

CONTRACT
SOFTWARE MAINTENANCE AGREEMENT

by and between

CUYAHOGA COUNTY, OHIO

and

PITNEY BOWES SOFTWARE INC.

THIS AGREEMENT (the "Contract") is made and entered into this _____ day of _____, 2011, by and between Cuyahoga County, Ohio ("the County"), on behalf of the Information Services Center and Pitney Bowes Software Inc. ("PBSI" or "Provider"), a Delaware Corporation with offices located at 4200 Parliament Place, Suite 600, Lanham, MD 20706-1844.

WHEREAS, the County has a present need for renewal of Software Maintenance Services of PBSI's products (CODE - 1 Plus with delivery point validation, LACSLINK, SuiteLink and US Postal databases & POSTNET Barcoding Option) ("collectively, the "Licensed Products") installed and operating at the Information Services Center and further identified in PBSI's Maintenance Renewal attached hereto and incorporated by reference herein as Schedule A; and

WHEREAS, PBSI is the Provider and thus the sole source for providing Software Maintenance Services for the Licensed Products as identified in Schedule A attached hereto and incorporated by reference herein; and

WHEREAS, the County desires to avail itself of the Software Maintenance services contained herein and in Schedule A attached hereto for the Licensed Products installed and operating at the Cuyahoga County Information Services Center and PBSI is willing to provide such services to the County all upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, PBSI and the County agree as follows:

ARTICLE I – AGREEMENT AND TERM

- 1.1 **Scope of Agreement.** During the term of this Contract, PBSI shall provide the County with all Software Maintenance Services for the Licensed Products as outlined in the PBSI Quote attached hereto and incorporated by reference herein as Schedule A. In the event that a discrepancy exists between the terms of Schedule A and this Contract, the terms of this Contract will be controlling and binding.



Software Maintenance Services shall consist of: (i) reasonable amounts of telephone support to assist the County with the use of the Licensed Products; (ii) updates, enhancements, modifications, new releases, revisions and corrective programming provided to other licensees of the Licensed Products who have paid for Software 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 for the Licensed Products ("Support Guidelines"). The telephone support described herein shall be provided only to the individuals located at the installation site of the Licensed Products. If PBSI is unable to correct a reported error or non-conformity that is classified in the Support Guidelines as a production emergency or serious problem within thirty (30) days following notice from the County or an additional period of time reasonably agreed to by the parties, the County may terminate Software Maintenance Services for such Licensed Products. If the County terminates Software Maintenance Services in accordance with this Section, the County shall, as its sole and exclusive remedy, receive a pro-rata refund of the fees paid for Software Maintenance Services for the balance of the existing maintenance term.

PBSI may terminate Software Maintenance Services for the Licensed Products upon at least ninety (90) days written notice to the County 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.

1.2 **Term.** The term of this Contract shall commence as of July 1, 2011; and, unless earlier terminated in accordance with the provisions of this Contract, shall continue in effect for a period of one year from commencement date (7/1/11 – 6/30/12). The cost of this Contract shall not exceed **Ten-Thousand Five Hundred Forty Dollars and Zero Cents (\$10,540.00).**

ARTICLE II – SCOPE OF WORK

2.1 **Rendering of Services.** PBSI hereby agrees to render the services identified in Article 1, and Schedule A attached hereto and incorporated by reference herein at a total price, which shall in no event exceed the amount of **Ten-Thousand Five Hundred Forty Dollars and Zero Cents (\$10,540.00).**

ARTICLE III – PAYMENT AND INVOICING

3.1.1 **Payment.** During the term of this Contract the County shall pay PBSI for Software Maintenance Services rendered under the terms of the Contract and any schedules attached hereto.

3.2 **Invoicing.** PBSI shall invoice the County annually for the Software Maintenance Service contemplated by this Contract. PBSI shall submit original invoice(s) to the following address:

Cuyahoga County Information Services Center

Business Department
1255 Euclid Avenue, 4th floor
Cleveland, Ohio 44115

ARTICLE IV - INDEMNITIES AND LIABILITIES

- 4.1 Subcontracting. This Contract was awarded to PBSI based upon PBSI's unique qualifications and skills, and no task required to be performed under this Contract by PBSI shall be subcontracted to third parties without the express written consent of Cuyahoga County. County acknowledges that PBSI currently employs subcontractors to provide certain services in support of Software Maintenance Services set forth herein.
- 4.2 Indemnification. PBSI shall agree to release, indemnify and to hold harmless Cuyahoga County, the County Executive and any and all officers, agents, servants or employees thereof, from any and all responsibility or liability for its gross negligence or willful misconduct under this Contract.

ARTICLE V - DISPUTE RESOLUTION AND TERMINATION

5.1 Dispute Resolution.

a) In the event of any dispute or disagreement between PBSI and the County, either with respect to the interpretation of any provision of this Contract or with respect to the performance by PBSI or the County hereunder, which cannot be resolved in the normal course of business, then upon written notice of either party, each party will appoint a designated officer whose task it will be to meet for the purpose of endeavoring in good faith to resolve such dispute or to negotiate for an adjustment to such section or provision of this Contract. The designated officers shall meet as often as the parties reasonably deem necessary in order to gather and furnish to the other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. Such officers will discuss the problem and/or negotiate the applicable section or provision without the necessity of any formal proceedings relating thereto. During the course of such negotiation, all reasonable requests made by one party to the other for information will be honored in order that each of the parties may be fully advised in the negotiations. The specific format for such discussions will be left to the discretion of the designated officers but may include the preparation of agreed upon statements of fact or written statements of position furnished to the other party. No formal proceedings for the binding arbitration of such dispute may be commenced until (i) resolution as contemplated in this clause has been unsuccessful and (ii) either of the parties concludes in good faith that amicable resolution through continued negotiation of the matter in issue does not appear likely and so notifies the other party.

(b) The rights and obligations of the parties under this provision shall not limit either party's right to terminate this Contract as may be otherwise permitted hereunder.



Termination for Default. Either party may terminate this Contract, in whole or in part, whenever such party determines that the other has failed satisfactorily to fulfill its obligations and responsibilities hereunder and is unable to cure such failure within a reasonable period of time, not to exceed thirty (30) calendar days or such longer period of time as may be specified in writing by the terminating party, taking into consideration the gravity and nature of the default. Such termination shall be referred to as "Termination for Default". Upon determination by either party hereto that the other has failed to satisfactorily perform its obligations and responsibilities hereunder, the party seeking termination shall notify the defaulting party in writing of the failure and of the time period that has been established to cure such failure, which time period shall be not less than ten (10) days. If the defaulting party is unable to cure the failure within the specified time period, the party seeking to terminate may, by giving written notice thereof to the defaulting party, terminate this Contract, in full or in part, as of the date specified in the notice of termination. PBSI, however, shall be paid for all services and/or materials provided on or prior to the date of termination.

5.3 Termination for Financial Instability. In the event that PBSI becomes financially unstable to the point of (i) ceasing to conduct business in the normal course, (ii) making a general assignment for the benefit of creditors, or (iii) suffering or permitting the appointment of a receiver for its business or its assets, or there is a filing by or against PBSI of a meritorious petition in bankruptcy under any bankruptcy or debtor's law, the County may, at its option, immediately terminate this Contract under Section 5.2, the "Termination for Default" clause, by giving written notice thereof.

ARTICLE VI – ADHERENCE TO ELECTRONIC SIGNATURE POLICY OF COUNTY

6.1 By entering into this Contract, PBSI, its officers, employees, subcontractors, sub-grantees, agents or assigns, to conduct this transaction by electronic means by agreeing that all documents requiring county signatures may be executed by electronic means, and that the electronic signatures affixed by Cuyahoga County to said documents shall have the same legal effect as if that signature was manually affixed to a paper version of the document.

6.2 PBSI further agrees to be bound by the provisions of Chapter 304 and 1306 of the Ohio Revised Code as they pertain to Electronic Transactions and to comply with the electronic signature policy of Cuyahoga County.

ARTICLE VII – MISCELLANEOUS

7.1 Notices. Wherever one party is required or permitted to give notice to the other pursuant to this Contract, such notice shall be deemed given when delivered by hand, via certified mail with return receipt requested, via overnight courier with signature required, and addressed as follows:

In the case of the County:



Cuyahoga County Information Services Center
ATTN: Jeff Mowry, CIO
1255 Euclid Avenue, 4th Floor
Cleveland, Ohio 44115

In the case of PBSI:

Pitney Bowes Software Inc.
ATTN: Contract Administration
4200 Parliament Place, Suite 600
Lanham, Maryland 20706-1844

Either party may from time to time change its designated recipient or address for notification purposes by giving the other party written notice of the new designated recipient or address and the date upon which it will become effective.

- 7.2 Severability. If, and only to the extent that, any provision of this Contract is declared or found to be illegal, unenforceable or void, then both parties shall be relieved of all obligations arising under such provision, it being the intent and agreement of the parties that this Contract shall be deemed amended by modifying such provision to the extent necessary to make it legal and enforceable while preserving its intent. If that is not possible, another provision that is legal and enforceable and achieves the same objective shall be substituted. If the remainder of this Contract is not affected by such declaration or finding and is capable of substantial performance, then the remainder shall be enforced to the extent permitted by law.
- 7.3 Waiver. No delay or omission by either party in the exercise of any right or power shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties of any of the covenants, conditions or agreements to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant, condition or agreement herein contained. No change, waiver, or discharge hereof shall be valid unless in writing and signed by an authorized representative of the party against which such change, waiver, or discharge is sought to be enforced.
- 7.4 Survival of Terms. Termination or expiration of this Contract for any reason shall not release either party from any liabilities or obligations set forth in this Contract which (i) the parties have expressly agreed shall survive any such termination or expiration, or (ii) remain to be performed or by their nature would be intended to be applicable following any such termination or expiration.
- 7.5 Record Audit Retention. PBSI agrees to make all pertinent contractual books and records and other documents pertaining to this Contract available to the County and its designated agents for purpose of audit and examination upon reasonable request during the term of this Contract and for a period of two (2) years from the expiration date or final payment under this Contract, whichever is later; provided however, that should PBSI be notified that an audit has been commenced pursuant to Ohio Revised Code Sec. 117.11



during said period, for which the aforesaid books and records are material, the aforesaid records shall be retained pending the completion of said audit.

- 7.6 Headings and Interpretation. The article and section headings used herein are for reference and convenience only, and shall not enter into the interpretation hereof.
- 7.7 Governing Law. This Contract shall be subject to interpretation under the laws of the State of Ohio.
- 7.8 Social Security Act. PBSI shall be and remain an independent PBSI with respect to all services performed hereunder and agrees to and does hereby accept full and exclusive liability for payment of any and all contributions or taxes for social security, unemployment insurance, or old age retirement benefits, pensions, or annuities now or hereafter imposed under any Local, State or Federal Law which are measured by the wages, salaries, or other remuneration paid to persons employed by the PBSI for work performed under the terms of this contract and further agrees to obey all lawful rules and regulations and to meet all lawful requirements which are now or hereafter may be issued or promulgated under said respective laws by and duly authorized State or Federal officials; and said PBSI also agrees to indemnify and save harmless Cuyahoga County from such contributions or taxes or liability.
- 7.9 Assignment. PBSI shall not assign, transfer, convey or otherwise dispose of this Contract, or its right to execute it, or its right, title or interest in or to it or any part thereof, or assign, by power of attorney or otherwise, any of the monies due or to become due under this Contract without approval of the County Executive by resolution.
- 7.10 Contract Processing. PBSI shall submit one (1) original contractual agreement with original signatures to the following:

Cuyahoga County Information Services Center
ATTN: Business Department
1255 Euclid Avenue, 4th Floor
Cleveland, Ohio 44115

- 7.11 Commencement of Contract Performance. In order to protect the interest of Cuyahoga County this Contract must be executed by the County Executive before compensation for the services or products set forth in this Contract can be provided. In the event that services are provided by PBSI prior to the execution of this Contract by the County Executive, the same will be provided at PBSI's risk, and payment therefore cannot, and will not, be made unless and until this Contract is approved by the County Executive. Upon approval by the County Executive of this Contract, however, any and all prior performance under this Contract shall be deemed ratified and said performance shall be deemed to be included in this Contract. Payment(s) for said prior performance shall not increase the amount of the contract limit.

A handwritten signature, possibly 'C. J. [unclear]', is located in the bottom right corner of the page.

7.12 **Entire Agreement and Modification.** This Contract, including any Schedules and documents referred to in this Contract or attached hereto, each of which is incorporated herein, constitutes the entire and exclusive statement of the agreement between the parties with respect to its subject matter and there are no oral or written representations, understandings or agreements relating to this Contract which are not fully expressed herein. The parties agree that any other terms or conditions included in any quotes, acknowledgments, bills of lading or other forms utilized or exchanged by the parties shall not be incorporated herein or be binding unless expressly agreed upon in writing by authorized representatives of the parties. No modification, change or amendment hereof shall be valid unless such is in writing and signed by the authorized representative of the party against which such modification, change or amendment is sought to be enforced.

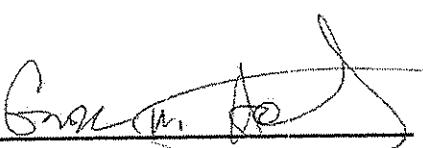
7.13 **USPS Mandated Terms.** In addition to the terms and conditions set out in the Contract, use of the United States Postal Service's ("USPS") delivery point validation, SuiteLink and LACSLink software shall be subject to the additional terms set out at <http://www.pbinsight.com/about/legal/usps-terms-suitelink-product/>.

THIS CONTRACT shall be subject to interpretation under the laws of the State of Ohio, and is subject to the review of the County Prosecutor's Office as to legal form and correctness.

IN WITNESS WHEREOF, THE County and PBSI have each caused this Contract to be signed and delivered by its duly authorized representative as of the date first written.

PITNEY BOWES SOFTWARE INC.

CUYAHOGA COUNTY, OHIO

BY: 

Gregg M. Holtzman
Managing Director, Global Contracts


BY: 

Edward FitzGerald, County Executive



Schedule A



Pitney Bowes Software, Inc.
4200 Parliament Place
Suite 600
Lanham, Maryland 20706

Customer ID # 1448
Quote Date: 4/7/2011
Maintenance Renewal Quote #

Bill To:
Business Department
Cuyahoga County Info Svcs Ctr
1255 Euclid Ave Fl 4
Cleveland, OH 44115-1807

Ship To:
Robert Brown
Cuyahoga County Info Svcs Ctr
1255 Euclid Ave Fl 4
Cleveland, OH 44115-1807

Code	MAINTENANCE/SUBSCRIPTION	COMMENTS	OP SYSTEM	NUMBER OF COPIES	RENEWAL FEE
CPMAINT	CODE-1 Plus		IBM: OS/390 IMS	1	\$3,522.00
EP	US Postal Database		IBM: OS/390 IMS	1	\$6,571.00
BCMAINT	POSTNET Barcoding Option		IBM: OS/390 MVS	1	\$447.00
				Total Renewal	<u>\$10,540.00 *</u>
					<small>*tax not included</small>

Coverage Period: 7/1/2011 to 6/30/2012

Quote is valid through 6/30/2011. All terms and conditions of original license agreement(s) are applicable without modification. The renewal can be processed upon acceptance of this quote, or a valid Purchase Order issued by Cuyahoga County Info Svcs Ctr. To ensure that there is no interruption in the maintenance services, such as delivery of updates and telephone support, please send your Purchase Order no later than 30 days from the above date.

Upon receipt of the PO or this signed acceptance, an invoice will be generated.

In the event this quote or applicable purchase order is not received prior to the current maintenance expiration date, maintenance may be reinstated for your products through payment of past due maintenance plus a reinstatement fee equal to 5% of the above annual maintenance fee.

Agreed to and accepted:

By: _____

Name: _____

Title: _____

Date: _____

Please acknowledge receipt and acceptance of this quote by returning a signed copy to:

John McClure
Pitney Bowes Software
E-mail: john.mcclure@pb.com
Tel.: 615.777.6218
Fax: 415.962.3256



Sole Source Statement

This is to certify that the computer software program(s) identified below (the "Licensed Products"), are proprietary property of Pitney Bowes Software Inc. ("PBSI"). PBSI is the owner, developer, and manufacturer of the source code to the Licensed Products and has exclusive rights to distribute the Licensed Products or authorize resellers to distribute the Licensed Products on PBSI's behalf. No other vendor has end user distribution rights to the source code.

PBSI is the only vendor that has the ability and expertise to support the Licensed Products for the purposes of maintenance services, including software updates, enhancement, bug fixes, and standard technical support issues. If subscription services are applicable, the subscription database is manipulated by PBSI to operate with the proprietary nature of the Licensed Products.

1. POSTNET Barcode Option utilizing the MVS Operating System
2. CODE-1 Plus with the delivery point validation, LACSLink, SuiteLink and U.S. Postal monthly database utilizing the IMS Operating System

Signed By:



Pitney Bowes Software Inc.
Gregg M. Holzman
Managing Director, Global Contracts

(Please print title)

Notarize below:

Sworn to and subscribed before me in my presence this 1st day of June, 2009.



Sheila Rowe
Notary Public

Sheila Rowe
NOTARY PUBLIC
Prince George's County, Maryland
My Commission Expires 9/01/2014