessary to comply with the superseding law, provided however, that the remaining provisions of the Contract, or portions thereof, shall be enforced to the fullest extent permitted by law. All amendments must be executed by the parties in accordance with Section 1. of these Commonwealth Terms and Conditions and filed with the original record copy of a Contract as prescribed by CTR. The printed language of the Standard Contract Form, as officially published by ANF, CTR and OSD, which incorporates by reference these Commonwealth Terms and Conditions, shall supersede any conflicting verbal or written agreements relating to the performance of a Contract, or attached thereto, including contract forms, purchase orders or invoices of the Contractor. The order of priority of documents to interpret a Contract shall be as follows: the printed language of the Commonwealth Terms and Conditions, the Standard Contract Form, the Department's Request for Response (RFR) solicitation document and the Contractor's Response to the RFR solicitation, excluding any language stricken by a Department as unacceptable and including any negotiated terms and conditions allowable pursuant to law or regulation.

IN WITNESS WHEREOF, The Contractor certify under the pains and penalties of perjury that it shall comply with these Commonwealth Terms and Conditions for any applicable Contract executed with the Commonwealth as certified by their authorized signatory below:

CONTRACTOR AUTHORIZED SIGNATORY: \_\_\_\_\_

*Robert F. Mail*  
(signature)

Print Name: Bob Mailo

Title: Major Account Manager

Date: 4/16/2015

(Check One):  Organization  Individual

Full Legal Organization or Individual Name: PITNEY BOWES INC.

Doing Business As: Name (If Different): \_\_\_\_\_

Tax Identification Number: 0160495050

Address: 48 Woerd Ave Suite 102 Waltham, MA 02453-3826

Telephone: (781) 472-7321 FAX: (203) 617-2306

### INSTRUCTIONS FOR FILING THE COMMONWEALTH TERMS AND CONDITIONS

A "Request for Verification of Taxation Reporting Information" form (Massachusetts Substitute W-9 Format), that contains the Contractor's correct TIN, name and legal address information, must be on file with the Office of the Comptroller. If the Contractor has not previously filed this form with the Comptroller, or if the information contained on a previously filed form has changed, please fill out a W-9 form and return it attached to the executed COMMONWEALTH TERMS AND CONDITIONS.

If the Contractor is responding to a Request for Response (RFR), the COMMONWEALTH TERMS AND CONDITIONS must be submitted with the Response to RFR or as specified in the RFR. Otherwise, Departments or Contractors must timely submit the completed and properly executed COMMONWEALTH TERMS AND CONDITIONS (and the W-9 form if applicable) to the: **Payee and Payments Unit, Office of the Comptroller, 9th Floor, One Ashburton Place, Boston, MA 02108** in order to record the filing of this form on the MMARS Vendor File. Contractors are required to execute and file this form only once.

ver 8.0

Contract Doc ID	<input type="text"/>	(required)
Calendar Year	<input type="text"/>	(required)
Calendar Quarter	<input type="text"/>	(required)
Fiscal Year	<input type="text"/>	(calculated)
Fiscal Quarter	<input type="text"/>	(calculated)
Vendor Company Name	<input type="text"/>	(required)
Vendor Email	<input type="text"/>	(required)
Vendor Customer Code	<input type="text"/>	(required)
Vendor Line Number	<input type="text" value="00"/>	(calculated)
Total Quarterly Sales (\$)	<input type="text"/>	(required)
Total Quarterly SDP (\$)	<input type="text"/>	(required)

*Enter the total SDP spend of the year & quarter referenced above. Enter \$0 to indicate none.*

### Instructions for completing the Vendor Sales/SDP Quarterly Report

**COVER SHEET**

All fields in the Cover sheet are required. If you have trouble finding your VC code, please contact the Sourcing Lead. If a required field is not completed, you will get a dialog box stating that you cannot move on until the field is filled in.

After filling in the fields, click on one of the buttons on the bottom.

- 1.) The **Enter Sales** button will open hidden sheets for you to enter the quarterly sales information . You may paste your information into the first Sales sheet. If additional lines are required, you can continue by using sheets 2 and 3. **DO NOT use sheets 2 & 3 unless sheet 1 is full.**
- 2.) The **Enter SDP** button will open a hidden sheet for you to enter the quarterly SDP information.

The Sales tabs and SDP tab will not open unless all required fields are completed. Please note that if a vendor has been awarded multiple contracts, a separate quarterly report for each of the contracts must be submitted to it's respective Sourcing Lead.

**SALES SHEET(s)**

The first Sales sheet is where the vendor will provide their quarterly sales activity. All columns are mandatory and must be filled in. It is important to note that the sales sheet is partially locked and that vendors will not be able to insert columns. However, it is possible to insert new rows in the spreadsheet and paste sales data from external sources.

*Tip: When pasting data from external sources, paste the data into Notepad first. Then copy the data from Notepad & paste the data into the Sales worksheet. This removes all unnecessary formatting and invisible characters from the data.*

**Do not use Sales sheet 2 or 3 unless sheet 1 is full.**

**SDP SHEET**

The SDP sheet is used to report the vendor's quarterly spend with their SDP partner(s). The Certification Type column contains pull-down options. The remainder of the columns must be filled in.

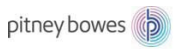
**SALES AND SDP DATA:**

Data provided in this vendor report is aggregated using custom software. Commonwealth merges all vendor reports in a central database for analysis. Therefore, please do not include subtotals, totals, charts, graphics, empty rows between data rows, special characters, & formatting in the data. In addition, special arrangements could be made to accommodate large datasets (> 4 million rows). Please ask your lead for details.

**INSTRUCTIONS TO ENABLE MACROS**

Click "Enable Content" within the yellow security warning bar at the top of the worksheet upon opening the file. For additional assistance, please visit Microsoft's website using the link below:  
<http://office.microsoft.com/en-us/word-help/enable-or-disable-macros-in-office-files-HA010354316.aspx>





### Fair Market Value Option Lease

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Agreement Number

### Your Business Information

Full Legal Name of Lessee / DBA Name of Lessee Tax ID # (FEIN/TIN)

Billing Address : Street City State ZIP+4

Billing Contact Name Billing Contact Phone # Billing Account #

Installation Address (if different from billing address) : Street City State ZIP+4

Installation Contact Name Installation Contact Phone # Installation Account #

PO # Quote Expiration Date

### Your Business Needs

Qty	Item	Business Solution Description

### Your Payment Plan

Initial Term: months	Initial Payment Amount:	
Number of Months	Monthly Amount	Billed Quarterly at*

- Tax Exempt Certificate Attached
- Tax Exempt Certificate Not Required
- Purchase Power® transaction fees included
- Purchase Power® transaction fees extra

\*Does not include any applicable sales, use, or property taxes which will be billed separately; payment plans begin after any applicable Interim Usage Period.

**Your Signature Below**

By signing below, you agree to be bound by your State's/Entity's/Cooperative's contract, which is available at [www.pb.com/states](http://www.pb.com/states). The terms and conditions of this contract will govern this transaction and be binding on us after we have completed our credit and documentation approval process and have signed below.

OFF39  
State/Entity's Contract #

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Lessee Signature

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Print Name

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Title

---

Date

---

Email Address

---

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Pitney Bowes Signature

---

Print Name

---

Title

---

Date

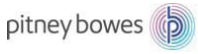
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**Sales Information**

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Account Rep Name 1	Split	Sales Rep ID	District Office
Account Rep Name 2	Split	Sales Rep ID	District Office

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# Purchase Agreement / Equipment and Software Maintenance Agreement

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Agreement Number

## Your Business Information

Full Legal Name of Client / DBA Name of Client Tax ID # (FEIN/TIN)

Billing Address : Street City State ZIP+4

Billing Contact Name Billing Contact Phone # Billing Account #

Installation Address (if different from billing address) : Street City State ZIP+4

Installation Contact Name Installation Contact Phone # Installation Account #

PO # Quote Expiration Date

## Your Business Needs

Qty	Item	Business Solution Description	Sales Type	Unit Cost	Discount/ Trade-In Allowance	Net Cost
				\$	\$	\$
				\$	\$	\$
				\$	\$	\$
				\$	\$	\$
				\$	\$	\$
				\$	\$	\$
				\$	\$	\$
				\$	\$	\$
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				\$	\$	\$
				\$	\$	\$
				\$	\$	\$
				\$	\$	\$
				\$	\$	\$
				\$	\$	\$

Purchase Total**	\$
Monthly Total**	\$
Annual Total**	\$

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

**Your Payment Plan**

Quarterly Billing Total**		Annual Billing Total**	
Type	Fees	Type*	Fees
Meter	\$	Equipment Maintenance	\$
Soft-Guard®	\$	Software Maintenance	\$

**Tax Exempt**

- Tax Exempt Certificate Attached
- Tax Exempt Certificate Not Required
- Purchase Power® transaction fees included
- Purchase Power® transaction fees extra

Shipping and Handling

Initial Term : 12 Months

\* \_\_\_\_day standard equipment warranty

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

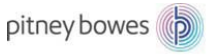
**Your Signature Below**

By signing below, you agree to be bound by your State's/Entity's/Cooperative's contract, which is available at [www.pb.com/states](http://www.pb.com/states). The terms and conditions of this contract will govern this transaction.

OFF39 \_\_\_\_\_  
State/Entity's Contract # \_\_\_\_\_  
Client Signature \_\_\_\_\_  
Print Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_  
Email Address \_\_\_\_\_

**Sales Information**

Account Rep Name 1	Split	Sales Rep ID	District Office
Account Rep Name 2	Split	Sales Rep ID	District Office



## Postage Meter And/Or Equipment Rental Agreement

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Agreement Number

### Your Business Information

Full Legal Name of Client / DBA Name of Client			Tax ID # (FEIN/TIN)		
Billing Address: Street	City	State	ZIP+4		
Billing Contact Name	Billing Contact Phone #		Billing Account #		
Installation Address (if different from billing address) : Street	City	State	ZIP+4		
Installation Contact Name	Installation Contact Phone #		Installation Account #		
PO #	Quote Expiration Date				

### Your Business Needs

Qty	Item	Business Solution Description

### Your Payment Plan

Quarterly Billing Total**		Annual Billing Total**	
Type	Fees	Type*	Fees
	\$		
	\$		
	\$		

#### Tax Exempt

- Tax Exempt Certificate Attached
- Tax Exempt Certificate Not Required
- Purchase Power® transaction fees included
- Purchase Power® transaction fees extra

Shipping and Handling

Initial Term: 12 Months

\* \_\_\_ day equipment warranty

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

**Your Signature Below**

By signing below, you agree to be bound by your State's/Entity's/Cooperative's contract, which is available at [www.pb.com/states](http://www.pb.com/states). The terms and conditions of this contract will govern this transaction.

OFF39

State/Entity's Contract#

Client Signature

Print Name

Title

Date

Email Address

**Sales Information**

Account Rep Name 1	Split	Sales Rep ID	District Office
Account Rep Name 2	Split	Sales Rep ID	District Office



COMMONWEALTH OF MASSACHUSETTS/PITNEY BOWES INC.  
**Postage Meter Rental Terms and Conditions– OFF 39**

This document is an exhibit to the Commonwealth of Massachusetts’ Contract OFF39 (“State Contract”), and is deemed to be attached to and incorporated within the State Contract by reference.

In the event of conflict between (i) the OFF39 RFR, as amended, the Commonwealth Standard Contract Form and the Commonwealth Terms & Conditions, and the Contractor's Response to the RFR collectively “OFF39”, and (ii) these Postage Meter Rental Terms and Conditions, OFF39 shall prevail. The order of priority for documents governing this agreement shall be as stated in paragraph 15 of the Commonwealth Terms & Conditions.

**PITNEY BOWES TERMS**  
**GENERAL TERMS**

To the extent not inconsistent with the Commonwealth’s Terms and Conditions, Standard Contract Form, and OFF39, as amended, these General Terms apply to the transaction you enter into with Pitney Bowes. Other provisions in the Pitney Bowes Terms may also apply, depending on your

**G1. DEFINITIONS**

The following terms mean:

“Agreement” - the Order, Commonwealth of Massachusetts Contract OFF39 (“State Contract”) and any terms referred to in or attached to the Order.

“Bank”- The Pitney Bowes Bank, Inc.

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

“Excluded Circumstances” – your negligence, an accident, usage which exceeds our recommendations, use of Meter in a manner not authorized by this Agreement or any operator guide, use of Meter 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.

“Initial Service Term” - twelve (12) months, or, if you have a Lease, the Lease Term.

“Initial Term” – the period listed on the Order.

“Lease” – the Order and the Lease terms and conditions attached to the Order.

“Lease Term” – as defined in the Lease.

“Lockbox Bank” – any bank through which you transfer funds to the USPS.

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

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

“Order” - the executed order between the applicable Pitney Bowes company and you for the Meter covered by the order.

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

“PBI” - Pitney Bowes Inc.

“PBI Equipment” - PBI-branded equipment.

“Pitney Bowes” – PBI, PBGFS and their respective subsidiaries.

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

“Service” - the service option for the Meter selected by you on the Order.

“SLA” - the Service Level Agreement.

“Third Party Equipment” - equipment manufactured by a party other than us.

“Usage-based Equipment” - equipment for which charges are based on volume of use.

“USPS” – the United States Postal Service.

“We,” “our,” or “us” – the Pitney Bowes companies with whom you’ve entered into the Order.

“You,” “your,” or “Client” – the entity identified on the Order.

**G2. WARRANTY**

- G2.1 (a) PBI warrants that the PBI Equipment will be free from defects in material and workmanship and will perform according to the operator guides for a period of one year (365 days) from the date the equipment or other item is installed at your location.
- (b) PBI warrants that the Service will be performed in a professional and workmanlike manner.
- (c) **As your sole remedy in the event of a warranty claim, we will either repair or replace the Meter or, in the case of defective Service, reperform the Service.**
- (d) A “defect” does not include the failure of rates within a rate update to conform to published rates.
- (e) There is no warranty for Meter requiring repair or replacement because of any Excluded Circumstance.
- (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.

G2.2 **EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, WE (ON BEHALF OF OURSELF AND OUR SUPPLIERS) MAKE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE METER OR SERVICES.**

G2.3 PBI MAKES NO REPRESENTATION OR WARRANTY AS TO ANY THIRD PARTY EQUIPMENT. PBI AGREES TO PASS THROUGH TO YOU ALL THIRD PARTY EQUIPMENT WARRANTIES TO THE EXTENT PERMITTED.

**G3. LIMITATION OF LIABILITY**

G3.1 NEITHER PBI NOR ITS SUPPLIERS IS LIABLE FOR ANY DAMAGE YOU MAY INCUR BY REASON OF YOUR MISUSE OR NEGLIGENT USE OF THE METER, OR YOUR NEGLIGENT ACTS OR OMISSIONS.

G3.2 NEITHER PBI (INCLUDING ITS SUPPLIERS) NOR YOU WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES OF ANY NATURE WHATSOEVER, INCLUDING COMMERCIAL LOSS, OR LOST PROFITS, DATA, OR GOODWILL, FOR ANY MATTER RELATING TO THIS AGREEMENT.

**G4. DEFAULT AND REMEDIES**

- G4.1 **Default and Remedies.** In the event that you do not make any payment after the due date in accordance with the State Contract, you breach any other obligation under this Agreement or under any other agreement with PBI or PBGFS and such breach continues for thirty days after we give you notice or you become insolvent or file for bankruptcy, you shall be in default and we may:
- (a) cancel this Agreement and any other agreements PBGFS or PBI has with you pursuant to OFF39;
  - (b) require immediate payment of all payments due under a Lease(s) or other agreements, whether accrued or due in the future;
  - (c) disable the Meter;
  - (d) require you to return the Meter and software;
  - (e) if you do not return the Equipment, require you to make immediate payment of an amount equal to the fair market value of the Equipment at such time, as determined by us;
  - (f) charge you interest on any late payment in accordance with the Commonwealth's Bill Payment Policy; and
  - (g) pursue any other remedy, including repossessing the Meter. By repossessing the Meter, we are not waiving our right to collect the balance due.
- G4.2 **Enforcing Our Rights.** In the event you are not an agency, department, facility or municipality of the Commonwealth, You agree to pay all our costs, including reasonable attorneys' fees, in enforcing our rights under this Agreement
- G4.3 **Suspension of Services.** PBI may suspend any services with written notice during any period in which your account is more than thirty (30) days past due.

**G5. TAXES**

In the event You are not an agency, department or facility of the Commonwealth, You agree to pay Pitney Bowes for all sales, use, property or other taxes (excluding taxes on or measured by net income) related to the Meter and Meter location unless a tax exemption certificate is provided to us. With respect to property and similar taxes, Pitney Bowes will determine the amount of such taxes to be charged to you based on its reasonable valuation of the Equipment or of the Meter, taking into consideration applicable tax rates and depreciation. You agree to pay a tax administrative charge to be determined by Pitney Bowes without reference to the tax charged or services performed; such fee and charge not to exceed in the aggregate \$35 for each year for each rental agreement.

**G6. EMBEDDED SOFTWARE**

Our equipment and Meter 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 and meter 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 accompany such third party software.

**G7. INTERNET ACCESS POINT**

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

**G.8 ANALOG CONNECTION FEE**

All mailing systems include digital connection capability. You should use a digital connection. If you choose to use an analog connection, there will be an additional set-up fee for analog access. This analog set-up fee will be assessed in one non-refundable installment at the beginning of the term of the Agreement if you select an analog connection as your connection method or, if you use an analog connection during the term of the Agreement notwithstanding your original selection of a digital connection as your connection method, in the invoice following your use of an analog connection.

**G.9. MISCELLANEOUS**

- G9.1 **Use of Meter.** You agree to use the Meter only for business or commercial purposes, and not for personal, family, or household purposes.
- G9.2 **Force Majeure.** Refer to Commonwealth Terms and Conditions Section 4 Contract Termination Or Suspension.
- G9.3 **Assignment.** You may not assign this Agreement without our prior written consent, which shall not be unreasonably withheld. Any assignment without our consent is void.
- G9.4 **Merger; Amendment; Severability.** This Agreement, including the Commonwealth's Terms and Conditions, Standard Contract Form, RFR OFF39, as amended, and vendor's response thereto, incorporates all of the terms agreed by both parties and can only be changed by written agreement. You may use a purchase order to offer to obtain Meter or services but none of its provisions will modify or supersede these provisions unless we expressly agree in writing. If one or more provisions of this Agreement are deemed to be invalid or unenforceable, the remaining provisions will not be affected.
- G9.5 **Survival.** Our respective rights and obligations under Section G3 (Limitation of Liability), G4 (Default and Remedies) and G5 (Taxes) survive termination of this Agreement.
- G9.6 **Choice of Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Massachusetts without regard to its conflicts of laws principles.

**POSTAGE METER RENTAL TERMS AND CONDITIONS**

The following provisions apply whenever you rent a Meter from Pitney Bowes.

**R1. METER RENTAL**

- R1.1 **Fees.**
  - (a) If you are not leasing equipment and paying for it in your lease payment to PBGFS, we will invoice you the Meter rental ("rental") fees listed on the Order.
  - (b) After the Initial Term, we may increase the rental fees up to the then current price applicable under the State Contract upon 30 days' prior written notice.
  - (c) When you receive notice of an increase, you may terminate your rental only as of the date the increase becomes effective.
- R1.2 **Postage.**
  - (a) You may transfer funds to the Bank for deposit into your Reserve Account or you may transfer funds to the USPS through a Lockbox Bank. See the "USPS Acknowledgment of Deposit" below for more information.
  - (b) At the end of the Initial Term and any renewal of this Agreement not referencing the State Contract, we may charge you a fee of up to \$15.00 for refilling your

- postage and we may increase postage refill fees upon 30 days prior written notice.
- (c) If you participate in any PBI, PBGFS, or Bank postage advance programs (such as Purchase Power<sup>®</sup>), we will advance payment on your behalf to the USPS, subject to repayment by you under the terms of the postage advance program and billed separately from your rental fees.
- R1.3 **Meter Repair or Replacement.** If the Meter malfunctions or fails due to reasons other than an Excluded Circumstance, we will repair or replace the Meter.
- R1.4 **Terms of Use; Federal Regulations.**
  - (a) You may use the Meter solely for the purpose of processing your mail, provided that you are authorized by the USPS to use the Meter, and that you comply with (i) this Agreement, (ii) any 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 Equipment or 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 promptly 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.

R1.5 Rate Updates and Soft-Guard® Program.

- (a) Your Meter may require periodic rate updates that you will obtain under our Soft-Guard program.
- (b) Under the Soft-Guard program, we will provide up to 6 rate updates during each 12 month period following the date of installation of the Meter.
- (c) We will provide rate updates only if required due to a postal or carrier change in rate, service, ZIP Code™ or zone change.

**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

- (d) The Soft-Guard program does not cover any change in rates due to custom rate changes, new classes of carrier service, or a change in ZIP Code or zone due to equipment relocation.
- (e) If you have received the maximum number of rate updates under the Soft-Guard program, you will be billed separately for any additional rate update we provide.

R1.6 Collection of Information.

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

R1.7 Meter Care and Risk of Loss.

- (a) You agree to take proper care of the Meter(s) as stated in this Agreement and any user documentation.
- (b) You assume all risk of loss or damage to the Meter(s) in accordance with RFR OFF39, Section 3.6.9 while you have possession.

**R2. VALUE BASED SERVICES**

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

R2.1 Fees.

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

R2.2 Ending the Value Based Services. We have the right to terminate the Value Based Services if the USPS discontinues offering the service or you breach your obligations under this Agreement and fail to cure the breach within thirty (30) days after you have been notified in writing.

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.

**PBSMARTPOSTAGE TERMS AND CONDITIONS See attached PB Smart terms**

If you have ordered pbSmartPostage™, your use of that product will be subject to the Terms of Use which are available at [www.pbsmartpostage.com/terms](http://www.pbsmartpostage.com/terms) and which are incorporated by reference.



**COMMONWEALTH OF MASSACHUSETTS/PITNEY BOWES INC.  
pbSmartPostage™ Mail and Shipping Service, Terms of Use – OFF 39**

This document is an exhibit to the Commonwealth of Massachusetts' Contract OFF39 ("State Contract"), and is deemed to be attached to and incorporated within the State Contract by reference.

**Account Requirements**

When you register for the service, you will create a unique user ID and password. Your subscription is billed based on the nine digit zip code for the address entered during registration.

Your postage account is subject to USPS regulation. If you: 1) use your postage account in a fraudulent or unlawful manner, 2) do not use your account during a consecutive twelve (12) month period, 3) fail to exercise sufficient control over your account to prevent fraudulent or unlawful use, 4) take or allow the account to be taken outside the United States without the prior written authorization of the Manager of Retail Systems and Equipment, U.S. Postal Service, Washington DC 20260, or 5) otherwise fail to abide by the provisions of postal regulations and these Terms of Use regarding care and use of your account, then your account may be cancelled. You acknowledge and agree that your account must be surrendered to Pitney Bowes or the USPS upon demand.

You also acknowledge that any use of your account to fraudulently deprive 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, fictitious, or fraudulent statement can result in imprisonment for up to five (5) years and a fine of up to \$10,000 (18 U.S.C. 1001). In addition, a civil penalty of up to \$5,000 and an additional assessment of twice the amount falsely claimed may be imposed (31 U.S.C. 3802). The mailing of matter bearing a fraudulent imprint is an example of a violation of these statutes.

The USPS has granted Pitney Bowes the license as a PC postage vendor to create a shared postage evidencing system ("pbSmartPostage") that users will use to dispense postage. As a user of pbSmartPostage you must understand and acknowledge that authorization to use the system is granted by the USPS. You accept responsibility for control and use of the system and agree to abide by all rules and regulations governing its use, and that the rules and regulations regarding the use of pbSmartPostage as documented in the Domestic Mail Manual may be updated from time to time by the USPS. USPS may deny use of or revoke authorization to use a postage evidencing system in the event of (i) failure to comply with rules and regulations (ii) submission of false or fictitious information, (iii) entering of a series of unpaid or short-paid mail pieces and/or packages in the mail stream, (iv) use of the system for any illegal scheme or enterprise, (v) use of the system outside the customs territory of the United States, and (vi) possession of a decertified system. You must make the postage evidencing system and transaction records available and surrender the system to Pitney Bowes, the USPS, or its agent when notified to do so.

You agree to use the service only for business or commercial purposes and not for personal, family, or household purposes.

**Changes to the Terms of Use**

**pbSmartPostage Terms of Use (Version 11/15)**

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These Terms of Use may be changed by Pitney Bowes at any time with 10 days prior written notice to the Commonwealth of Massachusetts Operational Service Division Contract Manager responsible for RFR OFF39. Pitney Bowes will post the most current version of these Terms of Use on [www.pbSmartPostage.com/](http://www.pbSmartPostage.com/), or otherwise notify you that they have changed.

## **Subscriptions; Billing Cycle**

Your subscription cost is based on the subscription plan you select and does not include postage. Your subscription will be billed in advance with the first payment due at the time of registration. Your billing cycle reoccurs the same day of the month each billing period.

If your registration includes a trial period and if you do not wish to continue your subscription past the trial period, you must cancel your subscription before the last day of the trial period to avoid being billed for the first month of subscription once the trial period has completed.

If you received your pbSmartPostage subscription at no cost in connection with your lease or rental of a Pitney Bowes meter, your pbSmartPostage subscription will remain at no cost so long as you maintain your lease or rental of the meter. If you terminate or fail to renew your meter lease or rental, or your meter lease or rental otherwise expires, your pbSmartPostage subscription will be terminated immediately.

Subscriptions that are offered at a discount in return for a commitment over a period of time (e.g., one year) will be subject to an early termination fee if canceled prior to the end of commitment period. The early termination fee will be based on a fixed amount that will be disclosed with the subscription registration.

## **Purchasing**

Information you give Pitney Bowes as part of the registration process will be handled according to Pitney Bowes' Privacy Policy. Pitney Bowes reserves the right to verify the identity and/or credit of any person that is not an agency, department, facility or municipality of the Commonwealth registering for the service, and the identity of any person accessing the account or attempting to use the customer support process for accessing the account. In order to provide you with access to the service, we require that you provide certain personal information and answers to security questions. Personal information we collect through registration and answers to security questions will be used to authenticate your identity when you sign up for the service and each time you sign in, and may further be used to verify the identity of individuals who contact Pitney Bowes in connection with access to your account.

Postage costs for use of the service are not provided by Pitney Bowes and you are responsible for funding a pre-paid postage account. You may select a different method of payment for postage than used for the subscription payment. Postage payment options will be displayed during account setup. You agree to the minimum purchase of \$5 each time you purchase postage. The maximum amount of postage that can be held in the pre-pay account at any given time is \$1000. There is no limit on postage account refills as long as the max postage amount is not exceeded. No sales tax is charged to postage refills or dispenses. Postage costs will be charged to the preferred postage payment source immediately upon purchase and will be applied to the prepay account balance. Unless Pitney Bowes is the preferred

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payment source, charges for postage will appear and be supplied by your credit card issuer or bank directly; Pitney Bowes will not provide payment statements or invoices for third parties. You may request refunds from your postage account balance at any time for any amount. Postage can be dispensed at any time as long as the subscription account is paid and in good standing. (See Account Suspension section.)

Pitney Bowes will automatically charge your payment source (e.g., credit card, Purchase Power account) the cost of your subscription at the beginning of each billing cycle. Please note that Pitney Bowes may receive updated billing information regarding your credit card account or other payment source and, by accepting these Terms of Use, you consent to Pitney Bowes receiving such updates. Postage fees and product costs shall be applied to your payment source at the time of purchase. You will be allowed to print postage up to the amount of funds in your postage account that have cleared and provided that your subscription fees have been paid. Pitney Bowes will notify you if any transactions are rejected. If a subscription fee transaction is rejected, your account may be suspended until your account is brought up to date.

If you dispute a charge to the credit card which is your payment source, Pitney Bowes is authorized to debit your postage account from time to time in amounts which in the aggregate do not exceed the amount of the disputed charge.

Free trial periods will vary depending on offers. No subscription billing will occur during the free trial period based on your subscription selection. Billing will occur at the end of the trial period on the same day of the month the subscription was ordered and the invoice will reflect the billing cycle selected for the value of the price of the subscription ordered at the time of registration. You are only entitled to the free trial period for the specified period. Postage is not included in the free trial period unless specified.

Free postage offers will vary and will have specific terms depending on the offer. Free postage offers are not refundable. Pitney Bowes will not provide any cash payments or account credits for granted free postage at any time.

Promotional offers: Subscription plans that may include other products or services identified as “included”, “free”, or “discounted” are only available per single subscription plan. If you select the same items in the checkout process to be purchased in addition to the promotional offer, the additional items are not subject to the same value (e.g., free or discounted) as in the original promotional offer. All promotional items that are offered as part of the subscription are considered sold material and are invoiced at subscription check out and become the property of the subscriber excluding service type offers. Material items that are sold as part of a promotional offer or part of a bundle are not returnable for credit at any time.

## **Pricing**

Prices are subject to change at any time unless specified as conditions of a subscription type. Notification of any price changes will be delivered to the email on the registered subscription account.

## **Account Suspension**

Accounts will be suspended for improper use, violation of USPS rules and policies, illegal activity or when Pitney Bowes is unable to charge due to an invalid payment source for the subscription. During account suspension, you will be unable to access the account until payments become up to date. All past due

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billing will be charged as soon as a valid payment source is updated. It may take 24 hours for your account to be reactivated. After 90 days from the suspension date or if Pitney Bowes has determined that the account must be canceled for violation of policy, all funds in the prepay postage account will be credited to the prepaid account payment source less any unpaid fees owed to Pitney Bowes. Accounts closed for policy violations will be charged a \$25 processing fee.

### **Subscription Account Cancellation**

Your subscription will renew automatically on the anniversary of the following calendar year based on your initial invoice date. You may cancel your subscription at any time. You must contact Pitney Bowes at [1-800-228-1071](tel:1-800-228-1071) for cancellation.

Cancellation will be effective at the start of your next invoice period on the day of the month the subscription was activated. Pitney Bowes will refund the full amount of postage remaining in your account at the time of cancellation to your current payment source. Pitney Bowes will not provide any cash payments for subscription credits or postage in your postage pre-paid account. Your subscription account will remain active until the account cancellation date.

### **Postage Refund**

Requests for postage refunds for unused, misprinted or damaged postage will be granted for active accounts in good standing for face value only in accordance with USPS and Pitney Bowes policy and procedures. See [www.pbSmartPostage.com/](http://www.pbSmartPostage.com/) and click the History menu, select Request a Refund and Help for details, instructions and FAQs.

Pitney Bowes reserves the right to reject claims deemed not qualified for refunds at its sole discretion. All postage refund claims when granted will be credited to the prepay postage account balance. No cash payment or interest will be paid for any postage refund when granted.

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THE SERVICE, LIKE ALL SOFTWARE RELATED PRODUCTS, MAY BE SUBJECT TO KNOWN OR UNKNOWN ANOMALIES, WHICH MAY AFFECT ITS ABILITY TO PERFORM POSTAGE PRINTING ON ADDRESSES PUT INTO THE SERVICE. FOR EXAMPLE, DEPENDING ON THE ACCURACY OF YOUR LIST AND THE CITIES TO WHICH YOU MAIL, INCORRECT CODING MAY OCCUR. YOU UNDERSTAND AND AGREE THAT PITNEY BOWES IS NOT RESPONSIBLE OR LIABLE FOR ANY SUCH ANOMALIES.

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IN NO EVENT SHALL PITNEY BOWES' LIABILITY ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OF USE EXCEED \$50.00. SOME STATES DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTALS OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

## **General**

By registering for the service, you agree to pay all fees in accordance with the terms of the subscription you select. If you are establishing this account on behalf of a business, you represent that you have all necessary authority to establish an account with Pitney Bowes on behalf of the business.

Pitney Bowes reserves the right to discontinue service upon notification to its customers.

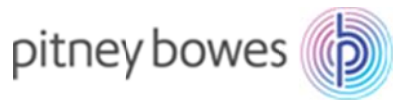
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Any legal action arising from or out of these Terms of Use shall be governed by the laws of the State of Connecticut without regard to its conflict of law principles. The sole jurisdiction and venue for any litigation arising from use of the service shall be an appropriate federal or state court located in Connecticut. THE UNITED NATIONS' CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS IS EXPRESSLY DISCLAIMED.

By "Clicking Accept" to these Terms of Use, you represent that you have read the Acknowledgment of Deposit Requirement—PC Postage, found in Pitney Bowes' Terms at <http://pb.com/termsconditions>, and are familiar with its terms. You agree that, upon "Clicking Accept," you will be bound by all terms and conditions of the Acknowledgment of Deposit Requirement—PC Postage, as it may be amended from time to time.

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**COMMONWEALTH OF MASSACHUSETTS/PITNEY BOWES INC.  
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**For**

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SendSuite® Tracking Software  
SendSuite Xpress™ Software  
Ascent® Mail Center Management Software  
All Arrival® Tracking Software  
LobbyTrac™ Arrival® Visitor Tracking Software**

**This document is an exhibit to the Commonwealth of Massachusetts' Contract OFF39 ("State Contract"), and is deemed to be attached to and incorporated within the State Contract by reference.**

**In the event of conflict between (i) the OFF39 RFR, as amended, the Commonwealth Standard Contract Form and the Commonwealth Terms & Conditions, and the Contractor's Response to the RFR collectively "OFF39", and (ii) this Software License and Maintenance Agreement, OFF39 shall prevail. The order of priority for documents governing this agreement shall be as stated in paragraph 15 of the Commonwealth Terms & Conditions**

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## **1 LICENSE**

**1.1 License Grant and Term.** Pitney Bowes grants to Licensee, pursuant to, and subject to Licensee's compliance with, the terms and conditions set forth in this Agreement and subject to payment of all applicable license fees relating to the Pitney Bowes Software, and Licensee accepts a non-exclusive, non-transferable license to access and use the Pitney Bowes Software for the Term (the "License"). The "Term" is: (a) a perpetual term in the case of Pitney Bowes Software subject to a Sales Agreement; and (b) the term of the applicable Lease Agreement in the case of Pitney Bowes Software subject to a Lease Agreement. This license does not include the right to grant sublicenses. "**Pitney Bowes Software**" means: (a) whichever of the software named above that is listed, with prices, in the Sales/Lease Agreement, (b) any Pitney Bowes proprietary software or third party proprietary software that connects with or interfaces the software named above to any Pitney Bowes, Licensee or third party equipment, software or service, (c) any other Pitney Bowes proprietary software and third party proprietary software that are listed, with prices, in the Sales/Lease Agreement and are directly related to Licensee's use of the software referred to in clause (a), and (d) any Pitney Bowes or third party proprietary development tools provided under this Agreement that are reasonably required to use the Pitney Bowes Software. Notwithstanding the foregoing, "Pitney Bowes Software" excludes any Pitney Bowes proprietary software and any third-party software that is subject to a separate software license agreement ("Excluded Software"). All obligations with respect to Excluded Software shall be exclusively governed by such separate software license agreement and, in the case of Excluded Software that is third-party software, shall be exclusively owed to Licensee by the third-party licensor thereof.

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**1.7 Reservation of Rights.** Any right not specifically granted in this Agreement by Pitney Bowes is expressly reserved. Nothing herein grants Licensee any ownership rights to the Pitney Bowes Software, or any ownership rights or license to the trademarks, copyrights, trade secrets and patents of Pitney Bowes or Pitney Bowes's licensors, other than as is necessary to execute the Pitney Bowes Software as permitted herein.

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(b) Licensee acknowledges and agrees that Pitney Bowes will not (i) identify what is a hazardous material, (ii) make any suggestions on what types of hazardous materials can be shipped individually or together, nor (iii) make any suggestion on what types of containers are to be used when shipping hazardous materials.

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**3.2 Security.** Licensee agrees to take reasonable measures to: (a) secure and protect the Pitney Bowes Materials and copies thereof in a manner consistent with the maintenance of Pitney Bowes's rights therein; and (b) take appropriate action by instruction or agreement with its employees and consultants who are permitted access to the Pitney Bowes Materials to: (i) prevent the Pitney Bowes Materials or copies thereof from being acquired by unauthorized persons or put to unauthorized use, (ii) prevent unauthorized copies of the Pitney Bowes Materials, and (iii) otherwise satisfy its obligations hereunder. Licensee shall be responsible for any such unauthorized acquisition, use or copying or other breach of its obligations under this Agreement.

**3.3 No Decompiling.** Licensee agrees not to: (a) disassemble, decompile or otherwise reverse engineer the Pitney Bowes Software or otherwise attempt to learn the source code, structure, algorithms or ideas underlying the Pitney Bowes Software; (b) alter or modify the Pitney Bowes Software create derivative works therefrom; (c) circumvent, obfuscate or remove any functions in the Pitney Bowes Software; (d) alter or remove any copyright and/or patent notices in the Pitney Bowes Software; (e) reuse any license key issued by Pitney Bowes or its licensors, or defeat or subvert, or attempt to defeat or subvert, the mechanisms of the Pitney Bowes Software designed to manage authorization, verification or tracking; or (f) allow or assist others (including, but not limited to, Licensee's employees and consultants who are permitted access to the Pitney Bowes Materials) to do any of the foregoing. To the extent permitted by the Commonwealth's Terms and Conditions. All rights in derivative works created by Licensee will be deemed to be the property of and owned by Pitney Bowes.

**3.4 Permitted Pitney Bowes Actions.** During the term of the License, if Licensee is enjoined from (or Pitney Bowes believes Licensee may be enjoined from) using the Pitney Bowes Software as a result of any action or proceeding based upon any Claim (as defined in Section 6.3), or if Pitney Bowes believes that a Claim may arise, or a Claim has been asserted, Pitney Bowes may, at its own expense and without diminishing its indemnification obligations under this Agreement: (a) procure for Licensee the right to use the Pitney Bowes Software; (b) provide Licensee with substitute software with the substantial operational functions of the original Pitney Bowes Software; (c) modify the Pitney Bowes Software, provided that it has the substantial operational functions of the original Pitney Bowes Software; or (d) terminate this Agreement as it applies to the relevant Pitney Bowes Software. If this Agreement is terminated pursuant to this Section, Pitney Bowes shall:

- (1) if Licensee is a party to a Sales Agreement with respect to the Pitney Bowes Software, refund to Licensee

an amount equal to: (A) the license fee paid for the Pitney Bowes Software, multiplied by a fraction of which: (i) the numerator is thirty-six (36) minus the number of months between the commencement of the Warranty Period and the effective date of termination; and (ii) the denominator is thirty-six (36); plus (B) any prepaid fees for Software Maintenance for the period after the effective date of termination; or.

- (2) if Licensee is a party to a Lease Agreement with respect to the Pitney Bowes Software, secure for Licensee a release from its payment obligations with respect to the License fee for the Pitney Bowes Software and its other payment obligations with respect to any such Software Maintenance fees included in its payments under the Lease due after the effective date of termination of this Agreement.

## 4 SOFTWARE MAINTENANCE; TRAINING

**4.1 Software Maintenance.** Software Maintenance (as defined in Exhibit A) for the Pitney Bowes Software shall be provided during the Warranty Period at no additional cost to Licensee as an ancillary feature of the License in accordance with the terms in such Exhibit. Software Maintenance may be available after the Warranty Period at an additional charge for as long as Pitney Bowes makes such Software Maintenance generally available to its licensees of the Pitney Bowes Software.

**4.2 Training.** Pitney Bowes will provide product training and other services as specified in the Sales/Lease Agreement and/or applicable SOW.

## 5 LIABILITY

**5.1 Limitation of Liability.** Intentionally Omitted.

**5.2 Excluded Damages.** NEITHER PITNEY BOWES NOR LICENSEE NOR ANY OF THEIR RESPECTIVE AFFILIATES SHALL BE LIABLE TO THE OTHER OR ANY THIRD PARTY UNDER OR RELATING TO THIS AGREEMENT OR THE PITNEY BOWES SOFTWARE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF REVENUE OR PROFITS, LOST BUSINESS, LOST GOODWILL, OR, WORK STOPPAGE OR C. THE FOREGOING DOES NOT APPLY TO AMOUNTS THAT MAY BE OWED TO THIRD PARTIES WITH RESPECT TO INDEMNIFICATION OBLIGATIONS UNDER SECTION 6 OR TO OBLIGATIONS UNDER **SEPARATE CARRIER AGREEMENTS RELATED TO THE THIRD PARTY CONTENT AVAILABLE TO YOU AS CLICK THROUGH AGREEMENTS ("CARRIER AGREEMENTS")**. THIS SECTION SHALL APPLY ONLY TO THE EXTENT NOT INCONSISTENT WITH THE COMMONWEALTH'S TERMS AND CONDITIONS.

## 6 INDEMNIFICATION

**6.1 By Pitney Bowes.** Pitney Bowes shall indemnify, defend and hold Licensee harmless from all claims and suits (including reasonable attorneys fees) against Licensee by a third party alleging infringement of a copyright, trademark, trade dress, trade secret or patent arising out of Licensee's authorized use of the Pitney Bowes Software during the term of the License. Pitney Bowes shall have no obligation to indemnify, defend and hold Licensee harmless with respect to any claim or suit that is: (a) based on any Third-Party Content (as defined in Section 9.8) except to the extent that Pitney Bowes's licensors or suppliers of such Third-Party Content have indemnified, defended and held Pitney Bowes harmless; (b) based on an event that would cause the warranty in this Agreement to be inapplicable under Section 2.1(c)(i), (ii) or (iii) (whether during or after the Warranty Period); or (c) not based on the most current release of the Pitney Bowes Software made available to Licensee to the extent that such claim or suit could have been avoided or mitigated by Licensee's use of such most current release. The provisions of this Section shall constitute the entire liability of Pitney Bowes with respect to a copyright, trademark, trade dress, trade secret or patent infringement claim or suit.

**6.3 Procedures.** Licensee or Pitney Bowes (the "**Indemnified Party**") shall give the other (the "**Indemnifying Party**") prompt written notice of any matter with respect to which the Indemnified Party intends to seek indemnification under this Agreement (a "**Claim**"), provided, that the failure or delay in providing such notice shall not relieve the Indemnifying Party from any obligation to indemnify the Indemnified Party except to the extent that

such failure or delay prejudices the defense of any such Claim. The Indemnifying Party may, at its election, conduct and control the defense of the Claim with counsel selected by it, subject to the Indemnified Party's consent, not to be unreasonably withheld or delayed. The Indemnified Party agrees to cooperate with the Indemnifying Party and its counsel in investigating and/or contesting any Claim. No compromise or settlement of the Claim may be effected by the Indemnifying Party without the Indemnified Party's prior written consent (which will not be unreasonably withheld or delayed), unless (a) there is no finding or admission of any violation of law by the Indemnified Party, and (b) the sole relief provided is monetary damages that are paid in full by the Indemnifying Party. Nothing contained in this Agreement shall abrogate the right of the Commonwealth's Office of the Attorney General to defend and control the defense of the Licensee in connection with such claims.

## **7 TERMINATION**

**7.1 Termination.** (a) This Agreement may be terminated in the event you are not an agency, department, facility or municipality of the Commonwealth: (i) by Pitney Bowes or Licensee, immediately upon written notice to the other party if the other party becomes insolvent, seeks protection under any bankruptcy, receivership, trust, deed, creditors arrangement, composition or comparable proceeding, proceedings in bankruptcy or insolvency are instituted against the other party, or a receiver is appointed with respect to the other party, or if any substantial part of the other party's assets is the object of attachment, sequestration or other type of comparable proceeding, and such proceeding is not vacated or terminated within thirty (30) days after its commencement or institution; or (ii) by Pitney Bowes, upon written notice to Licensee, as provided in Section 3.4; or (iii) by Pitney Bowes or Licensee, upon written notice to the other, in the event of a material breach of this Agreement or the Sales/Lease Agreement by such other party that is not cured within thirty (30) days after receipt by such other party of written notice thereof.

(b) The License shall immediately terminate upon: (i) Licensee's unauthorized use, transfer or copying of the Pitney Bowes Materials, or any portion thereof; or (ii) Licensee's breach of Sections 3.1-3.3 or 9.14 or the Carrier Agreements.

**7.2 Injunctive Relief.** Licensee acknowledges that any breach of its obligations under this Agreement with respect to Pitney Bowes's or a third party's proprietary rights or confidential information will cause Pitney Bowes and/or such third party irreparable injury for which there exists no adequate remedies at law, and therefore Pitney Bowes shall be entitled to injunctive relief, without the posting of any bond, in addition to all other remedies provided by this Agreement or available at law.

**7.3 Remedies.** Except as otherwise expressly provided in OFF 39, the obligations of Pitney Bowes to Licensee in respect of any breach of any term, condition or warranty (whether implied, by statute or otherwise) shall be limited, at Pitney Bowes's option, to: (a) using commercially reasonable efforts to correct or replace the defective feature of the Pitney Bowes Software in breach of such term, condition or warranty; or (b) the resupply or cost of resupply of any services. Such obligations shall only apply if Pitney Bowes is given written notice of such breach within thirty (30) days after the occurrence of such breach.

**7.4 Effect of Termination.** Upon termination of the License or this Agreement, Licensee shall cease use of the Pitney Bowes Materials and shall irretrievably delete and/or remove such items from its servers, terminal and other computer systems and, to the extent not so deleted and/or removed, return such items, together with all copies thereof, to Pitney Bowes; and Licensee shall certify compliance with the foregoing in writing.

**7.5 Survival.** The following shall survive termination of this Agreement: Sections 2.2, 3.1-3.3, 5, 6, 7.2, 7.4, 7.5 and 9 and the portions of the Carrier Agreements indicated therein as surviving.

## **8 FORCE MAJEURE – Refer to RFR OFF 39, Commonwealth Terms and Conditions Section 4**

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## **9 MISCELLANEOUS**

**9.1 Governing Law.** This Agreement and the rights and duties set forth herein, shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, but without recourse to that state's conflict of

laws provisions. The application of the United Nations Convention of Contracts for the International Sale of Goods is expressly excluded. In the event of any dispute arising out of or relating to this Agreement, a suit shall be brought only in a federal or state court of competent jurisdiction located in the Commonwealth of Massachusetts.

**9.2 Severability.** If any provision of this Agreement is declared by a court of competent jurisdiction to be invalid, illegal or unenforceable, such provision shall be severed from this Agreement and the other provisions shall remain in full force and effect.

**9.3 Modifications.** This Agreement may not be modified or amended in any way except in writing signed by duly authorized representatives of Pitney Bowes and Licensee or as otherwise expressly provided herein. In no event shall terms contained in any Licensee purchase order be made a part of or supersede this Agreement.

**9.4 Notices.** Any notice under this Agreement may be given by delivery: in the case of notices to Licensee, to Licensee at its address in the Sales/Lease Agreement or the address to which Pitney Bowes or any of its affiliates sends invoices to Licensee; and in the case of notices to Pitney Bowes, to Pitney Bowes Inc., 3001 Summer Street, Stamford, CT 06926, Attn: President, U.S. SMB, with a copy at such address to: Attn: Deputy General Counsel (MSC 64-03).

**9.5 Non-waiver.** A waiver of any breach or default under this Agreement shall not constitute a waiver of any other or subsequent breach or default. Failure or delay by either party to enforce compliance with any term or condition of this Agreement shall not constitute a waiver of such term or condition.

**9.6 Binding Effect; Assignment.** This Agreement shall be binding on and inure to the benefit of parties hereto and their respective successors and permitted assigns. Licensee may not assign this Agreement or assign, sublicense or transfer any of its rights hereunder without the prior written consent of Pitney Bowes; provided, however, that Licensee may assign this Agreement to an affiliate of Pitney Bowes for the purpose of such entity providing Licensee financing with respect to the Pitney Bowes Software.

**9.7 Confidentiality.** Licensee acknowledges that the Pitney Bowes Materials contain proprietary and confidential information. Licensee will not disclose or show the Pitney Bowes Materials, or any part thereof, to anyone for any purpose other than in order to enable Licensee to use the Pitney Bowes Materials in accordance with the terms of this Agreement. Upon termination of this Agreement, except as otherwise provided in Section 7.4, Licensee shall return all copies of the Pitney Bowes Materials. This Agreement (including any amendments), including the terms hereof, is confidential information of Pitney Bowes and shall not be disclosed by Licensee unless otherwise required by law.

**9.8 Third Party Content; Regulated Functionality.** Various third party software and other documentation ("**Third Party Content**") may have been incorporated into the Pitney Bowes Materials by Pitney Bowes under permission from Pitney Bowes's licensors and suppliers. The United States Postal Service ("**USPS**") or other governmental bodies may regulate certain functionality of the Pitney Bowes Software. Special terms and conditions applicable to the Third Party Content or such functionality are included in **the Carrier Agreements**; and Licensee agrees to be bound by and to comply with such terms and conditions. Any terms and conditions in such Carrier Agreements that are inconsistent with, or in addition to, the terms and conditions of the rest of this Agreement shall control with respect to the Third Party Content or such functionality. Pitney Bowes may amend such Carrier Agreements from time to time, by providing the revised portions of such Agreements to Licensee, to reflect (a) changes in Pitney Bowes's arrangements with its licensors or suppliers for Third-Party Content, or (b) regulatory requirements. Notwithstanding the foregoing, any separate software license agreement provided with any Excluded Software shall apply to such Excluded Software.

**9.9 Termination of Third Party Content.** If Pitney Bowes's license to any Third Party Content terminates, Licensee agrees: (a) that the Sales/Lease Agreement and all other agreements between Pitney Bowes or any of its affiliates and Licensee related thereto (e.g., equipment or software maintenance agreements) shall remain in full force and effect in accordance with their terms; (b) upon Pitney Bowes' written request, to discontinue use of, and/or return the terminated Third Party Content; and that in the event of such request for discontinuance, Pitney Bowes shall have no further obligation with respect to such Third Party Content.

**9.10 Other Functionality.** Licensee shall be solely responsible for: (a) entering into its own arrangements with third parties, including carriers, for software functionality not provided by Pitney Bowes as part of the Pitney Bowes Software; and (b) payment of all fees for third-party software not expressly included in the License fee paid under the Sales/Lease Agreement, including, without limitation, fees associated with Licensee's operating environment.

**9.11 Licensee Cooperation.** Intentionally Deleted .

**9.12 Audit.** Pitney Bowes may conduct, or have conducted, during Licensee's normal business hours and upon minimum prior notice of 10 days, audits of Licensee's use of the Pitney Bowes Software to verify Licensee's compliance with this Agreement. Licensee shall cooperate with such audits; and, if requested, shall provide Pitney Bowes with copies of audited materials. Such audits shall be conducted not more than once per calendar year, unless the prior audit reveals a material breach of this Agreement with respect to such use. Pitney Bowes's cost of any audit requested by it shall be borne by Pitney Bowes unless such audit discloses an underpayment based on usage or otherwise due to Pitney Bowes in excess of five percent (5%) of the amount actually due or use of the Pitney Bowes Software or Materials that constitutes a material breach of this Agreement, in which case the cost of such audit shall be borne by Licensee.

**9.13 U.S. Government Restricted Rights.** The Pitney Bowes Software and Materials are provided with "RESTRICTED RIGHTS". Use, duplication, or disclosure by the United States Government is subject to restrictions as set forth in FAR52.227-14 and DFAR252.227-7013 et seq. or their successors. The use of the Pitney Bowes Software by the United States Government constitutes acknowledgment of Pitney Bowes's proprietary rights in the Pitney Bowes Software. Further, the Pitney Bowes Software and Materials are deemed to be "commercial computer software" and "commercial computer software documentation" as defined in DFARS Section 227.7202 and FAR Section 12.212, as applicable. Any use, modification, reproduction, release, performance, display or disclosure of the Pitney Bowes Software and Materials by the United States Government shall be solely in accordance with the terms of this Agreement.

**9.14 Export and Other Laws.** Licensee agrees that, unless it has obtained prior written authorization from the United States Department of Commerce or is otherwise permitted by the United States Department of Commerce Export Administration Regulations and, in either case, has the prior written consent of Pitney Bowes, it will not export or otherwise disclose, directly or indirectly, any technology or software received from Pitney Bowes nor allow the direct product thereof to be shipped or to be disclosed, either directly or indirectly, to any destination that is prohibited by the United States Government or to a foreign national that is prohibited by the United States Government. Without limiting the foregoing, Licensee and Pitney Bowes shall comply with all applicable laws and regulations relating to the Pitney Bowes Software and its use.

**9.15 Use of Information.** Pitney Bowes and its affiliates may collect and use information Licensee provides or Pitney Bowes obtains or which is derived from Licensee's use of the Pitney Bowes Software (including, without limitation, shipping information) or Software Maintenance and other services for the Pitney Bowes Software; provided that such information shall be used for Pitney Bowes's internal purposes related to macro-level systems analysis and research, customer segmentation and/or the manner or method in which Pitney Bowes conducts business with its customers.

**9.16 Captions and Headings.** All captions, headings and titles contained in this Agreement are for convenience and reference purposes only and shall not be deemed a part of this Agreement.

**9.17 Relationship of the Parties.** Nothing contained in this Agreement shall be construed to constitute either party as a partner, joint venturer, co-owner, employee or agent of the other party, and neither party shall hold itself out as such.

**9.18 Taxes.** To the extent applicable by law Licensee shall pay, , all charges and taxes which are based on, measured by, imposed on, resultant from or levied upon this Agreement, the sale, purchase, personal property ownership, leasing, value, possession, or use of the Pitney Bowes Software, including, without limitation, sales, excise, use or property taxes, but excluding taxes on or measured by Pitney Bowes's net income. Such charges and taxes shall be collected from Licensee and remitted by Pitney Bowes to the appropriate tax authorities to the extent that Pitney Bowes is required by law to do so.

**10 ENTIRE AGREEMENT**

OFF39, this agreement, the Sales/Lease Agreement, any related SOW, and any other agreement between Pitney Bowes and Licensee expressly referred to herein contain the entire agreement of the parties with respect to the subject matter hereof and shall supersede any and all prior agreements, understandings, promises, representations or warranties made by one party to the other, whether oral or in writing, concerning the subject matter contained herein or the terms or conditions applicable hereto.

**LICENSEE HAS READ THIS AGREEMENT AND UNDERSTANDS AND AGREES TO ABIDE BY ITS TERMS**

**LICENSEE**

By \_\_\_\_\_

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

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

**PITNEY BOWES INC.**

By \_\_\_\_\_

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

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

## EXHIBIT A

### SOFTWARE MAINTENANCE AND SUPPORT

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

1. **“Software Maintenance”** means with respect to the Pitney Bowes Software:
  - (a) corrections or changes to the Pitney Bowes Software to correct errors or to otherwise make the Pitney Bowes Software conform to all substantial operational functions in accordance with the User Manual;
  - (b) Maintenance Support as set forth in Sections 2 and 3 of this Exhibit;
  - (c) updates and software patches as set forth in Sections 4 and 5, respectively, of this Exhibit.
  - (d) rate changes as set forth in Section 6 of this Exhibit;
  - (e) additional carrier functionality and routine revisions for compliance with carrier requirements as set forth in Section 7 of this Exhibit; and
  - (f) \* on-site service as set forth in Sections 2(c) and 2(e) of this Exhibit.

Software Maintenance applies only to the Pitney Bowes Software and, without limitation, does not apply to any modifications to the Pitney Bowes Software requested by Licensee; and if any Software Maintenance for such modifications is provided, at Pitney Bowes’s election, it shall be subject to additional charges at Pitney Bowes’s then prevailing rates only to the extent permitted by OFF39.

#### 2. **Maintenance Support**

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

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

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

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

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

Severity Level 5: Licensee has requested a new feature or modification of the Pitney Bowes Software. Pitney Bowes CDS will discuss the request with Licensee, inform Licensee if the request can be



accommodated, with or without additional charge, and if it can, provide status updates to Licensee in accordance with a mutually agreed upon time schedule.

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

### 3. Hours of Operation; Off-hours Support; Multiple-User Products

- (a) Pitney Bowes Customer Support is available at a toll-free Pitney Bowes customer support number and internet during normal operating hours, which are from 7 a.m. to 7 p.m. Central Time, Monday through Friday, excluding PBI-observed U.S. holidays, except as otherwise noted in the related SOW ("**Normal Operating Hours**"). You may request service by contacting Pitney Bowes by telephone or you may place a request via Pitney Bowes' website [www.pb.com](http://www.pb.com).
- (b) Pitney Bowes shall not be obligated to provide unlimited phone support for the Pitney Bowes Software outside of Normal Operating Hours ("**Standby Support**") unless Licensee has purchased access to such Standby Support, as evidenced by its election in the Sales/Lease Agreement or its entering into a new agreement with Pitney Bowes. Standby Support will be provided to U.S. locations only, and will provide emergency software repair support, and not general user "help" and "how to" inquiries. If Customer elects to purchase such service, Customer will be charged an annual or monthly access fee along with usage fees based upon Licensee's use of such Standby Support, in each case, at Pitney Bowes' then-current rates. To access Standby Support (i.e., emergency phone support service outside 7 a.m. to 7 p.m. Central Time, Monday through Friday, or on PBI-observed U.S. holidays), Licensee should call the toll-free phone number and leave a message for the support representative on call to be paged. Licensee should include in its message the name of the individual calling, the Licensee company name, area code and phone number where the caller can be reached, and a brief description of the problem.
- (c) Multiple-User Products
  - (i) If Licensee is licensed to use a Pitney Bowes Software that may have fifty (50) or more users at one or more locations (including, but not limited to, Pitney Bowes Software with desktop access), all Licensee users of the Pitney Bowes Software will initially contact Licensee's Corporate Help Desk or

other Licensee qualified contact(s) (collectively, “**Licensee Support**”) for support. Such support shall include, but not be limited to, answering and logging the user’s call; resolving all “how to” questions arising during normal operation of the Pitney Bowes Software; and attempting to resolve all of the user’s other questions or problems. If necessary, the Licensee Support will escalate the call to others within Licensee’s organization, including, but not limited to, Information Technology staff members who have been trained with respect to the Pitney Bowes Software as systems administrators and who are specifically accountable for support of the Pitney Bowes Software. Such levels of support are referred to as Levels 1 and 2 Support and are the responsibility solely of Licensee. It is expected that Licensee will be able to resolve most user calls by providing Level 1 and 2 Support.

- (ii) Pitney Bowes will provide Level 3 Support for calls escalated by a limited number of mutually agreed upon members of Licensee’s Information Technology staff who have been successfully trained by Pitney Bowes with respect to the Pitney Bowes Software for such purpose (“**Authorized Licensee Personnel**”). Support will be provided only to Authorized Licensee Personnel and will not be provided directly to Licensee’s users or to Licensee Support or other members of Licensee’s Information Technology staff generally. No call shall be placed to Pitney Bowes Level 3 Support unless Authorized Licensee Personnel have first validated that the subject matter of the call does not arise within Licensee’s own LAN/WAN and operating environment and that such subject matter is a well-documented, reproducible problem.
- (iii) Authorized Licensee Personnel must provide the Pitney Bowes support representative with the following information: the caller’s name; the Licensee company name; a detailed description of the problem, including validation required above; details of any error messages that may have been displayed; what the user was doing at the time of the problem; any other necessary phone numbers; and other information Pitney Bowes may ask for.
- (iv) If Licensee does not have Licensee Support and/or Authorized Licensee Personnel available, Licensee and Pitney Bowes may agree on other arrangements by which Level 1 and 2 Support may be provided by Pitney Bowes to Licensee at an additional charge.

**4. Updates.** Updates to the Pitney Bowes Software consisting of new code relating to the existing functionality of the Pitney Bowes Software may be issued periodically by Pitney Bowes. Updates shall be provided in executable code format on an “as is” basis and shall be implemented by Licensee.

**5. Software Patches.** Software patches to the Pitney Bowes Software may be issued periodically by Pitney Bowes. Software patches are fixes to previously reported “bugs” to the Pitney Bowes Software and/or technical upgrades to the Pitney Bowes Software. Subject to Section 9 of this Exhibit, Licensee may accept or reject a software patch to the Pitney Bowes Software at the time the software patch is offered. If the software patch is accepted, the software patch shall become part of the Pitney Bowes Software. Software patches shall be provided in executable code format on an “as is” basis and shall be implemented by Licensee. Software patches are also generally provided in the next scheduled update to the Pitney Bowes Software.

**6. Rate Changes.** If Pitney Bowes supplies carrier rate information to Licensee as part of Software Maintenance, Pitney Bowes shall provide rate change replacements based on the level of carrier coverage selected and paid for by Licensee, in electronic, physical or other format and shall be implemented by Licensee. Such rate change replacements shall include postal or carrier rate increases and decreases, zip code or zone changes and changes in service provided by carriers (e.g., required new report formats or geographical expansions). Rate change replacements exclude custom rate changes (except for one (1) single UPS Contract custom rate change provided as part of Software Maintenance per calendar year), new classes of services offered by carriers, and new rates needed to establish a new home zip code because of a change in location.

**7. Additional Carrier Functionality.** Additional carrier functionality made available by Pitney Bowes generally to Pitney Bowes Software customers without any additional separate charge and routine revisions for compliance with carrier requirements will be added to the Pitney Bowes Software through Software Maintenance and shall be implemented by Licensee. Pitney Bowes reserves the right not to add functionality or carrier services, even though they may be available from the carrier or requested by Licensee.

**8. Exclusions from Maintenance.** Pitney Bowes shall have no obligation to provide Software Maintenance if such Software Maintenance is required due to: (i) any event that would cause the warranty in this Agreement to be inapplicable or void (whether during or after the Warranty Period); or (ii) failure by Licensee to implement the most current update or software patch available from Pitney Bowes. Software Maintenance excludes any Pitney Bowes responsibility with respect to Licensee's operating systems, third-party connectivity software to host computers or web browsers. You are responsible for routine and preventative maintenance, including, but not limited to operating system, antivirus software, and SQL patches and updates. Pitney Bowes shall not be responsible for interruptions in the Pitney Bowes Software that are the result of machine failure or software supplied by vendors other than Pitney Bowes, improper preparation of input data, modification(s) performed by Licensee or its agent, or attempts to use the Pitney Bowes Software in a manner for which it was not intended. If Pitney Bowes elects to provide Software Maintenance notwithstanding the occurrence of an event specified in this paragraph, Pitney Bowes may charge Licensee, and Licensee shall pay, Pitney Bowes's standard fees, as then in effect, for the services and materials provided the extent such fees are authorized pursuant to OFF39.

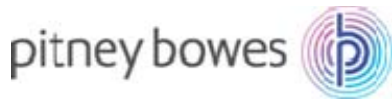
Software Maintenance excludes modifications to Pitney Bowes Software and/or updates or software patches thereto that have been modified by Pitney Bowes at Licensee's request ("**Modified Pitney Bowes Software**"). Such modifications and installation of the Modified Pitney Bowes Software may incur an additional charge.

New features or functionality and non-routine revisions for compliance with carrier requirements (including, without limitation, revisions not generally applicable to all shippers and regardless of whether such revisions are initiated by a licensee or a carrier) may also be available, from time to time, outside of Software Maintenance at an additional charge.

**9. Term of Maintenance Support.** (a) The initial term of Software Maintenance for Pitney Bowes Software subject to a Sales Agreement is the twelve (12) month period beginning at date of installation; provided that, due to its installation procedures, the initial term for Multi-Site Software is upon Acceptance of the Multi-Site Software.. Such term shall be automatically renewed for successive twelve (12) month periods unless Pitney Bowes receives from Licensee written notice of termination at least sixty (60) days before the end of the initial term or the then current renewal term. Pitney Bowes shall invoice Licensee for each additional twelve (12) month period sixty (60) days before the termination of the then current term, at Pitney Bowes's rate then in effect, which amount shall be deemed due and payable to Pitney Bowes upon receipt of such invoice by Licensee.

(b) The term of Software Maintenance for Pitney Bowes Software that is subject to a Lease Agreement is the term of the Lease Agreement.

**10. Modification; Termination.** Pitney Bowes may, from time to time, change the services provided in Software Maintenance, modify the terms of Software Maintenance, or terminate Software Maintenance, at Pitney Bowes's discretion, with notice to Licensee. Pitney Bowes will advise Licensee, in such notice, if it reasonably believes that any such change in services or modification of terms is material. If Licensee receives notice that any such change in services or modification of terms is material, Licensee may terminate Software Maintenance by delivering to Pitney Bowes written notice of such termination within thirty (30) days after Licensee's receipt of such notice from Pitney Bowes. Any such termination by Licensee shall be effective ten (10) business days after Pitney Bowes's receipt of Licensee's notice of termination. Licensee's notice must include Licensee's Customer Account Number and, if applicable, lease number and be sent to Pitney Bowes, by certified mail, return receipt requested, at the following address: Pitney Bowes Inc., 2225 American Drive, Neenah, WI 54956. If Software Maintenance is terminated, Pitney Bowes's sole obligation shall be a pro rata refund of Licensee's prepaid fee for Software Maintenance. Such obligation shall not apply in the case of termination due to a breach by Licensee. Except as provided in this paragraph, under no circumstances may Licensee cancel or terminate Software Maintenance during the term of Software Maintenance; and Licensee may only terminate for the successive period by providing timely notice of non-renewal as provided above.



## COMMONWEALTH OF MASSACHUSETTS/PITNEY BOWES INC.

### Addendum to Software License and Maintenance Agreement for Hosting by Pitney Bowes of Pitney Bowes Software – OFF39

**This document is an exhibit to the Commonwealth of Massachusetts' Contract OFF39 ("State Contract"), and is deemed to be attached to and incorporated within the State Contract by reference. In the event of conflict between (i) the OFF39 RFR, as amended, the Commonwealth Standard Contract Form and the Commonwealth Terms & Conditions, and the Contractor's Response to the RFR collectively "OFF39", and (ii) this Addendum to Software License and Maintenance Agreement for Hosting, OFF39 shall prevail. The order of priority for documents governing this agreement shall be as stated in paragraph 15 of the Commonwealth Terms & Conditions.**

This Addendum is between Pitney Bowes Inc., a Delaware corporation, with offices at 1 Elmcroft Rd, Stamford, CT 06926-0700 ("**Pitney Bowes**") and the customer ("**Licensee**") named in a Sales/Lease Agreement with Pitney Bowes or one of its affiliates pursuant to which Licensee has agreed to pay a hosting fee for Pitney Bowes to host certain Pitney Bowes Software licensed by Pitney Bowes to Licensee under a Software License and Maintenance Agreement (the "**License Agreement**"). This Addendum sets forth the terms pursuant to which Pitney Bowes will host for Licensee such Pitney Bowes Software. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the License Agreement. LICENSEE'S SIGNATURE BELOW, OR USE OF THE PITNEY BOWES SOFTWARE, CONSTITUTES LICENSEE'S AGREEMENT TO THIS ADDENDUM.

#### 1. Definitions

- (a) "**Host Environment**" means all software, middleware and hardware necessary to host the Pitney Bowes Software, including, without limitation, host servers; server, telecommunications and security software; database software; operating systems; client access hardware; back-up systems; network routing; system monitoring; and Internet access.
- (b) "**Pitney Bowes Hosting Period**" means the period during which Pitney Bowes has agreed to host the Pitney Bowes Software and Licensee has paid for such hosting.
- (c) "**Licensee Hosting Period**" means all times other than the Pitney Bowes Hosting Period.

#### 2. Pitney Bowes Hosting Period

The following terms apply during the Pitney Bowes Hosting Period:

- (a) Pitney Bowes shall: (i) host the Pitney Bowes Software for Licensee on server(s) at a Pitney Bowes or third-party facility ("**Host Servers**"); and (b) provide all appropriate and necessary application support, Software Maintenance, network security within the host firewall and load balancing for the Pitney Bowes Software for Licensee's use. As part of the foregoing, database transactions will be captured on a continuous basis, replicated to a backup system during Hosting Measurement Hours (as defined in Section 3 of this Addendum) and copied daily to a tape that is sent to a secure off-site storage facility.
- (b) The Pitney Bowes Hosting Period for Pitney Bowes Software that is financed under a Lease Agreement shall be the term of the Lease Agreement. The Pitney Bowes Hosting Period for Pitney Bowes Software subject to a Sales Agreement shall be for the term indicated in the Sales Agreement.
- (c) Pitney Bowes shall use commercially reasonable efforts to minimize downtime of the Host Servers for maintenance, updates and revisions to the Pitney Bowes Software and other software, hardware and equipment associated therewith. Except as expressly set forth in this Addendum, Pitney Bowes makes no representation, warranty, guaranty or other assurances regarding up-time of the Host Servers or the availability or accessibility of the Pitney Bowes Software.
- (d) Licensee shall provide Pitney Bowes, in writing, with the name, email address and telephone number of a Licensee representative whom Pitney Bowes may contact in the event of any Downtime (as defined in Section 3 of this Addendum). Pitney Bowes shall notify such representative by email when Downtime has exceeded fifteen (15) minutes. If an acknowledgement or notification of receipt of such notice is not received within thirty (30) minutes, up to two (2) attempts will be made by Pitney Bowes to reach such representative by telephone, leaving a message if possible. The same procedure will be followed when the Downtime has ended.

- (e) Licensee shall be solely responsible for: (i) its access to the Pitney Bowes Software through a Licensee WAN and to the Internet; (ii) providing, operating and maintaining all software (other than the Pitney Bowes Software to the extent Pitney Bowes is responsible therefor under this Addendum) and hardware in its locations or which may otherwise be required in connection with the Pitney Bowes Software and the use thereof; and (iii) without limiting the foregoing, configuration of the Pitney Bowes Software for each location, including, without limitation, user ID's, security levels and carrier accounts. Any changes by Licensee to the operating environment of its computer systems which require a revision of the Pitney Bowes Software or additional work by Pitney Bowes are subject to Pitney Bowes's prior written consent and an additional charge by Pitney Bowes authorized by OFF39.
- (f) Licensee shall provide Pitney Bowes with such cooperation as Pitney Bowes shall reasonably request with respect to Pitney Bowes's obligations under this Addendum, including, without limitation, by providing access through Licensee's firewall to the Pitney Bowes hosted network.
- (g) Pitney Bowes may provide links to external sites that cause Licensee to leave the site at which the Pitney Bowes Software is available. Any such link is provided for the use and convenience of Licensee. The appearance of a link does not constitute an endorsement, recommendation or certification by Pitney Bowes of the external link; and should not be construed as a suggestion that the external link has any relationship with Pitney Bowes except as expressly provided in the Pitney Bowes Software or the User Manual.
- (h) Pitney Bowes automatically collects and/or tracks: (i) the home server domain names, e-mail addresses, type of client computer, and type of web browser of users to the web site at which the Pitney Bowes Software is available, (ii) the e-mail addresses of users that communicate with Pitney Bowes; (iii) other information knowingly provided by the user; and (iv) aggregate or specific information on what pages users access. Pitney Bowes may use a technology called "cookies". These cookies may be used to obtain data such as the user's name, user-name and pages viewed.
- (i) The volume of transactions is expected to be reasonably evenly distributed throughout the year. Licensee acknowledges that peaks of volume may adversely affect hosting performance and that Pitney Bowes reserves the right to modify the hosting fee as a result of repeated peaks.

### 3. Downtime during Pitney Bowes Hosting Period

- (a) For purposes of this Addendum, the following terms have the meaning set forth next to them:
  - (i) **"Hosting Measurement Hours"** means, during the Pitney Bowes Hosting Period, 6 a.m. to 9 p.m., Central Time, Monday through Friday, excluding national holidays.
  - (ii) **"Measurement Period"** means, during the Pitney Bowes Hosting Period: (A) the first full twelve-month calendar period beginning after the later of: (1) the date on which Licensee has paid all amounts due to Pitney Bowes under the Sales Agreement or payments have begun under the Lease Agreement; or (2) Licensee's acceptance of the Pitney Bowes Software on a Delivery and Acceptance Form or other form provided by Pitney Bowes; (B) each successive full twelve-month calendar period thereafter during the Pitney Bowes Hosting Period; and (C) the final period at the end of the Pitney Bowes Hosting Period following the periods referred to in (A) or (B), provided that such final period shall be at least three (3) full calendar months.
  - (iii) **"Downtime"** means the time during Hosting Measurement Hours when the shipping functionality of the Pitney Bowes Software is not available for use by Licensee as a result of unscheduled downtime of the Pitney Bowes Software caused by: (A) Pitney Bowes personnel; or (B) Pitney Bowes equipment and related software that are within Pitney Bowes's firewall and are used for operation of the Pitney Bowes Software.
 

"Downtime" does not include, without limitation, downtime or unavailability of the Pitney Bowes Software: (1) caused by Licensee personnel, representatives or agents or by Licensee or third-party equipment or software; (2) caused by usage of the Pitney Bowes Software in excess of the expected or permitted usage, with such usage spread reasonably evenly throughout the Measurement Period; (3) related to content or applications associated with the Pitney Bowes Software but not within Pitney Bowes's commercially reasonable control; (4) related to licensee's Internet or telecommunication performance; (5) resulting from unscheduled maintenance to resolve or avoid a problem where such resolution requires less than fifteen (15) minutes; (6) caused by matters within the scope of Section 8 (Force Majeure) of the License Agreement; or (7) outside of Hosting Measurement Hours. In addition, "Downtime" does not include downtime or unavailability of the reporting or administrative functions of the Pitney Bowes Software.
  - (iv) **"Allowable Downtime"** means one percent (1%) of the Hosting Measurement Hours in a particular Measurement Period.

(v) **“Unit of Downtime”** means six (6) hours of Downtime.

- (b) Licensee shall give Pitney Bowes’s technical support staff prompt notice of Downtime. Notice shall be given by telephone (with a voicemail message left if a technical support staff member is not contacted in person) and by email to an address provided by Pitney Bowes for such purpose.
- (c) For each Unit of Downtime in excess of Allowable Downtime during a Measurement Period, Pitney Bowes will provide Licensee with a credit in an amount equal to one-tenth of one percent (0.1%) of the hosting fee paid by Licensee with respect to such Measurement Period; provided, however, that in no event shall the aggregate credit with respect to any Measurement Period exceed the hosting fee paid by Licensee with respect to such Measurement Period. Agreed-upon credits may be applied toward future amounts due to Pitney Bowes for hosting or Software Maintenance. If no such amounts are expected to be due, upon Licensee’s request, Pitney Bowes shall pay Licensee an amount equal to such credits.
- (d) Each party shall supply the other with the basis of its calculation of Downtime and shall, in good faith, consider the other’s information and try to mutually agree on actual Downtime, if any, for purposes of this Addendum.
- (e) Payment of the amount set forth in Section 3 of this Addendum is Licensee’s sole right and remedy with respect to Downtime or performance of the Pitney Bowes Software or Pitney Bowes’s hosting of the Pitney Bowes Software during the Pitney Bowes Hosting Period.

**4. Licensee Hosting Period.** At all times other than during the Pitney Bowes Hosting Period: (a) Licensee shall be solely responsible for: (i) hosting the Pitney Bowes Software for its use; and (ii) acquiring, installing, operating and maintaining the Host Environment; and (b) Pitney Bowes has no responsibility or liability for, and makes no representation or warranty, with respect to, the Host Environment; any recommendations made with respect to the Host Environment; or any websites accessed through the Pitney Bowes Software.

**5. Licensee Hosting Period and Pitney Bowes Hosting Period.** During both the Licensee Hosting Period and the Pitney Bowes Hosting Period, Licensee: (a) is solely responsible for its use of any websites accessed through the Pitney Bowes Software, whether such access is provided for Pitney Bowes Software functionality, as a matter of convenience or otherwise; and (b) uses such websites entirely at its own risk.

**6. Termination.** This Addendum shall terminate upon termination of the License Agreement.

**7. Entire Agreement.** This Addendum, together with the License Agreement and the other agreements referred to in Section 2 therein, contains the entire understanding of the parties with respect to the matters herein and therein. The License Agreement and this Addendum together constitute the “Agreement” as such term is used in the License Agreement. To the extent that any terms and conditions of the License Agreement conflict with the provisions of this Addendum, the provisions of this Addendum shall govern. Except as specifically provided herein, all terms and conditions of the License Agreement shall remain in full force and effect.

**LICENSEE HAS READ THIS ADDENDUM AND UNDERSTANDS AND AGREES TO ABIDE BY ITS TERMS.**

**LICENSEE**

**PITNEY BOWES INC.**

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

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

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

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

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

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



**COMMONWEALTH OF MASSACHUSETTS/PITNEY BOWES INC.**  
**Software Maintenance and Data Subscription Agreement – OFF39**  
**for**  
**Business Manager™ software**  
**SmartMailer™ software**  
**AddressRight® Pro software**  
**PB First™ software**

This document is an exhibit to the Commonwealth of Massachusetts' Contract OFF39 ("State Contract"), and is deemed to be attached to and incorporated within the State Contract by reference.

**In the event of conflict between (i) the OFF39 RFR, as amended, the Commonwealth Standard Contract Form and the Commonwealth Terms & Conditions, and the Contractor's Response to the RFR collectively "OFF39", and (ii) this Software License and Maintenance Agreement, OFF39 shall prevail. The order of priority for documents governing this agreement shall be as stated in paragraph 15 of the Commonwealth Terms & Conditions.**

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

## 1.0 Definitions

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

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

## 2.0 Scope of Services – Software Maintenance

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

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

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

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

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

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

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

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

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

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

- (b) Maintenance Support shall be limited to telephone, Internet or electronic customer support response(s) at our sole discretion; and is contingent upon Licensee providing access, as requested by Pitney Bowes, for Internet and/or electronic remote support. Maintenance Support is provided under the condition that Licensee provides adequate information with respect to any malfunction in the Pitney Bowes Software.
- (c) \* On-site support shall be provided at U.S. locations only and upon written request of Licensee and the execution of, or in conjunction with, an additional agreement with Pitney Bowes. If Licensee requests on-site assistance, Licensee shall be billed for and pay appropriate time and travel-related expenses pursuant to OFF39. If Pitney Bowes determines that error corrections must be performed on-site, the related services are billable to Licensee unless Licensee has elected coverage under a Tier 2 Service Plan.
- (d) If Licensee is provided with Internet and/or electronic customer support, it is Licensee's responsibility to determine the access allowed to its equipment. Pitney Bowes accepts no responsibility for any problems, loss or damage caused directly or indirectly by Pitney Bowes personnel or any other third parties when providing such service except to the extent directly caused by Pitney Bowes's, and not caused by Licensee's, negligence or willful misconduct.
- (e) \* We service your Software on-site at our sole discretion, Monday through Friday, 8 a.m. to 5 p.m. in your local U.S. time zone, excluding PBI-observed U.S. holidays. If we deem it necessary, a service engineer will be dispatched to arrive at Licensee location for on-site service, in most cases within eight- (8) normal business-day working hours after your initial contact with Pitney Bowes reporting the Software failure. If Licensee has elected coverage under a Tier 2 Service Plan there will be no hourly charges unless Pitney Bowes performs service outside those hours.
- (f) Professional services and training services, other than repair and maintenance services specifically referred to herein, are not covered by this Agreement.

## 2.0.2 Updates

Software application updates are installable by Customer. If installation is required by Pitney Bowes, Pitney Bowes will install such updates at its then current rates pursuant to OFF39. You must be fully current with installation of Updates provided by Pitney Bowes in order to be entitled to software maintenance services. "Update" for the purposes of software maintenance means a fix to previously reported "bug(s)", a technical upgrade and/or an esthetic change to the Software. An Update is intended to substantially correct a functional deviation between the Software as issued and the Software's User Manual and/or specifications, but does not introduce new functionality. An Update is typically indicated by a change within a version level of the Software -- e.g., version 1.2 would be an update of version 1.1.

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

## 2.1 Data Subscription

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

## 3.0 Exclusions



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

#### **4.0 Term**

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

#### **5.0 Modification; Termination**

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

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

#### **6.0 Fees**

Software maintenance rate adjustments will be made only at renewal time. We reserve the right to cancel a renewal of this Agreement at any time and for any reason including, but not limited to, your refusal to pay any newly adjusted rates pursuant to OFF39.

If any payment under this Agreement is not paid in full on or before its due date, you shall pay interest on any late payment in accordance with the Commonwealth's Bill Payment Policy. In the event you are not an agency, department, facility or municipality of the Commonwealth we can hold you responsible for costs of collection and reasonable attorney's fees.

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

This section shall apply only to the extent not inconsistent with OFF39.

THE SERVICES, UPDATES, DATABASE UPDATES AND OTHER MATERIALS PROVIDED HEREUNDER ARE PROVIDED "AS IS"; AND PITNEY BOWES SPECIFICALLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER WARRANTY. Your sole remedy under this Agreement or with respect to such services, Updates, Database updates or other materials is, at Pitney Bowes' option, refund of amounts paid by you for software maintenance or data subscription, as may be applicable, during the current 12-month term of this Agreement, replacement of any defective media, or provision again by Pitney Bowes of such services, Updates, Database updates and other materials by Pitney Bowes.

IN NO EVENT WILL PITNEY BOWES BE LIABLE FOR ANY DAMAGES, INCLUDING ANY LOST PROFITS OR INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR OTHER DAMAGES, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. WITHOUT LIMITING THE FOREGOING, PITNEY BOWES' LIABILITY ARISING OUT OF CONTRACT, NEGLIGENCE, STRICT LIABILITY, IN TORT OR WARRANTY, OR OTHERWISE SHALL NOT EXCEED THE AMOUNTS PAID BY CUSTOMER FOR THE SOFTWARE MAINTENANCE AND DATA SUBSCRIPTION PROVIDED UNDER THIS AGREEMENT DURING THE 12-MONTH TERM OF THIS AGREEMENT DURING WHICH SUCH LIABILITY AROSE.

CARRIER RATE INFORMATION SUPPLIED TO YOU IS OBTAINED FROM CARRIERS OR OTHER SOURCES BELIEVED TO BE REASONABLY RELIABLE. HOWEVER, WITHOUT LIMITING ANYTHING ELSE IN THIS AGREEMENT, SUCH INFORMATION IS

NOT WARRANTED TO BE ACCURATE, COMPLETE OR CORRECT; AND PITNEY BOWES SHALL HAVE NO LIABILITY FOR ANY DAMAGES YOU MAY INCUR AS A RESULT OF YOUR USE OR RELIANCE ON SUCH RATE INFORMATION.

### **8.0 General**

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

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

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

**Force Majeure.** Refer to OFF39, Commonwealth Terms and Conditions Section 4

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

**Entire Agreement.** OFF39, this agreement, the Sales/Lease Agreement and the Software License Agreement comprise the entire agreement between us with regard to the subject of this Agreement. No statements or prior understandings even if reduced to writing or other documents are effective if they are inconsistent with, or if they obligate us in any way beyond, what is written here. Any terms of any other document that add to, vary from, or conflict with these terms are hereby objected to. This Agreement may not be modified or amended in any way except in writing signed by duly authorized representatives of each of us or as otherwise provided herein.

**In the event of conflict between (i) the OFF39 RFR, as amended, the Commonwealth Standard Contract Form and the Commonwealth Terms & Conditions, and the Contractor's Response to the RFR, as clarified or amended in response to Department requests for technical corrections, clarifications, and best and final offers, collectively "OFF39", and (ii) this Direct Connect Software License, OFF39 shall prevail. The order of priority for documents governing this agreement shall be as stated in paragraph 15 of the Commonwealth Terms & Conditions.**

## Exhibit B

### **PITNEY BOWES INC., DOCUMENT MESSAGING TECHNOLOGIES DIRECT CONNECT SOFTWARE LICENSE EXHIBIT**

**IMPORTANT:** The use of any software programs and databases supplied by Pitney Bowes Inc., through its Document Messaging Technologies division ("Pitney Bowes") is conditioned on Client's agreement to be bound by the terms and conditions of this Exhibit. This License Exhibit covers all software programs, databases and user documentation supplied pursuant to the Lease Supplement Agreement into which this Exhibit is incorporated. The software programs and data bases covered by this Exhibit include Pitney Bowes' proprietary programs and databases as well as programs and databases owned by third parties and distributed by Pitney Bowes under a separate license agreement.

**GRANT OF LICENSE:** Pitney Bowes agrees to grant and Client agrees to accept, a non-exclusive and non-transferable licenses to use each of the software programs and data bases along with documentation identified in the LEASE SUPPLEMENT (the "LICENSED PROGRAMS") in accordance with the terms and conditions of this Software License Exhibit.

This Exhibit authorizes the Client to use the LICENSED PROGRAMS only in machine readable form and only in conjunction with the operation of the specific system equipment identified in the Lease Supplement. Any other use with any other equipment is expressly prohibited.

**OWNERSHIP AND USE:** Client may not copy the LICENSED PROGRAMS. Pitney Bowes will provide one (1) copy of the LICENSED PROGRAMS for back-up purposes. The LICENSED PROGRAMS cannot be transferred via any media, including telecommunications lines, other than that on which it is supplied to Client.

Client shall not create by decompilation or otherwise, the source programs or any part thereof from the object program or from other information made available under this Software License Exhibit.

Client shall not sell, transfer, publish, disclose, display, or otherwise make available any Licensed Program or copies thereof to others.

Client acknowledges that the LICENSED PROGRAMS are trade secrets of Pitney Bowes or of the third parties under whose license Pitney Bowes provides the LICENSED PROGRAMS. Client agrees to secure and protect the LICENSED PROGRAMS and copies thereof in a manner consistent with maintenance of Pitney Bowes' rights therein and to take appropriate action by instruction or agreement with its employees to satisfy its obligations hereunder.

The terms of this Software License Exhibit are applicable to the LICENSED PROGRAMS only.

**OTHER RESTRICTIONS:** Client shall not use, transmit, or permit export of the LICENSED PROGRAMS in any country where such use is not permitted under United States export regulations or any other applicable law. Use, duplication or disclosure by the Government is subject to any additional restrictions as set forth in subdivision (b) (3) (ii) of the Rights to Technical Data and Computer Software clause at 252.227-7013. Client shall not install, download or execute software other than that provided under this Exhibit on the CPU or storage devices associated with this product.

**TERMINATION:** This Software License Exhibit is effective upon delivery of the LICENSED PROGRAMS and shall remain in force until terminated. Client may terminate this Software License Exhibit at any time by destroying the programs and documentation together with all copies. This Software License Exhibit will terminate automatically if any term of this Software License Exhibit is violated by Client. Termination of the Software License Exhibit shall be in addition to, and not in lieu of any other legal or equitable remedies available to Pitney Bowes.

**LIMITED WARRANTY:** Pitney Bowes warrants for a period of one (1) year from the date of delivery that the LICENSED PROGRAMS will perform substantially in accordance with the user documentation.

This warranty is void if the LICENSED PROGRAMS fail to perform as a result of accident, misuse, or due to use with software programs or non-qualifying databases of any party other than Pitney Bowes or if used on any other equipment or system other than the one(s) specifically identified in the Lease Supplement. To the extent that any of the LICENSED PROGRAMS require current data recommended by Pitney Bowes to operate according to the user documentation, if Client does not obtain and install any necessary current data, this warranty is void.

**EXCEPT AS: (1) PROVIDED IN THE COMMONWEALTH'S TERMS AND CONDITIONS, STANDARD CONTRACT FORM, AND RFR OFF39, AND (2) HEREIN SPECIFICALLY PROVIDED, THE LICENSED PROGRAMS ARE PROVIDED WITHOUT ANY WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

Pitney Bowes does not warrant that the functions contained in the LICENSED PROGRAMS will meet Client's requirements, or that the operation of the LICENSED PROGRAMS or any data base supplied will be uninterrupted or error free.

Pitney Bowes may, from time-to-time, revise or update the LICENSED PROGRAMS including user documentation, and in so doing, incurs no obligation to furnish such revisions or updates to the Client after one (1) year warranty except as provided for Software Maintenance Agreement subscribers. Upon issuance of revisions or updates to the LICENSED PROGRAMS or user documentation, Pitney Bowes will provide written notice to Client of the availability of such revisions, updates, or documentation, as well as the duration of such availability. Any revisions or updates issued during the warranty period will be warranted for the remainder of the warranty period.

**LIMITATION OF REMEDIES: IN NO EVENT WILL PITNEY BOWES BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES, INCLUDING ANY LOST PROFITS, ARISING OUT OF THE USE OR PERFORMANCE OF SUCH LICENSED PROGRAMS BY CLIENT OR ANY THIRD PARTY EVEN IF PITNEY BOWES HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

**GENERAL:** This Exhibit and performance hereunder shall be governed by and

construed in accordance with the laws of the Commonwealth of Massachusetts.

The waiver or failure of Pitney Bowes to exercise in any respect any right provided for herein shall not be deemed a waiver of any future right hereunder.

If any portions of this Software License Exhibit are invalid under any applicable statute or rule of law to that extent they shall be deemed omitted from this Software License Exhibit.

LICENSEE HAS READ THIS EXHIBIT AND UNDERSTANDS AND AGREES  
TO ABIDE BY ITS TERMS



In the event of conflict between (i) the OFF39 RFR, as amended, the Commonwealth Standard Contract Form and the Commonwealth Terms & Conditions, and the Contractor's Response to the RFR, as clarified or amended in response to Department requests for technical corrections, clarifications, and best and final offers, collectively "OFF39", and (ii) this Master License Agreement, OFF39 shall prevail. The order of priority for documents governing this agreement shall be as stated in paragraph 15 of the Commonwealth Terms & Conditions.

MASTER LICENSE AGREEMENT  
(10/14)

This Master License Agreement (the "Agreement") is made and entered into effective this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, by and between:  
Pitney Bowes Inc., through its Document Messaging Technologies \_\_\_\_\_ ("Client")  
division, a Delaware corporation ("PBDMT")  
37 Executive Drive  
Danbury, CT 06810

1. **Definitions.** As used in this Agreement, the following terms have the meanings set forth below:

**"Affiliate"** means an entity that Controls, is Controlled by or is under common Control with a party;

**"Application"** means the application, if any, identified in an Order;

**"Computer"** means the server or computer identified in an Order on which Licensed Products are authorized to be installed and used;

**"Control"** means the ownership of more than fifty percent (50%) of an entity's stock or other voting interest;

**"Data Output"** means the maps, reports or other information generated by analyzing or processing Subscription Data, including geocode coordinates or address corrections appended to Licensee database records.

**"Data Record"** means each separate, individual digital data record which is used, referenced or accessed by the Licensed Products;

**"Documentation"** means the current technical and user documentation for the Licensed Products, Support Guidelines and other specifications. The Documentation may be modified from time-to-time to incorporate Enhancements;

**"Enhancements"** means any updates, upgrades, modifications, new releases and corrective programming to the Software, Subscription Data or Documentation that are provided as part of Maintenance Services;

**"Installation Site"** means the location identified in an Order where the Licensed Products are authorized to be installed and used;

**"Licensee"** means Client or the Affiliate of Client identified in an Order that is authorized to use the Licensed Products identified therein;

**"Licensor"** means PBDMT or the Affiliate of PBDMT identified in an Order that is granting the license set out therein;

**"Licensed Products"** means the Software and Enhancements;

**"Maintenance Services"** means the services described in Section 8(b), below;

**"MIPS"** means the processing speed of a computer expressed in millions of instructions per second;

**"Order"** means the document pursuant to which a Licensee licenses Licensed Products and obtains related services. Each Order will be in a format substantially similar to the form set out in Exhibit 1;

**"Processor Cores"** or **"CPU Cores"** means the number of cores on each processor or CPU in the Computer;

**"Remote Access"** means access to and use of the Licensed Products, including, without limitation, the submission and/or receipt of data, documents or processing instructions, directly or indirectly via a server, Internet, independent software application or otherwise, to the Computer, from locations other than the Installation Site;

**"Service Provider"** means a Licensee that uses the Licensed Products to perform services, including, without limitation: to verify address information and/or provide postal-related services; develop, design, archive, process and/or print bills, statements or other business documents; merge or convert print stream data; append geographic coordinates to address records or other data and/or perform other data processing services; for entities other than Licensee, such as an Affiliate;

**"Software"** means the computer software identified in an Order;

**"Subscription Data"** means data files, including, but not limited to, postal, census, geographic, demographic, and other data, that are either identified in an Order or otherwise licensed with certain of the Licensed Products;

**“Support Guidelines”** means the then current technical support guidelines for the Licensed Products located at <http://www.pbinsight.com/resources/get/9898>;

**“Transaction”** means a record or user query that is submitted to the Licensed Products;

**“User”** means an individual authorized by Licensee to use the Licensed Products in accordance with an Order regardless of whether the individual is actively using the Licensed Products at any given time; and

**“Warranty Period”** means either: (1) the ninety (90) day period following initial delivery of the Software or (2) the minimum warranty period required by RFR OFF39, as amended, whichever is greater.

2. Scope of Agreement; Orders by Licensee. The entire agreement between the parties consists of the following documents in the following order of precedence:

1. the Commonwealth's Terms and Conditions;
2. the Commonwealth's Standard Form Contract;
3. the Commonwealth's RFR OFF39, as amended;
4. the Contractor's Response to the RFR solicitation, excluding any language stricken by the Commonwealth as unacceptable and inclusive of all technical corrections, clarifications, and best and final offers; and
5. Contractor's Master License Agreement

In the event of a conflict in language between any of the above-mentioned documents, the provisions and requirements set forth or referenced in the document of highest priority in the conflict, starting with the Commonwealth Terms and Conditions, which has the highest priority of all such documents, shall govern. In the event that an issue is addressed in the Response that is not addressed in the RFQ, no conflict in language shall be deemed to occur.

From time to time during the term of this Agreement, Client may license Licensed Products and obtain Maintenance Services by entering into one or more Orders, which will become effective when executed by both parties. Each Order will constitute a separate contract between the parties, and will be governed in accordance with the order of precedence identified in this section. Any conflict between the terms of an Order and this Agreement will be resolved in favor of the Order. Affiliates of Client are authorized to place Orders under this Agreement (each a “Client Affiliate”). By submitting an Order under this Agreement, Client Affiliate is deemed to agree to be bound by the terms of this Agreement. The term “Licensee” as used in this Agreement and the applicable Order will be deemed to refer to either Client or such Client Affiliate entering into the Order.

3. Grant of License. Subject to the terms and conditions of this Agreement and all Orders, Licensor hereby grants to Licensee a non-exclusive, non-transferable license to use the Licensed Products in accordance with the terms of this Agreement and the applicable Order. Unless otherwise identified in an Order, the Subscription Data is licensed for twelve (12) month terms and the license to the Subscription Data may be renewed for additional twelve (12) month terms as part of Maintenance Services in accordance with Section 8. The grant of rights to the Licensed Products is not a sale of the

Licensed Products. Licensor and its third party providers reserve all rights not expressly granted by this Agreement.

#### 4. Use of Licensed Products.

a) Licensee is permitted to use the Licensed Products and Data Output only for its own internal business purposes. The Licensed Products will be installed and used only at the Installation Site on the Computer containing up to the number of MIPS or Processor Cores set out in the applicable Order and utilizing the operating system set out therein. If the Licensed Products are installed in a virtual environment, the number of Processor Cores within the environment that may be used, in whole or in any part, to access the Licensed Products will be set forth in the applicable Order. Remote Access to the Licensed Products and use of the Licensed Products as a Service Provider are prohibited unless otherwise authorized in the applicable Order. Additional terms of authorized use are as set forth in the applicable Order, and may include limitations on: (i) the number of Users; (ii) the Application authorized to access the Licensed Products and use the Data Output; and (iii) the number of Transactions processed or Data Records accessed using the Licensed Products. Licensed Products licensed for desktop use by a specific number of Users may be installed on the number of devices equal to the specific number of User licenses purchased, or may be installed on multiple devices so long as the number of Users do not exceed the number of licenses purchased.

b) Licensee may add additional Processor Cores or MIPS to the Computer, transfer the Licensed Products to a different computer with more MIPS or Processor Cores, utilize the Licensed Products with a different operating system, process additional Transactions or add Users or Applications upon PBDMT written consent and the payment of applicable fees. If the Installation Site is located in the United States, such Installation Site may be changed to another location within the United States upon written notice to Licensor, but may not be changed to a location outside the United States absent Licensor's prior written consent. If the Installation Site set forth in the Order is located outside of the United States, such Installation Site may be changed to another location within the original country upon notice to Licensor, but may not be changed to a different country absent Licensor's prior written consent.

c) Licensee may make a reasonable number of copies of the Licensed Products and Documentation solely for back up or disaster recovery purposes. Licensee must reproduce all copyright, trademark, trade secret and other proprietary notices in such copies. The back up or disaster recovery copies can only be used to perform disaster recovery testing or if the Computer becomes inoperative. If the Computer becomes inoperative, the Licensed Products can only be used on a back-up computer utilizing the same operating system with equal to or a fewer number of Processor Cores or MIPS as the Computer. Except to perform disaster recovery testing in accordance with Licensee's disaster recovery procedures, Licensee is not permitted to use the back up or disaster recovery copies of the Licensed Products for production or testing concurrently with the production or testing copies of the Licensed Products.

d) Licensee may install, for a period not to exceed fifteen (15) days from date of installation, Enhancements in a test environment for the sole purpose of determining if such Enhancements will be deployed by Licensee on the authorized Computer(s). Thereafter, Licensee is permitted to install only the authorized number of licensed copies of the Licensed Products on the authorized Computers.

e) Licensee may, upon prior written notice to Licensor, permit its third party contractors to access and use the Licensed Products solely on behalf of, and for the benefit of, Licensee, so long as: (i) contractor agrees to comply fully with all terms and conditions of this Agreement and the applicable Order(s) as if they were Licensee; (ii) Licensee remains responsible for each contractor's compliance with this Agreement and the applicable Order(s) and any breach thereof; (iii) any User limitation includes User licenses allocated to Contractors; and (iv) the contractor is not a competitor of PBDMT, Licensor or any Licensor Affiliate. All rights granted to any contractor hereunder terminate immediately upon conclusion of the services rendered to Licensee that gives rise to such right. Upon termination of such rights, contractor must immediately cease all use of the Licensed Products, un-install and destroy all copies of the Licensed Products, Documentation and any other Licensor information in its possession, and must certify in writing upon Licensor request of compliance with this section.

f) In addition to the terms of this Agreement and the Order(s), product-specific license terms which may be applicable to certain Licensed Products can be found at <http://www.pb.com/license-terms-of-use/> and will be agreed to between the Parties and approved by the Commonwealth's contract manager, where applicable.

#### 5. General Use Restrictions.

a) Licensee will not: (i) make derivative works of the Licensed Products; (ii) reverse engineer, decompile or disassemble the Licensed Products or any portion thereof; (iii) make copies of the Licensed Products or Documentation except as otherwise authorized in Section 4(c) or an Order; (iv) disclose the Licensed Products, Documentation or any other Licensor information marked confidential or proprietary to any third party; (v) sublicense, rent, lease, lend, or host the Licensed Products to or for other parties; (vi) attempt to unlock or bypass any initialization system, encryption methods or copy protection devices in the Licensed Products; (vii) modify, alter or change the Licensed Products; (viii) alter, remove or obscure any patent, trademark or copyright notice in the Licensed Products or Documentation; or (ix) use components of a Licensed Product independent of the Licensed Products they comprise.

b) Licensee is prohibited from using the Licensed Products within or in conjunction with in-flight navigation or any vehicle navigation system providing turn-by-turn directions.

c) Licensee will not use Data Output outside of the Application designated in the Order (if applicable), or disclose Data Output to third parties except as authorized in the applicable Order(s), including the longitude and latitude or "x,y" coordinates contained therein. Any authorized disclosure of Data Output to third parties must prohibit those third parties from selling, sublicensing or

disclosing the Data Output to additional third parties and from using the Data Output for any purpose other than as authorized in the applicable Order(s). Licensee may use Data Output to derive conclusions or recommendations that form part of Licensee's services to its customers, but Licensee may not provide Data Output as part of those services. Licensee may translate Subscription Data into other data formats so long as use of the Subscription Data in all formats does not exceed the limits of this Agreement and the applicable Order(s).

#### 6. Payment Terms. Intentionally Omitted. .

#### 7. Indemnification.

a) Licensor will indemnify, defend and hold Licensee, its officers, directors and employees, harmless from all losses, damages, and reasonable costs and expenses to the extent they arise out of a claim by a third party that the Licensed Products, when used in accordance with the Documentation and in compliance with the terms of this Agreement and the applicable Order(s), infringe or misappropriate any copyright, trade secret, trademark or patent registered or valid within the country the Licensed Products are authorized to be installed as set out in the applicable Order. Licensor will defend at its own expense, any claim or litigation to which this indemnity relates. Licensee must notify Licensor promptly of any such claim and provide reasonable cooperation to Licensor, upon Licensor's request and at Licensor's cost, to defend such claim. Licensor will not agree to any settlement which requires acknowledgment of fault or an incurred liability on the part of an indemnified party not otherwise covered by this indemnification without indemnified party's prior consent. Licensee may elect to participate in the defense of any claim with counsel of its choosing at its own expense. Nothing contained in this Agreement shall abrogate the right of the Commonwealth's Office of the Attorney General to defend and control the defense of the Licensee in connection with such claims.

b) If the Licensed Products are subject to a claim of infringement or misappropriation, or if Licensor reasonably believes that the Licensed Products may be subject to such a claim, Licensor reserves the right to: (i) replace the Licensed Products with functionally equivalent Software or Subscription Data; (ii) modify such Licensed Products while retaining substantively equivalent functionality; (iii) procure at no cost to Licensee the right to continue to use such Licensed Products; or (iv) if the foregoing is not commercially reasonable, direct Licensee to terminate use of such Licensed Products. If Licensor directs Licensee to terminate use of such Licensed Products (or a permanent injunction is issued against such use), Licensee will immediately terminate such use and Licensee's remedies, in addition to the indemnification set out herein, will be limited to a pro rata refund of the current maintenance fees unused at the time of termination plus license fees previously paid for such Licensed Products that are subject to the infringement or misappropriation claim based on: (i) a term of sixty (60) months following execution of the applicable Order for a perpetual license; or (ii) any pre-paid but unused fees for the balance of a limited term license.

c) Licensor will have no obligation to indemnify Licensee under this Section 7 if the infringement or misappropriation results

from Licensee's (i) modification of the Licensed Products; (ii) combination, operation or use of the Licensed Products with non-Licensors software products if such claim of infringement or misappropriation would have been avoided had such combination, operation or use not occurred; (iii) use of the Licensed Products in breach of this Agreement or an Order; or (iv) use of other than the most current release of the Licensed Products if such claim of infringement or misappropriation could have been avoided by Licensee's use of such current release of the Licensed Products, provided Licensor delivered such superseding version to Licensee and notified Licensee in writing of the need to use such version.

#### 8. Maintenance; Renewal of Term License.

a) Licensee will obtain Maintenance Services for Licensed Products for the initial term set forth in the Order and for the fees set forth therein. Following such initial term, Licensee may elect to purchase additional Maintenance Services in twelve (12) month terms at Licensor's then current rates, as authorized by OFF39, in accordance with this Section 8.

b) Maintenance Services consist of: (i) reasonable amounts of telephone support to assist Licensee with the use of the Licensed Products in accordance with the Support Guidelines; (ii) Enhancements provided to other licensees of the Licensed Products who have paid for Maintenance Services for the current maintenance term; (iii) Subscription Data, as applicable; and (iv) the correction of errors or non-conformities with the Licensed Products in accordance with the Support Guidelines. Telephone support is provided only to the individuals located at a single designated location. If Licensor is unable to correct a reported error or non-conformity that is classified in the Support Guidelines as a critical or high severity level problem within thirty (30) days following notice from Licensee or an additional period of time reasonably agreed to by the parties, Licensee may terminate Maintenance Services for such Licensed Products and receive, as its remedy, a pro-rata refund of the fees paid for Maintenance Services for the balance of the existing maintenance term, as permitted by OFF39..

c) Maintenance Services for the Licensed Products may be terminated by Licensee prior to the end of a term upon notice to Licensor. Licensor may terminate Maintenance Services for the Licensed Products upon at least ninety (90) days written notice to Licensee prior to the end of any term or upon one hundred eighty (180) days written notice to Licensee for any superseded versions of the Licensed Products or if the Licensed Products are licensed for use on an operating system or Computer that is no longer supported by their developer or manufacturer.

d) If Licensee terminates or declines to renew Maintenance Services for the Licensed Products and subsequently elects to renew Maintenance Services, Licensee will pay to Licensor the fees for the subsequent twelve (12) month renewal term..

e) Prior to the expiration of the term to any Licensed Products licensed on a limited term, Licensee may renew or extend the term license for such Licensed Products upon agreement by Licensor at rates and for the duration set forth in a quote issued by Licensor. Licensee may issue Licensor a purchase order for such renewal as

set forth in the quote, provided such purchase order will: (i) incorporate the terms of the Agreement and the applicable Order, as may be amended; and (ii) not introduce any new terms, other than OFF39 agreed-upon changes or changes required by regulatory change (e.g., Commonwealth' bill paying policy establishes late payment interest rates and changes from time to time).. If a Licensee has a term license to the Licensed Products, Licensee must renew the term license in order to purchase and obtain additional Maintenance Services for such Licensed Products.

#### 9. Training; Services.

a) Licensee may attend the training class identified in an Order. Licensee must attend and, if the training is on-site at Licensee's location, permit Licensor to perform the training course prior to the expiration date set out in the Order (which will provide adequate time for attendance of the training course). If Licensee willfully fails to have personnel attend the training class or permit Licensor to perform the training class prior to such expiration date, Licensor will not be obligated to perform the training. Unless otherwise specified in an Order, training will be provided at one of Licensor's training locations located within the Commonwealth of Massachusetts. Licensee and Licensor each will be solely responsible for all respective travel-related expenses incurred in attending training at Licensor's or Licensee's facilities.

b) Licensor, upon Licensee request, may perform additional consulting and professional services for Licensee ("Services") to the extent permitted by and consistent with the terms of RFR OFF39. Any Services performed by Licensor will be set forth in a Statement of Work ("SOW") executed by the parties and governed by the terms of this Agreement and addendum to this Agreement executed by the parties.

#### 10. Warranties; Disclaimers.

a) Licensor represents and warrants that the copyright and all intellectual property rights in and to the software is owned by the licensor or is distributed by licensor under a valid current license and that it has the right to grant to Licensee the rights granted hereunder.

b) Licensor represents and warrants that during the Warranty Period the Licensed Products will perform all material functions set out in the Documentation for such Licensed Products and otherwise operate in substantial accordance with such Documentation. If, during the Warranty Period the Licensed Products fail to comply with this warranty, Licensee must notify Licensor in writing of any alleged errors or non-conformities with the Licensed Products. Licensor will have thirty (30) days from receipt of such notice or an additional period of time as reasonably agreed to by the parties to correct such errors or non-conformities in accordance with the Support Guidelines. If Licensor is unable to timely correct such errors or non-conformities, Licensee may elect to terminate the license to such Licensed Products. If Licensee terminates the license to such Licensed Products during the Warranty Period in accordance with this Section, Licensee will, as its remedy, receive a refund of all fees previously paid for such Licensed Products.

c) LICENSOR DOES NOT WARRANT THAT THE LICENSED PRODUCTS WILL OPERATE ERROR-FREE OR THAT



LICENSOR WILL CORRECT ALL PRODUCT ERRORS INCLUDING THOSE DESIGNATED AS LOW SEVERITY LEVEL ISSUES. EXCEPT FOR (1) THE WARRANTY REQUIREMENTS CONTAINED IN RFR OFF39, AND (2) THE EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT, THE LICENSED PRODUCTS ARE PROVIDED "AS IS" AND LICENSOR AND ITS THIRD PARTY SUPPLIERS DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE LICENSED PRODUCTS AND SERVICES FURNISHED UNDER THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, RELIABILITY COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE IN TRADE.

d) LICENSOR WILL NOT BE LIABLE FOR ANY CLAIMS OR DAMAGES CAUSED BY THE UNAUTHORIZED USE OF THE LICENSED PRODUCTS OR ACTS OF ABUSE OR MISUSE BY LICENSEE. IN ADDITION, LICENSOR WILL NOT BE LIABLE FOR ANY LOSS OR DAMAGE IN CONNECTION WITH OR ARISING OUT OF THE INTERRUPTION OR LOSS OF USE OF THE LICENSED PRODUCTS OR THE LOSS OR CORRUPTION OF LICENSEE'S DATA OR FILES PROCESSED OR STORED BY THE LICENSED PRODUCTS.

e) THE LICENSED PRODUCTS MAY CONTAIN A DISABLING DEVICE OR DEVICE REQUIRING ENABLEMENT: (i) TO COMPLY WITH REQUIREMENTS OF REGULATORY AUTHORITIES; (ii) TO PREVENT USE OF THE LICENSED PRODUCTS BEYOND THE TERM OF A LICENSE IDENTIFIED IN AN ORDER OR ON A COMPUTER OTHER THAN THE COMPUTER AUTHORIZED IN AN ORDER; AND/OR (iii) TO PREVENT USE OF THE LICENSED PRODUCTS IN EXCESS OF ANY TRANSACTIONS (OR OTHER RESTRICTIONS) OR BY MORE THAN THE NUMBER OF USERS SET OUT IN AN ORDER.

11. Limitation of Liability.

A) DISCLAIMER. NEITHER PARTY NOR PBDMT'S THIRD PARTY SUPPLIERS WILL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL OR INDIRECT DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUE, OR BUSINESS INTERRUPTION.

B) EXCLUSIONS. THE FOREGOING DISCLAIMER SET FORTH IN SECTION 11(A) DOES NOT APPLY TO LICENSEE'S BREACH OF SECTION 5(A) (GENERAL USE RESTRICTIONS) OR LICENSOR'S INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 7.

12. Term; Termination.

a) This Agreement will commence as of the date set forth above and will continue in effect until terminated as set forth in this Agreement or in OFF39, or as agreed to in writing signed by both parties. Each Order or SOW will be effective as of the date set forth in such Order or SOW and will remain in effect until its expiration. Any Order entered into before the termination of this Agreement will remain in full force and effect for its entire term and this Agreement

will remain in full force and effect for purposes of such Order until the termination of such Order, or in the case of perpetual licenses granted under an Order, for the duration of the license.

b) Intentionally omitted.

c) Upon: (i) expiration of a term license to any of the Licensed Products, unless such term license is renewed; (ii) termination or expiration of the license to any of the Licensed Products for any reason; or (iii) termination of an Order, Licensee will immediately cease use of the applicable Licensed Products and delete and/or remove all copies of such products from its servers, terminals and other computer systems and promptly return or destroy all copies of the Licensed Products, Documentation and any other Licensor confidential and proprietary information in Licensee's possession. If requested, Licensee will certify compliance with the foregoing in writing.

d) Sections, 7 (Indemnification), 10 (Warranties, Disclaimers), 11 (Limitation of Liability), 12 (Term, Termination), 16(e) (General), 17 (Applicable Law), 18 (Verification) and other sections that by their nature are intended to survive will survive termination of this Agreement or an Order indefinitely or to the extent set out therein.

13 Intentionally Omitted.

14. Assignment. Licensee is not permitted to transfer or assign (by operation of law or otherwise) any of its rights or obligations under an Order or this Agreement without the prior written consent of Licensor, which consent will not be unreasonably withheld, delayed or denied. Any such transfer or assignment without Licensor's written consent will be void and of no force and effect.

15. Intentionally Omitted.

16. General.

a) No waiver of any breach of any provision of this Agreement or an Order by either party or the failure of either party to insist on the exact performance of any provision of this Agreement or an Order will constitute a waiver of any prior, concurrent or subsequent breach of performance of the same or any other provisions hereof, and no waiver will be effective unless made in writing.

b) Any notice alleging a breach of this Agreement must be in writing and be sent by overnight courier or delivered in person to the party's address set forth in this Agreement. Any other notice required to be provided by Licensor under this Agreement may be sent by postal mail service or e-mail to the individual designated by Licensee. Any notice delivered to Licensor hereunder must be sent to the attention of "Contract Administration."

c) If any provision of this Agreement or an Order, or portion thereof, is held to be invalid, illegal or unenforceable by a court of competent jurisdiction, such provision will be severed and the remaining provisions of the Agreement or Order will remain in full force and effect.

d) If physical delivery of the Licensed Products is required, delivery of the Licensed Products will be in accordance with OFF39. Licensor may, to the extent available, deliver the Licensed Products, Enhancements or key codes electronically via the Internet or permit Licensee to download the Licensed Products, Enhancements or key codes from Licensor's website.

e) Licensee agrees not to export, re-export, or provide the Licensed Products to: (i) any country to which the United States has embargoed goods; (ii) any person on the U.S. Treasury Department's list of Specially Designated Nationals; (iii) any person or entity on the U.S. Commerce Department's Denied Persons List; or (iv) any person or entity where such export, re-export or provision violates any U.S. Export control or regulation.

f) Each party will act as an independent contractor and employees of each party will not be considered to be employees of the other party. No agency, partnership, joint venture or other joint relationship is created by this Agreement. Neither party may make any commitments binding on the other, nor may either party make any representation that they are acting for, or on behalf of, the other.

17. Applicable Law. This Agreement will be governed by, and construed in accordance with, the laws of the Commonwealth of Massachusetts without regard to its principals of conflict of laws. In the event of any dispute arising out of or relating to this Agreement, a suit will be brought only in a federal or state court of competent jurisdiction located in the Commonwealth of Massachusetts.

18. Verification. Upon ten (10) days written notice, and at a mutually agreed-upon time Licensor or its designated third party may verify Licensee's compliance with the terms of the Agreement and applicable Order at all locations and for all environments in which Licensee uses the Licensed Products. Such verification will take

Agreed to and accepted:

**PITNEY BOWES INC., THROUGH ITS DOCUMENT  
MESSAGING TECHNOLOGIES DIVISION**

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

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

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

place no more than one (1) time per twelve (12) month period during Licensee's normal business hours in a manner which minimizes disruption to Licensee's work environment. Licensor may use an independent third party under obligations of confidentiality to provide assistance. Licensor will notify Licensee in writing if any such verification indicates that Licensee has used the Licensed Products in excess of the use authorized by the Agreement or Order. Licensee agrees to promptly enter into an Order and pay all associated fees directly to Licensor for the charges that Licensor specifies including, but not limited to: (i) any excess use; (ii) maintenance and/or subscription fees for the excess use for the duration of such excess or (2) two years, whichever is less; and (iii) any additional charges authorized by OFF39, determined as a result of such verification.

19. U.S. Government Restricted Rights. If Licensee is an agency of the United States Government, the Licensed Products will be deemed "commercial computer software" or "commercial computer software documentation" and the Governments rights with respect to such Licensed Products and Documentation are limited by the terms of this Agreement, pursuant to FAR § 12.212(a) and/or DFARS § 227.7202-1(a), as applicable.

20. Entire Agreement. The documents identified in Section 2, Scope of Agreement, above, together with this Agreement and each Order and all appendices, exhibits, schedules and attachments hereto constitute the sole and complete agreement between the parties with regard to its subject matter, may not be modified or amended except by a writing signed by both parties except as otherwise indicated herein, and supersedes all proposals, understandings, representations, prior agreements or communications relating to the Licensed Products and the subject matter of this Agreement.

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

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

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

**EXHIBIT 1**

**ORDER #**

This Order #\_\_ (the "Order") to Master License Agreement # \_\_\_\_\_, and any amendments thereto (collectively, the "Agreement") is made and entered into effective this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, by and between:

**Pitney Bowes Inc., through its Document Messaging Technologies** ("Licensee")  
**division, a Delaware corporation ("Licensor")**  
 37 Executive Drive  
 Danbury, CT 06810

**1. LICENSED PRODUCTS:**

Licensed Products	Term of License	Number of Copies	Type of Operating System	Number of [Users] [Transactions] [Data Records]	Application

**2. LICENSE AND MAINTENANCE/SUBSCRIPTION FEES:**

Licensed Products	License Fees	Maintenance Fees (12 months)	Subscription Fees (12 months)

**3. COMPUTER:**

Manufacturer	Model Number	Serial Number	Number of Processor Cores	MIPS

**4. INSTALLATION SITE(S):**

**5. TRAINING:**

Class (at Licensor location)	Number of Students	Fee	Expiration Date

**6. ADDITIONAL PROVISIONS:**

**7. GENERAL:**

- A. The terms of this Order, including the license or rights granted herein and applicable fees, are conditioned upon Licensee's execution and Licensor's receipt of this Order by \_\_\_\_\_. If Licensee fails to execute and return this Order to Licensor by such date, Licensor may, in its sole discretion, decline to honor the terms of this Order, including the fees and license set out herein.
- B. The Agreement is supplemented as set forth herein. Otherwise, all the terms and conditions of the Agreement not amended herein will remain in full force and effect and are incorporated herein.

Agreed to and accepted by:

**Licensor**

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

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

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

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

**Licensee**

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

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

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

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

## ACKNOWLEDGEMENT OF USPS® DPV™, LACS<sup>Link</sup>™ SUITE<sup>Link</sup>™ TERMS

This document serves as an amendment to the Software License and Maintenance Agreement (“Agreement”) between Pitney Bowes Inc. (“Company”) and \_\_\_\_\_ (End-User) and sets forth additional terms required by the United States Postal Service® (“USPS”) regarding End-User’s use of United States Postal Service Products known as “DPV,” “LACS<sup>Link</sup>,” and “SUITE<sup>Link</sup>,” collectively referred to as Product(s) or Licensed Material(s) which may be supplied through Company in the products of AddressVision Inc. (AVI), RAF Technology Inc. (RAF), or other third parties (collectively Third Party Providers).

End-User agrees to use the Products only according to the terms set forth in this Agreement. In the event of conflict between the terms of this Agreement and the Software License and Maintenance Agreement, this Agreement shall override.

1. For purposes of this Agreement:

- a. DPV means the USPS confidential and proprietary technology Product designed to help mailers validate the accuracy of address data, right down to the physical delivery point. The DPV process cannot assign a ZIP + 4® Code nor will it respond to a non-ZIP + 4® coded address.
- b. LACS<sup>Link</sup> means the USPS confidential and proprietary technology product designed to identify conversions of existing addresses and to provide the updated address representation for that delivery point, which includes but is not limited to the LACS<sup>Link</sup> Product, the interface and the Licensed Materials, and
  - i. Any materials, know-how, computer code, and technical information that USPS or other Third Party provides in written or oral form for use in connection with the Products; and
  - ii. All whole or partial copies on any media, adaptations, improvements, modifications, translations, derivative works, compilations, partial copies within modification, including merges with other materials from whatever source and updated works based on the foregoing that are provided using the Products or are created by a Third Party in accordance with this Agreement.
- c. SUITE<sup>Link</sup> means the USPS confidential and proprietary technology product for improving delivery addresses in multi-occupation buildings by providing information concerning those addresses in response to inquiries as to whether a suite number and/or other secondary address information is available. The Suite<sup>Link</sup> CASS Enhancement System includes the full system and its components, which includes but is not limited to the Suite<sup>Link</sup> Product, the CASS Certified interface and the Licensed Materials.

2. End-User understands that the Licensed Materials have been incorporated into products sold to End-User and that the Company receives the Licensed Materials from a Third Party Provider (“USPS Licensee”); the USPS Licensee who provides the DPV and LACS<sup>Link</sup> Product provides it through a nonexclusive, revocable, royalty-free special licensing with USPS. The Licensed Materials, in order to protect USPS, are confidential, proprietary, intellectual property of the USPS and compliance with restrictions is covered under Title 39 of the United States Code.
3. End-User acknowledges that the address information contained within the Licensed Material is subject to 39 USC § 412. End-User shall take all steps necessary to secure the Licensed Material in a manner that fully complies with Section 412 constraints prohibiting the disclosure of address lists.
4. End-User acknowledges that the DPV, LACS<sup>Link</sup> and SUITE<sup>Link</sup> Products and subsequent revision thereof are confidential and the proprietary property of the USPS. End-User further acknowledges that the USPS represents that it is the sole owner of copyrights, USPS marks and other proprietary rights in the DPV, LACS<sup>Link</sup> and SUITE<sup>Link</sup> Products, that nothing contained in this Agreement shall give End-User any right, title or interest in or to Licensed Materials, except as an End-User under the terms of this Agreement, and that the Products shall remain the property of USPS.
5. End-User understands that Licensed Material data expire after 105 days from the release date of the Licensed Material. The End-User also understands that after the Licensed Material has aged more than 105 days from the release date, some mechanisms within the Products supplied will stop working and produce an error code until the Products are updated. Monthly updates more than 60 days old shall be destroyed using common practice for disposal of sensitive materials. Examples of acceptable methods of destruction include shredding, punching, incinerating or breaking the CDs/DVDs.

6. End-User shall not use, and will not permit any of its employees, former employees, agents, representatives and customers use the DPV, LACS<sup>Link</sup> and SUITE<sup>Link</sup> Product(s) technology to artificially compile or maintain a list of addresses not already in End-User's possession or to create other derivative products based upon information received from or through the DPV, LACS<sup>Link</sup> and SUITE<sup>Link</sup> Product(s) technology.
7. No proprietary End-User address list(s) or service products or other system of records that contain(s) addresses and/or address attributes updated through Licensed Material processing shall be rented, sold, distributed or otherwise provided in whole or in part to any third party for any purpose containing addresses derived from Licensed Material processing. End-User may not use the Licensed Materials technology to artificially generate address records or to create mailing lists.
8. The scope of this Agreement does not permit any use of information, data, software, code, systems, updates, or the like obtained or derived from or based on or incorporating directly or indirectly, in whole or in part, the Licensed Materials, including but not limited to any part of the above named Products or Systems, to create or maintain anything that incorporates in whole or in part directly or indirectly the Licensed Materials, other than the CASS Certified Interfaces. The scope of this Agreement also does not include any right to use the Licensed Materials to conduct any research, experiments, evaluations, comparisons or inventive endeavors.
9. DPV, and LACS<sup>Link</sup> processing requires End-User to have access to address information that appear on mailpieces. To ensure the confidentiality of this address information, no employee, former employee, agent, representative or customer of End-User may, at any time, disclose to any third party any address information obtained in the performance of this agreement. End-User agrees to control and restrict access to address information to persons who need it to perform work under this agreement and prohibit the unauthorized reproduction of this information. Due to the sensitive nature of the confidential and proprietary information contained in the Product, End-User acknowledges that unauthorized use and/or disclosure of the Product will irreparably harm the USPS' intellectual property.
10. End-User shall be strictly limited to using the LACSLink Interface as a component of the Third Party Product. End-User shall also be strictly limited to using the CASS Certified Interface only as a component of the Third Party Product and shall be strictly limited to using the Suite<sup>Link</sup> Product only in conjunction with Third Party Product.
11. THIRD PARTY PROVIDER AND USPS SHALL NOT BE LIABLE FOR ANY DESIGN, PERFORMANCE OR OTHER FAULT OR INADEQUACY OF THE PRODUCT WHICH IS PROVIDED "AS IS", OR FOR ANY DAMAGES OF ANY KIND ARISING OUT OF OR IN ANY WAY RELATED TO OR CONNECTED WITH SUCH FAULT OR INADEQUACY OF THE PRODUCT. THIRD PARTY PROVIDER AND USPS DISCLAIMS THE EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR THE PARTICULAR PURPOSE OR OTHERWISE.
12. Third Party Provider agrees, and has agreed, to hold harmless, defend and indemnify End-User for infringement of any U.S. copyright, trademark, or service mark in the Product provided to End-User under this Agreement. The foregoing obligation shall not apply unless Third Party Provider has been informed within five (5) calendar days by End-User of the suit or action alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in the defense thereof. In addition, End-User agrees to hold harmless, defend and indemnify Third Party Provider and USPS from all claims, losses, damage, actions, causes of action, expenses, and/or liability resulting from, brought for, or on account of any injury or damage received or sustained by any person, persons or property growing out of, occurring, or attributable to End-User's performance under or related to this Agreement, resulting in whole or in part from any breach of this Agreement or from the negligence or intentional misconduct, including any unauthorized disclosure or misuse of Product, including data derived from the Product, by End-User, or any employee, agent, or representative of End-User.
13. USPS or its designated representatives, on an announced or unannounced basis, shall have the right to visit and examine End-User's sites. USPS or its designated representative shall have the right to examine, on or off End-User's premises, End-User's computer systems, processing files, documents, administrative records, and other materials to ensure End-User's compliance with the provisions of this Agreement. USPS or its authorized representatives will, until three (3) years after final payment under this Agreement, have access to and the right to examine any directly pertinent books, documents, papers, records or other materials of End-User involving transactions related to this Agreement.
14. End-User acknowledges that the USPS reserves the right to require Third Party Provider to suspend any End-User's ability to perform DPV, LACS<sup>Link</sup> and SUITE<sup>Link</sup> processing. Third Party Provider will not be liable or responsible for any decision the USPS makes in canceling End-User's DPV, LACS<sup>Link</sup> and SUITE<sup>Link</sup> processing, including, but not limited to, arbitrating the cancellation decision on behalf of the End-User. In the event the USPS suspends End-User's DPV, LACS<sup>Link</sup> and SUITE<sup>Link</sup> processing, (i) End-User shall not be entitled to any refund or credit from

Company; and, (ii) Company will discontinue shipping Product directories to End-User. Continuing use of the Licensed Material requires compliance with all terms of this Agreement.

15. End-User shall not export the DPV, LACS<sup>Link</sup> and SUITE<sup>Link</sup> Product outside of the United States or its territories.
16. End-User shall be required to fulfill the following stop processing requirement for DPV, and LACS<sup>Link</sup>:
  - a. Section 7.0 of the DPV Licensee Performance Requirements, which is located on the USPS RIBBS website ([www.ribbs.usps.gov](http://www.ribbs.usps.gov)), describes the requirements for handling false positive records. Section 7.5 describes the MASS<sup>TM</sup> Processing on MLOCR Equipment method of logging false positives. The document further describes a layout of file records that are to be used for logging false positives. The documents and sections referred to may be updated or changed by the USPS at their sole discretion.
  - b. The LACS<sup>Link</sup> End-User Licensee Performance Requirements follow the same process as described in Section 7.0 of the DPV Licensee Performance Requirements, which is located on the USPS RIBBS website. The DPV document describes the requirements for handling false positive records. Section 7.5 describes the MASS<sup>TM</sup> Processing on MLOCR Equipment method of logging false positives. The document further describes a layout of file records that are to be used for logging false positives.
  - c. For each false positive result of a DPV query the Third Party Provider DPV Product will continue processing and the End-User will log the mail piece name and address that resulted in the False Positive, into two files named: **drsdpvfp.txt** and **drsdpvfp.dat**. The file **drsdpvfp.txt** containing the false positive information must be provided immediately to **Pitney Bowes**. In addition, the file **drsdpvfp.dat** containing the false positive information must also be provided to **Pitney Bowes** so that **Pitney Bowes** can submit to Third Party Provider in the event that the USPS needs Third Party Provider to resolve.
  - d. USPS reserves the right to suspend the End-User's ability to perform DPV and LACS<sup>Link</sup> processing when multiple incidents of artificial address detection occur.
17. The End-User cannot modify copy or redistribute the DPV, LACS<sup>Link</sup> and SUITE<sup>Link</sup> data or Products.
18. The scope of this Agreement does not include any right to retain or maintain ownership of any Improvements developed or created or authored by Licensee during the course of this Agreement to the extent such Improvements are primarily useful with respect to the from DPV, LACS<sup>Link</sup> and Suite<sup>Link</sup> Products or Systems.
19. End-User agrees to not advertise as a licensee of the Licensed Materials and furthermore agrees to adhere to all USPS advertising guidelines.
20. This license for DPV, LACS<sup>Link</sup> and SUITE<sup>Link</sup> shall not be transferable, in whole or in part. The rights and obligations of End-User shall be terminated immediately in the event of a dissolution, merger, buy-out, or transfer of any kind of the assets of End-User.
21. All obligations of End-User referred to in this Agreement inure to the benefit of USPS.
22. USPS reserves the right to make any changes, modifications, or enhancements to the DPV, LACS<sup>Link</sup>, and Suite<sup>Link</sup> Products and the other Licensed Materials in the Agreements during the term of this Agreement.
23. This Amendment shall be effective as of the last date set forth below.
24. The obligations set forth in Sections 1 – 4, 6 – 9, 12 – 14, 20 - 22 shall survive the expiration or termination of this Agreement.

**End User**

**Pitney Bowes Inc.**

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

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

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

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

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

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

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

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

These terms apply only if you have purchased a sorter from Pitney Bowes

**In the event of conflict between (i) the OFF39 RFR, as amended, the Commonwealth Standard Contract Form and the Commonwealth Terms & Conditions, and the Contractor's Response to the RFR, as clarified or amended in response to Department requests for technical corrections, clarifications, and best and final offers, collectively "OFF39", and (ii) this Addendum to Software License and Maintenance Agreement for Hosting, OFF39 shall prevail. The order of priority for documents governing this agreement shall be as stated in paragraph 15 of the Commonwealth Terms & Conditions.**

**SORTER SOFTWARE LICENSE AND MAINTENANCE SUPPLEMENT  
for**

**Software Imbedded in a Sorter purchased from PBDMT ("Operating Software") and/or any Software Licensee May Elect to License in connection with such Sorter ("Application Software"). Application Software includes, but is not limited to, Fast Forward, Clear Scan, OCR, AddressScript, and UMove**

THIS SORTER SOFTWARE LICENSE AND MAINTENANCE SUPPLEMENT ("Supplement") is between PBDMT and You ("Licensee") with PBDMT or one of its affiliates relating to one or more of the imbedded sorter software products named on the Order. The terms of this Supplement are in addition to, and do not supersede, the terms of the Order, except that, with respect to the PBDMT Software (as defined in Section 1.1 below), this Supplement does supersede those portions of the Order that refer expressly to software (other than those portions that relate to financing with respect to the Licensed Software). In the event of a conflict between the terms of this Supplement and the Order with respect to the PBDMT Software, the terms of this Supplement shall control. LICENSEE'S SIGNATURE ON THE ORDER, OR USE OR CONTINUED USE OF THE PBDMT SOFTWARE, CONSTITUTES LICENSEE'S AGREEMENT TO THIS SOFTWARE LICENSE SUPPLEMENT.

**1 LICENSE**

**1.1 License Grant and Term:** PBDMT grants to Licensee, pursuant to, and subject to Licensee's compliance with, the terms and conditions set forth in this Supplement and subject to payment of all applicable license fees relating to the Operating and Application Software (collectively "PBDMT Software"), and Licensee accepts a non-exclusive, non-transferable license to use the PBDMT Software for the Term (the "License"). **Term:** Unless terminated as provided herein, the term of the License for the PBDMT Software shall commence on the equipment delivery date and shall continue for a period of one (1) year. Thereafter, this Supplement shall be renewed pursuant to the term on the given Order, or at Licensee's option for additional one (1) year periods unless either party gives written notice of its intention not to renew no less than ninety (90) days prior to the anniversary date. In the event Licensee elects to terminate this Supplement without cause prior to the expiration of the then-current one (1) year term, a pro-rata refund will be provided.

Application Software provided hereunder requires Licensee to provide testing materials to the United States Postal Service ("USPS") for purposes of ensuring MERLIN compliance. PBDMT assumes no liability for Licensee's failure to obtain USPS approval. You have the right to cancel this License if approval for MERLIN compliance is not obtained.

**1.2 Software Use:** Licensee is authorized to use the PBDMT Software solely for its own internal operations on the sorter indicated in the Order, this Supplement or any applicable Statement of Work or similar agreement between PBDMT and Licensee with respect to the PBDMT Software.

**1.3 Backup Copies:** Licensee shall have the right to make no more than one copy of the PBDMT Software solely for backup and archival purposes and exclusively for Licensee's internal use provided that such copies include all original copyright and other proprietary notices.

**1.4 Fees:** Commencing on the equipment delivery date, Licensee shall pay to PBDMT the license and maintenance charges authorized by OFF39, as described in the Order or if applicable, Exhibit C attached hereto. For any Software Maintenance provided after the first year, pricing will be reviewed on an annual basis, to the extent permitted by OFF39. In the event Software Maintenance is terminated by Licensee, Licensee's license rights hereunder shall also terminate.

PBDMT will invoice Licensee for annual license and maintenance charges (or for any *pro rata* portion thereof) on the delivery date and on each subsequent anniversary thereof. Invoices will be paid in accordance with the Commonwealth's Bill Payment Policy. If Licensee upgrades to a new release, *i.e.*, major enhancements and/or new functionality of the programs licensed by PBDMT, the software maintenance services provided hereunder may be transferred to the new release at the then current subscription fee, as authorized by OFF39, for the new

release less credit for license and maintenance fees previously paid hereunder.

If AddressScript™ software is licensed hereunder; advance purchase of blocks of clicks (11-digit finalized answers) is required. Licensee's initial purchase of clicks shall be set forth in the Order. Licensee agrees to purchase all such clicks from PBDMT. Licensee further understands that if it purchases or otherwise acquires clicks from any other source, Licensee's license will be terminated and PBDMT may seek remedies hereunder.

## 2 WARRANTY

**2.1 Warranty:** PBDMT warrants during the Warranty Period that the PBDMT Software will conform to all substantial operational functions of the PBDMT Software described in any documentation provided if installed and used in the operating environment specified therein. The **"Warranty Period"** for the PBDMT Software is one year (1) year from the date of delivery. If the PBDMT Software does not so conform during the Warranty Period, PBDMT shall, at its option, (i) repair the PBDMT Software or (ii) replace the PBDMT Software. This warranty is void if the PBDMT Software fails to perform as a result of accident, misuse, or due to use with hardware, software programs or non-qualifying databases of any party other than PBDMT. To the extent that the PBDMT Software requires current data to operate in accordance with the documentation, if Licensee does not obtain and install any necessary current data, this warranty is void.

**2.2 Warranty Limitation:** EXCEPT AS REQUIRED BY OFF39 AND PBDMT'S RESPONSE THERETO OR HEREIN SPECIFICALLY PROVIDED, THE PBDMT SOFTWARE IS PROVIDED WITHOUT ANY WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. PBDMT DOES NOT WARRANT THAT THE FUNCTION CONTAINED IN THE PBDMT SOFTWARE WILL MEET LICENSEE'S REQUIREMENTS, OR THAT THE OPERATION OF THE PBDMT SOFTWARE OR ANY DATABASE SUPPLIED WILL BE UNINTERRUPTED OR ERROR FREE.

## 3 PROPRIETARY RIGHTS

**3.1 Ownership of PBDMT Software.** The PBDMT Software and Materials, and all materials relating thereto (collectively, the **"PBDMT Materials"**) are proprietary to PBDMT and/or its licensors and suppliers and shall remain the sole and exclusive property of PBDMT and/or its licensors and suppliers. The PBDMT Software and

Materials are protected by United States copyright and international treaty provisions. Licensee shall not sell, transfer, publish, disclose, distribute, display, copy, use or otherwise make available the PBDMT Materials or copies thereof to others except as expressly permitted in this Supplement. Licensee shall not remove, disfigure or alter any of the proprietary notices or trademarks incorporated into the PBDMT Materials.

**3.2 Security.** Licensee shall not sell, transfer, publish, disclose, display, or otherwise make available any PBDMT Software or copies thereof to others. Licensee acknowledges that the PBDMT Software is a trade secret of PBDMT or of the third parties under whose license PBDMT provides the PBDMT Software. Licensee agrees to secure and protect the PBDMT Software and copies thereof in a manner consistent with maintenance of PBDMT's rights therein and to take appropriate action by instruction or agreement with its employees to satisfy its obligations hereunder.

**3.3 No Decompiling.** Licensee agrees not to: (a) disassemble, decompile or otherwise reverse engineer the PBDMT Software or otherwise attempt to learn the source code, structure, algorithms or ideas underlying the PBDMT Software; (b) alter or modify the PBDMT Software or Materials or create derivative works therefrom; or (c) allow or assist others to do any of the foregoing. All rights in derivative works created by Licensee will be deemed to be the property of and owned by PBDMT or the Third Party provider who provided such content.

## 4 SOFTWARE MAINTENANCE

**4.1 Software Maintenance:** Software Maintenance for the Operating Software shall be provided as part of your equipment warranty and/or equipment maintenance. Software Maintenance (as defined in Exhibit A) for Application Software is available at an additional charge in accordance with the requirements and pricing terms of OFF39.

## 5 LIABILITY Pursuant to terms of OFF39.

**5.2 Excluded Damages:** IN NO EVENT WILL PBDMT BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING ANY LOST PROFITS, ARISING OUT OF THE USE OR PERFORMANCE OF SUCH PBDMT SOFTWARE, EVEN IF PBDMT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## 6 TERMINATION



**6.1 Termination:** Pursuant to the terms of OFF39.

**6.2 Injunctive Relief:** Pursuant to the terms of OFF39.

**6.3 Survival:** The following shall survive termination of this Supplement: Sections 1.4, 2.2, 3, 5, 6.2, 6.3, 7 and 8.

## **7 MISCELLANEOUS**

**7.1 Third Party Content:** Various third party software and other documentation (“**Third Party Content**”) may have been incorporated into the PBDMT Software and/or the Materials by PBDMT under permission from PBDMT’s licensors and suppliers. Certain Third Party Content provided hereunder requires Licensee be certified by the United States Postal Services. Licensee’s failure to obtain such certification shall not impact Licensee’s obligation to pay to PBDMT fees due hereunder. In addition, certain Third Party Content requires Licensee to agree to additional terms of use set forth on Exhibit B hereto. If PBDMT’s license to any Third Party Content terminates, PBDMT reserves the right to: (i) replace the Third Party Content with functionally equivalent Software; (ii) modify such Third Party Content while retaining substantively equivalent functionality; (iii) procure at no cost to Licensee the right to continue to use such Third Party Content; or (iv) if the foregoing is not commercially reasonable, direct Licensee to terminate use of such Third Party Content. If Licensor directs Licensee to terminate use of such Third Party Content, (or a permanent injunction is issued against such use), Licensee agrees: (a) that the Order and all other agreements related thereto (e.g. equipment or software maintenance agreements) shall remain in full force and effect in accordance with their terms; (b) to discontinue and/or return the terminated Third Party Content upon notice

from PBDMT; and (c) except for PBDMT’s obligation to replace such Third Party Content outlined above, that PBDMT shall have no further obligation with respect to such Third Party Content.

**7.2 Export and Other Laws:** Licensee agrees that, unless it has obtained prior written authorization from the United States Department of Commerce or is otherwise permitted by the United States Department of Commerce Export Administration Regulations and, in either case, has the prior written consent of PBDMT, it will not export or otherwise disclose, directly or indirectly, any technology or software received from PBDMT nor allow the direct product thereof to be shipped or to be disclosed, either directly or indirectly, to any destination that is prohibited by the United States Government or to a foreign national that is prohibited by the United States Government. Without limiting the foregoing, Licensee and PBDMT shall comply with all applicable laws and regulations relating to the PBDMT Software and its use. In addition, certain United States Postal Service regulations and/or rules prohibit the transfer of certain software outside of the United States.

**8 ENTIRE AGREEMENT: OFF39, together with** this Supplement, the Order, any related statement of work, application design agreement or similar document signed by both PBDMT and Licensee, and any other agreement between PBDMT and Licensee expressly referred to herein contain the entire agreement of the parties with respect to the subject matter hereof and shall supersede any and all prior agreements, understandings, promises, representations or warranties made by one party to the other, whether oral or in writing, concerning the subject matter contained herein or the terms or conditions applicable hereto.

## EXHIBIT A TO SORTER SOFTWARE LICENSE AND MAINTENANCE SUPPLEMENT

If Licensee has elected to purchase maintenance from or has included maintenance in its lease payments to PBDMT for the software licensed hereunder, the following additional terms and conditions shall apply:

1. Services Provided. PBDMT shall provide the following support services:

(a) Error Correction. PBDMT shall attempt to correct documented errors in the Software. Errors must be reported to PBDMT within a reasonable time and must be repeatable by PBDMT. PBDMT shall, as expeditiously as possible, use its best efforts to correct such errors, or to provide a software patch or bypass around such error. No warranty is made that all errors can or will be corrected, however material defects will be remedied by repair or replacement of the Software pursuant to the terms of OFF39. Licensee shall provide PBDMT with reasonable direct and/or remote access to Licensee's equipment, the Software and all relevant documentation and records, and shall provide such reasonable assistance as PBDMT may request, including, but not limited to, providing sample output and other diagnostic information.

(b) Updates. PBDMT shall provide Licensee, at no additional cost, error corrections, modification or minor enhancements (herein called "Updates") for the Software when such Updates are developed or published by PBDMT and made generally available to other licensees of the Software. Updates are installed by PBDMT and are available until after any new version release/upgrade is issued. All Updates shall become part of the Software and shall be subject to the terms of this Supplement. Any new products developed or published by PBDMT will be offered to Licensee at PBDMT's then current rates as authorized by OFF39. Determination of whether specific software programs are Updates or new products shall be made solely and exclusively by PBDMT.

(c) USPS Address Data Directory. PBDMT shall provide Data Directory updates to be installed by you on a bi-monthly basis to satisfy USPS requirements.

(d) Sorting Software. PBDMT shall provide Sorting updates to Licensee as required by the USPS, including all postal rates and classification changes

(e) Telephone Support Service. PBDMT will provide twenty-four (24) hours a day, seven (7) days a week, to discuss technical and operational issues pertaining to Software.

2. Licensee Responsibilities.

(a) Operation. Licensee is responsible for properly managing and operating the Software.

(b) Modifications by Licensee. In no event shall PBDMT be responsible to correct any errors or damages resulting from Licensee's unauthorized changes or modifications of the Software.

(c) Uninstalled Updates. Support services shall only be offered with the most current version of the Software. PBDMT shall not be responsible for correcting any alleged error if the Licensee has failed to incorporate any Update, which has been made available by PBDMT.

3. Charges for Maintenance and Support.

(a) Commencing on the equipment delivery date, Licensee shall pay to PBDMT the maintenance charges authorized by OFF39, as described in the Supplement to which this is an exhibit. Pricing will be reviewed on an annual basis. Any pricing changes will be governed by OFF39.

(b) In the event maintenance is not included in Licensee's lease payment to PBDMT, PBDMT will invoice Licensee for annual maintenance charges (or for any *pro rata* portion thereof) on the delivery date and on each subsequent anniversary thereof. Invoices will be paid in accordance with the Commonwealth's Bill Payment Policy.

(c) If Licensee upgrades to a new release, *i.e.*, major enhancements and/or new functionality of the programs licensed by PBDMT, the software maintenance services provided hereunder may be transferred to the new release at the subscription fee authorized by OFF39.

## EXHIBIT B TO SORTER SOFTWARE LICENSE AND MAINTENANCE SUPPLEMENT

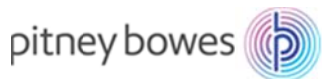
The following terms apply if Licensee licenses certain third party Application Software hereunder

Software provided by Firstlogic, Inc. and/or its successors and assigns is subject to the following additional terms and conditions.

Directories. Due to United States Postal Service regulations, Licensee, depending on which Licensed Product is being used, must use a current Zip+4 directory (“Directory”) to operate the Licensed Software within the mail transport product. The Licensed Software will not operate without a current Directory which is compatible with the Licensed Software. PBDMT, on behalf of Firstlogic and/or its successors and assigns, supplies updated Directories on an annual basis to Licensees for whom such service is subscribed and for whom the annual software maintenance fee set forth in the Order is timely paid. In order to continue receiving the Directory updates, the software maintenance must be renewed each year and another annual software maintenance fee paid to PBDMT. During the term of this Supplement, PBDMT will supply Directory updates to each Licensee for such periods for which the applicable Annual Subscription Fees are received by PBDMT. **PAYMENT OF THE APPLICABLE ANNUAL SUBSCRIPTION FEES FOR EACH LICENSEE IS REQUIRED TO OPERATE THE LICENSED SOFTWARE WITHIN THE LICENSEE APPLICATION.**

Software provided by Computech Corporation and/or its successors and assigns is subject to the following additional terms and conditions.

Dongles. Computech Corporation reserves the right to include a deactivation device (“dongle”) in each copy of the CARS II Software. If included, the dongle will prevent the use of such CAR II Software until Computech furnishes the key which will activate the CARS II Software. Dongles are the property of Computech Corporation and are used to prevent unauthorized copying or use of the CARS II Software. Dongles may not be transferred between Licensee unless the corresponding software is transferred under the terms of this Supplement. Dongles remain the property of Computech and must be returned by Integrator (PBDMT) to Computech upon expiration/termination of each Licensee account, which shall be at no cost to Licensee.



Pitney Bowes Inc., through its Document Messaging Technologies division

**In the event of conflict between (i) the OFF39 RFR, as amended, the Commonwealth Standard Contract Form and the Commonwealth Terms & Conditions, and the Contractor's Response to the RFR, as clarified or amended in response to Department requests for technical corrections, clarifications, and best and final offers, collectively "OFF39", and (ii) this On-Call Equipment Maintenance Agreement, OFF39 shall prevail. The order of priority for documents governing this agreement shall be as stated in paragraph 15 of the Commonwealth Terms & Conditions.**

**ON-CALL EQUIPMENT MAINTENANCE AGREEMENT**

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

**1. SCOPE AND TERM OF AGREEMENT**

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

1.2 This Agreement shall be effective as of the date described in Schedule A ("Service Date") and shall continue for an initial term of one (1) year. Thereafter, this Agreement may be renewed in writing for successive one (1) year terms, as authorized by RFR OFF39, as amended.

1.3 Notwithstanding anything contained herein to the contrary, Pitney Bowes may terminate this Agreement upon ten (10) business day's written notice to Client if Client breaches the payment provision of this Agreement and such payment breach is not cured within thirty (30) business days after receipt of written notice of such breach from Pitney Bowes.

**2. BASIC SERVICE SUPPORT**

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

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

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

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

2.5 Notwithstanding anything in this Agreement to the contrary, Pitney Bowes will not be responsible: (i) for maintaining any Products that Client has failed to operate under suitable temperature, humidity, or line voltage conditions; (ii) if reasonable care is not used in handling, operating, and maintaining the Product; (iii) if the Product is not used in accordance with the agreed applications and for the ordinary purpose for which it is designed; (iv) if the inability of any Product to perform is due to any act or failure to act on the part of Client, including without limitation, any unauthorized alteration of or adding components to any Product; (v) unqualified operators' use of the Product; (vi) use of the Product in a manner not intended; (vii) use of the Product to process applications not previously approved in writing by Pitney Bowes. Approved applications are described in the operator training class and in the equipment specifications; or (viii) use of damaged materials, such as paper or envelopes. If Pitney Bowes performs any repairs or maintenance as a result of any of the foregoing, Pitney Bowes shall inform the Client prior to performance, that such repairs or maintenance will be subject to additional charges and obtain Client's written consent to such charges. The Client shall pay Pitney Bowes at Pitney Bowes' normal rates in effect at such time, as authorized by RFR OFF39, as amended. Client shall promptly notify Pitney Bowes of any unauthorized alteration of or addition to the Product that occurred after Client accepted the Product. Pitney Bowes will not be required to maintain Products that have become obsolete, either due to age, discontinuance of Product's manufacture or irreparability. Pitney Bowes shall make recommendations to Client regarding the replacement or refurbishment of such obsolete Products. Product maintenance and support shall be provided as required by OFF39.

2.6 Service outside of the contracted hours or beyond what is described in Schedule B will be provided at Pitney Bowes' rates in effect at such time, as authorized by OFF39, as amended.

2.7 Obsolescence

To the extent permitted by the terms of RFR OFF39, as amended, from time to time, Pitney Bowes may provide notice to Client of its election, in its sole discretion, to terminate support for certain hardware, software, servers and/or databases due to obsolescence, end of life or a third party manufacturer's election to discontinue certain servers, platforms and/or software (collectively "Obsolescence"). In the event Client's support is terminated due to Obsolescence, Client will be provided a pro-rata refund for any amounts prepaid for maintenance for the obsolete hardware or software. In the event of a termination due to Obsolescence, Client will be provided an option to replace the obsolete software, servers and/or databases with replacements that meet or exceed Client's original system requirements, provided; however, additional costs, including but not limited to installation and support fees associated with the new solution may apply.

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

## 2.8 Nonsolicitation

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

## 3. MAINTENANCE CHARGES AND PAYMENTS

3.1 Commencing on the Service Date, Client shall pay to Pitney Bowes the maintenance charges described in Schedule B. Pricing will be reviewed on an annual basis and Pitney Bowes shall notify Client in writing of any authorized price increases not less than thirty (30) days prior to the end of the then-current term. Within thirty (30) days after its receipt of such notice, Client may terminate this Agreement by delivering to Pitney Bowes written notice of its desire to terminate, which notice must include the Client account number and be sent to Pitney Bowes at the address on page 1, Attention: Finance, by certified mail, return receipt requested. Any such termination by Client shall be effective ten (10) business days after Pitney Bowes' receipt of the notice of

termination. If no such notice is received the Agreement shall continue at the rates contained in the notice sent to Client after Client's written approval of such rates. In the event Client notifies Pitney Bowes that it desires to have additional Products covered under this Agreement, modifications to this Agreement will be made by mutual agreement.

3.2 Pitney Bowes will invoice Client for maintenance charges in advance (or for any *pro rata* portion thereof) as of the Service Date and annually thereafter. Such invoices are payable in accordance with the terms of RFR OFF39, as amended, and the Commonwealth's Bill Payment Policy.

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

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

## 4. OUTAGES

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

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

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

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

## 5. TERMS AND CONDITIONS

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

5.2 Intentionally Omitted

5.3 Default

If a material breach by either party of any of its obligations or responsibilities under this Agreement is not cured within thirty (30) days after the other party notifies the

breaching party thereof, the non-breaching party may by notice to the breaching party terminate this Agreement.

5.4 No Implied Warranties

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

5.5 Limitation of Liability

a. PITNEY BOWES' TOTAL LIABILITY SHALL BE IN ACCORDANCE WITH SECTION 11 OF THE COMMONWEALTH'S TERMS AND CONDITIONS. REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT OR OTHERWISE, PITNEY BOWES SHALL IN NO EVENT BE LIABLE FOR ANY DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, OR FOR INCIDENTAL, CONSEQUENTIAL, OR INDIRECT, DAMAGES ARISING OUT OF THIS AGREEMENT., EVEN IF PITNEY BOWES HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

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

5.6 Intentionally Omitted.

5.7 Independent Contractor Relationship

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

5.8 Complete Agreement

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

Pitney Bowes Inc., through its Document Messaging Technologies division

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

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

\_\_\_\_\_  
Title

\_\_\_\_\_

This Agreement, along with the documents identified in Section 2 of the Master Agreement and Schedules attached hereto, shall be the total and complete understanding of the parties, as to the subject matter of the Agreement, superseding all prior negotiations and discussions between the parties and cannot be modified, waived or amended except as agreed to in writing by both parties.

5.9 Miscellaneous

(a) Intentionally Omitted.

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

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

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

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

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

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

CLIENT

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

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

\_\_\_\_\_  
Title

\_\_\_\_\_

Date

Date

Email: DMT\_Consoleprocessing@pb.com

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

PBI-DMT Contracts Review

Initials: \_\_\_\_\_

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

**SCHEDULE A**

**EQUIPMENT COVERED UNDER MAINTENANCE AGREEMENT:**

Products model and serial number:

Location:

Service Date:

On-call maintenance schedule:



**SCHEDULE B**

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

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

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

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

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

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

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

## SCHEDULE C

### SOFTWARE MAINTENANCE SCHEDULE

#### 1. SCOPE AND TERM OF SCHEDULE

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

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

1.3 Pitney Bowes may terminate this Schedule in accordance with the terms of OFF39 if Client breaches the payment provision of the EMA, and such breach is not cured within 30 (30) business days after receipt of written notice from Pitney Bowes.

#### 2. SOFTWARE MAINTENANCE SUPPORT

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

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

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

2.3 Client shall be advised of required Fixes made to the Licensed Programs during the term of maintenance support. Fixes shall be made available to Client, for implementation by Client or Pitney Bowes using the method deemed most appropriate; however, installation of a Fix to Licensed Programs which have been modified by Client or Pitney Bowes may require additional modifications, for which there may be an additional charge, if authorized pursuant to OFF39.

2.4 Upgrades and Version Releases. Upgrades and version releases to the Licensed Programs may be issued periodically by Pitney Bowes, shall consist of additional and enhanced functions, may be available at an additional charge to the Client, and may be installed at Client’s option. Upgrades incorporate functional and technical capability not provided in the last Version Release but deemed required prior to the next Version Release (“Upgrade(s)”). Version releases incorporate all of the Upgrades; including functionality changes, and Fixes which have been issued since the previous release (“Version Release”). Installation of an Upgrade or Version Release to a Licensed Program that has been modified by Pitney Bowes at Client’s request (“Modified Licensed Programs”) may require additional modification, for which there may be an additional charge, if authorized pursuant to OFF39. All Version Releases, Upgrades, and Fixes provided under this Schedule shall be subject to the terms and conditions of the applicable agreement pursuant to which the original Licensed Program was licensed.

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

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

maintained in accordance with the manufacturer's specifications; or (viii) where Client's service issue results from a problem other than from the Licensed Programs. If Pitney Bowes performs any SMS or DBS as a result of any of the foregoing, the Client shall pay Pitney Bowes at Pitney Bowes' normal rates in effect at such time as authorized by OFF39. Pitney Bowes is not responsible for maintaining software and/or hardware that communicates or operates with the Licensed Programs. Client shall promptly notify Pitney Bowes of any unauthorized alteration of or addition to the Licensed Programs that occurred after Client accepted the Licensed Programs.

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

**SCHEDULE D**

ANNUAL CYCLE VOLUME:

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

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

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

Machine type:

Maximum number of annual cycles:

Overage rate:

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