

ACQUISITION ADMAIL™ AGREEMENT

Schedule B - Form of Third-Party Service Provider



From anywhere... to anyone

Agreement Number _____

Customer Number _____

Customer:

Third-Party Service Provider _____

Contact Name _____

Mailing Address – Street Name and Number _____

City _____ Prov./State _____ Postal Code/ZIP Code _____

Email Address _____

Telephone and Extension _____ x _____ Fax _____ - _____ - _____ x _____

This agreement is made as of _____, 201_____

BETWEEN:

[Name of Third Party Mail Service Provider], a corporation incorporated under the laws of

(the "Licensee")

AND:

CANADA POST CORPORATION, a corporation incorporated under the *Canada Post Corporation Act*

("Canada Post")

BACKGROUND:

- A. Canada Post has developed and owns the Acquisition Admail™ address list ("the **List**");
- B. The Licensee wishes to obtain a licence to use the List, or certain portions thereof, to create and fulfil Acquisition Admail orders on behalf of certain Customers ; and
- C. Canada Post wishes to grant the Licensee such licence, on the terms and conditions set out in below.

NOW THEREFORE, in consideration of the covenants and obligations contained in this agreement, and other good and valuable consideration, Canada Post and the Licensee agree as follows:

1.0 DEFINITIONS

1.1 In this agreement:

- (a) "**Customer**" has the meaning given in section 3.1;
- (b) "**Derivative File**" means any file that is created using data from the List, including mailing lists created using the List;
- (c) "**List**" has the meaning given in the recitals.
- (d) "**Supplement**" means any Acquisition Admail supplement agreed to by the parties in writing pursuant to this agreement, in the form attached as Schedule A.

2.0 PROPERTY RIGHTS IN THE LICENSED TECHNOLOGY

- 2.1 **Representation of Canada Post.** The Licensee acknowledges and accepts Canada Post's representation that Canada Post and/or its licensors own all right, title and interest in and to the List.
- 2.2 **Ownership of the List.** The Licensee will, at the request of Canada Post, sign all documents as may be required to ensure that ownership of the List remains with Canada Post and/or its licensors.

3.0 GRANT OF LICENSE

- 3.1 **License Grant.** Subject to the terms and conditions of this agreement, Canada Post hereby grants the Licensee a non-exclusive, non-transferrable right and license to use the List, or certain portions thereof, in accordance with any Supplement to prepare mailing lists for, and fulfil direct mailings of promotional materials on behalf of, the customer specified on the Supplement (the "**Customer**"), provided that all mailings are completed no later than 90 days from the date of the Supplement to which the mailings relate. Immediately following the completion of the mailings contemplated in any Supplement, the Licensee will cease to use the List and all Derivative Files licensed pursuant to that Supplement. Within three (3) days of the date of completion of the mailings contemplated in any Supplement, the Licensee will destroy all List and Derivative Files in its possession or control licensed pursuant to such Supplement and the Licensee will have no further rights to use or possess such List or Derivative Files. The Licensee will certify the destruction of the List and Derivative files upon request by Canada Post.

3.2 License Limitations.

The Licensee agrees that:

- (a) It will not use the List to create any Derivative File other than those expressly permitted in section 3.1;
- (b) It will not disclose or make available any List or any Derivative File to the Customer or any other third party;
- (c) It will not use any List or Derivative file for the benefit of any third party other than the Customer. For greater certainty, the Licensee may not use the List for its own benefit;
- (d) It will not copy the List or Derivative Files except as required for the purposes contemplated in section 3.1;
- (e) It will only perform merge, purge and suppression activities for the purposes expressly permitted in section 3.1;
- (f) It will not add any address data other than the List to any Derivative File;
- (g) It will store the List and Derivative Files in a secure and segregated location, separate from all other data assets in the possession of the Licensee; and
- (h) Nothing in this agreement grants any license to the Licensee to use any of Canada Post's trademarks or logos, and that any such use by the Licensee is expressly prohibited.

The List will be seeded to ensure compliance with the above limitations.

It is understood that monetary damages may not be a sufficient remedy for any breach of this section by the Licensee, and the Licensee agrees that Canada Post will be entitled to interim and permanent equitable relief, including injunction and specific performance, as remedies for any breach. These remedies shall not be deemed to be the exclusive remedies for any breach but shall be in addition to all other remedies available at law or in equity.

- 3.3 **Acquisition Admail Specifications.** All direct mailings carried out by the Licensee pursuant to this agreement must meet the Acquisition Admail specifications set out in Schedule C, available at http://www.canadapost.ca/cpo/mc/assets/pdf/business/acquisition_admail_spec_en.pdf.
- 3.4 **Acquisition Admail Volume Pricing.** A unique Acquisition Admail code will be provided to the Licensee for each Acquisition Admail List mailing it conducts on behalf of the Customer that meets the requirements for volume pricing as set out in Acquisition Admail rate card. The code provides the Customer with incentive Acquisition Admail rates and must be inputted by the Licensee when the Licensee creates each electronic statement of mailing for the Customer. The code can only be used for the Customer's Acquisition Admail List orders that meet the requirements for volume pricing and cannot be combined with other products or services on the same electronic statement of mailing. The Licensee is solely responsible for ensuring that the code is inputted on the Customer's electronic statements of mailing.

4.0 LICENSE FEES

- 4.1 **License Fee.** There is no license fee charged to the Licensee for the use of the List. The Licensee is solely responsible for negotiating and collecting any fee it charges the Customer for the services contemplated in this agreement.

5.0 CONFIDENTIALITY

5.1 The Licensee agrees to take adequate security measures to prevent the unauthorized duplication, distribution or use of the List and Derivative Files and to preserve the confidentiality of same. The Licensee will only allow access to the List and Derivative files to those of its employees and agents who have a need for such access in order to carry out the activities contemplated in section 3.1. The Licensee shall provide a list of the locations, employees and agents who have access to the List or Derivative Files, upon request by Canada Post.

6.0 DISCLAIMER OF WARRANTY AND LIMITATION OF LIABILITY

6.1 **Disclaimer of Warranty.** Except as expressly set out in section 2.1, Canada Post makes no representations or warranties, either express or implied, with respect to the List or that the exercise by the Licensee of the rights granted under this agreement will not infringe the patent or proprietary rights of a third party. Without limitation, Canada Post specifically disclaims any implied warranty, condition, or representation that the List :

- (a) corresponds to a particular description;
- (b) is of merchantable quality;
- (c) is fit for a particular purpose; or
- (d) is usable for any period of time.

6.2 **Limitation of Liability.** Canada Post will not be liable for any damage or loss, whether direct, indirect, consequential, incidental, or special which the Licensee or its agents suffer arising from any defect, error or fault of the List or its failure to perform under this agreement, even if Canada Post has been advised of the possibility of such defect, error, fault, or failure.

7.0 TERM

7.1 The term of this agreement will commence on the date first written above and continue following the completion of the work set out in any Supplement until terminated by either party by giving the other no less than thirty (30) days prior written notice.

8.0 TERMINATION

8.1 **Automatic Termination.** This agreement will automatically and immediately terminate without notice to the Licensee upon any breach of this agreement by the Licensee becoming known to Canada Post, the Licensee becoming bankrupt or insolvent, the Licensee making an assignment for the benefit of its creditors, a receiver being appointed for any of the property of the Licensee, or and order being made for the winding up of the Licensee.

8.2 **Effect of Termination.** When this agreement is terminated the Licensee will immediately cease to use the List and all Derivative Files. Within three (3) days of the date of termination, the Licensee will destroy all List and Derivative Files that are in its possession or control and the Licensee will have no further rights to use or possess the List or Derivative Files. The Licensee will certify the destruction of the List and Derivative files upon request by Canada Post.

9.0 GENERAL

9.1 **Governing Law.** This agreement is governed by, and will be construed in accordance with, the laws of the jurisdiction in which the Licensee is situated and the laws of Canada applicable therein, without regard to any choice or conflict of laws, rule or principle, that will result in the application of the laws of any other jurisdiction.

9.2 **Headings.** The headings and subheadings in this agreement are inserted for convenience of reference only and will not be used in interpreting or construing the provisions of this agreement.

9.3 **Independent Contractor.** The relationship between Canada Post and the Licensee is that of independent contractors and nothing in this agreement will be construed as establishing an agency, partnership, joint venture, or employment relationship between the parties. No party has the authority to act on behalf of the other party, or to commit the other party in any manner at all or cause any other party's name to be used in any way not specifically authorized by this agreement.

ACQUISITION ADMAIL™ AGREEMENT

Schedule B - Form of Third-Party Service Provider



From anywhere... to anyone

- 9.4 **Entire agreement.** The parties hereto acknowledge that this agreement sets forth the entire agreement and understanding of the parties hereto as to the subject matter hereof, and replaces and supersedes all prior discussions, agreements and writings in respect hereto.
- 9.5 **Amendment.** No amendment or variation to this agreement will operate to change or vary the terms, obligations or conditions hereof except upon mutual agreement by both parties signed by an authorized representative of each party.
- 9.6 **Severability.** In the event that any provisions of this agreement are determined to be invalid or unenforceable by a court of competent jurisdiction in any jurisdiction, the remainder of the agreement will remain in full force and effect without said provision in said jurisdiction and such determination will not affect the validity or enforceability of such provision or the agreement in any other jurisdiction. The parties will in good faith negotiate a substitute clause for any provision declared invalid or unenforceable, which will most nearly approximate the intent of the parties in entering this agreement.
- 9.7 **Schedules.** Schedules A and B attached hereto form part of and are incorporated by reference into this agreement.
- 9.8 **Notice.** Any demand, notice, direction or other communication to be made or given hereunder shall be in writing and may be made or given by personal delivery, by courier or email; or sent by Xpresspost, addressed to the respective parties as follows:

(i) if to the Licensee:

Email: _____

Attention: _____

(ii) if to Canada Post:

Email: _____

Attention: _____

or to such other address as any party may from time to time designate in accordance with this section.

- 9.9 **Assignment.** Neither party may assign this agreement with out the prior written consent of the other.
- 9.10 **Waiver.** The failure of either party to exercise any right granted herein or to require any performance of any term of this agreement or the waiver by either party of any breach of this agreement shall not be deemed a waiver of any subsequent breach of, the same or any other term of this agreement.
- 9.11 **Survival.** Sections 2.2, 3.2, 5.0, 6.0, 8.2, 9.1 and 9.8 survive termination of this agreement.
- 9.12 **Force Majeure.** No party to this agreement shall be liable to the other for any failure or delay in fulfilling an obligation hereunder if said failure or delay is attributable to reasons beyond its control.
- 9.13 **Compliance with Laws.** In the exercise of their respective rights and the performance of their respective obligations, each party shall comply with all applicable laws, regulations and governmental orders of Canada.

ACQUISITION ADMAIL™ AGREEMENT

Schedule B - Form of Third-Party Service Provider



From anywhere... to anyone

- 9.14 **Language.** It is the express wish of the parties that this agreement and all related documents be written in English. Les parties ont demandé expressément que la présente, ainsi que tout document afférent, soient rédigés en anglais.
- 9.15 **Counterparts.** This agreement may be executed in any number of counterparts, and or by facsimile or e-mail transmission of Adobe Acrobat files, each of which shall constitute an original and all of which, taken together, shall constitute one and the same instrument. Any party executing this agreement by fax or Adobe Acrobat file shall, immediately following a request by any other party, provide an originally executed counterpart of this agreement.

CANADA POST CORPORATION

Name (Please print)

Title

Signature

Date

[CUSTOMER]

Company Name (Third-Party Service Provider)

Name (Please print)

Title

Signature

Date