

ACQUISITION ADMAIL AGREEMENT Supplement



From anywhere... to anyone

Agreement Number _____

Customer Number _____

This agreement is made as of _____, 201____

BETWEEN:

[Name of Customer],

a corporation incorporated under the laws of

AND:

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

BACKGROUND:

- A. The Customer has entered into an Addressed Admail™ agreement with Canada Post, of which this agreement is a supplement to;
- B. Canada Post has developed and owns the Acquisition Admail address list (the "List");
- C. The Customer wishes to, via a third party mail service provider, use the List or certain portions thereof to conduct Acquisition Admail mailings to promote the Customer's products and services; and
- D. Canada Post wishes to grant the Customer a license, via the third party mail service provider, to use the List to conduct Acquisition Admail mailings, 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 Customer agree as follows:

1.0 DEFINITIONS

1.1 In this agreement:

- (a) "**Derivative File**" means any file that is created using data from the List, including mailing lists created using the List;
- (b) "**List**" has the meaning given in the recitals.
- (c) "**Mail Service Provider**" has the meaning given in section 3.1.
- (d) "**Order Form**" means any Acquisition Admail order form 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 Customer acknowledges and accepts Canada Post's representation that Canada Post owns all right, title and interest in and to the List.
- 2.2 **Ownership of Licensed Data.** The Customer 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.

3.0 GRANT OF LICENSE

- 3.1 **License Grant.** Subject to the terms and conditions of this agreement, Canada Post hereby grants the Customer a non-exclusive, non-transferrable right and license to use the List, or certain portions thereof, in accordance with any Order Form, via the third party mail service provider listed in Schedule B (the "**Mail Service Provider**"), to conduct Acquisition Admail mailings to promote the Customer's products and services. The Customer may, via the Mail Service Provider, conduct mailings pursuant to any Order Form provided that all mailings are completed no later than 90 days (for Acquisition List Plus, as identified in the Order Form) or 180 days (for Acquisition List, as identified in the Order Form) from the date of the Order Form to which the mailings relate.

Canada Post will, pursuant to the Order Form, deliver a copy of the List to the Mail Service Provider for use in relation to the Customer's Acquisition Admail mailings in accordance with the form of agreement attached as Schedule B.

3.2 License Limitations.

The Customer agrees that:

- (a) It will not have any access to the List or any Derivative File created by the Mail Service Provider using the List;
- (b) The Mail Service Provider will use the List only in accordance with Schedule B;
- (c) The Customer may only use the List, via the Mail Service Provider, to conduct Acquisition Admail mailings to promote the Customer's own products and services; and
- (d) Nothing in this agreement grants any license to the Customer to use any of Canada Post's trademarks or logos, and that any such use by the Customer 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 Customer, and the Customer 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 Mail Service Provider on behalf of the Customer pursuant to this agreement must meet the Acquisition Admail specifications set out in Schedule C.
- 3.4 **Acquisition Admail List Plus.** A unique Acquisition Admail code will be provided to the Mail Service Provider for each Acquisition Admail List Plus mailing it conducts on behalf of the Customer. The code provides the Customer with Acquisition Admail List Plus postage rates and must be inputted by the Mail Service Provider when the Mail Service Provider creates each electronic statement of mailing for the Customer. The code can only be used for the Customer's Acquisition Admail List Plus orders made pursuant to this agreement and cannot be combined with other products or services on the same electronic statement of mailing. The Mail Service Provider is solely responsible for ensuring that the code is inputted on the Customer's electronic statements of mailing.
- 3.5 **Suppression Files.** The Customer may wish to suppress certain addresses from its Acquisition Admail mailing. In the event that the Customer provides Canada Post with a list of addresses it wishes to suppress from its Acquisition Admail mailing, the Customer hereby grants Canada Post a non-exclusive, limited license to use any such list of addresses provided to Canada Post by the Customer for the purposes of suppressing those addresses from the Customer's Acquisition Admail mailing. The Customer represents that it has all required authority to grant Canada Post such license. Canada Post agrees not to disclose or make available any part of the Customer's address list to any third party or permit any third party to use any of the Customer's address list, other than agents or contractors of Canada Post who have signed agreements containing confidentiality obligations that are at least as protective as those set out in this agreement. Canada Post will destroy the Customer's address list upon completion of the suppression for which the Customer provided the address list.

4.0 LICENSE FEES

- 4.1 **License Fee.** The Customer agrees to pay the fees set out in the Acquisition Admail rate card applicable on the date of the Order Form to which the mailings relate available at <http://www.canadapost.ca/cpo/mc/business/productsservices/aadmail/aatarget.jsf#ratesprices>, plus all applicable taxes, within 15 days from the date of invoice issued by Canada Post. In the case of Acquisition Admail List Plus, the rates are subject to change if the mailing volume commitment is not satisfied. All overdue payments are subject to interest at a rate of 1.5% per month (18% per annum) beginning on the first day on which the payment is overdue and continuing until all principal and interest owing is paid. All fees paid are non-refundable.
- 4.2 **Mail Service Provider Fees.** Any fee charged to the Customer by the Mail Service Provider is separate and apart from this agreement and is the sole responsibility of the Customer and Mail Service Provider.

5.0 DISCLAIMER OF WARRANTY AND LIMITATION OF LIABILITY

5.1 **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 Customer 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.

5.2 **Limitation of Liability.** Canada Post will not be liable for any damage or loss, whether direct, indirect, consequential, incidental, or special which the Customer 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.

6.0 TERM

6.1 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 Order Form until terminated by either party by giving the other no less than thirty (30) days prior written notice.

7.0 TERMINATION

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

7.2 **Effect of Termination.** When this agreement is terminated, the Customer will pay all outstanding fees and interest to Canada Post and Canada Post may proceed to enforce payment of all outstanding fees and interest owed to Canada Post. On termination of this agreement, the Customer will immediately cease to use the List and all Derivative Files via the Mail Service Provider and will have no further right to use the List or Derivative files via the Mail Service Provider.

8.0 GENERAL

8.1 **Governing Law.** This agreement is governed by, and will be construed in accordance with, the laws of the jurisdiction in which the Customer 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.

8.2 **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.

8.3 **Independent Contractor.** The relationship between Canada Post and the Customer 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.

8.4 **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.

8.5 **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.

8.6 **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.

8.7 **Schedules.** Schedules A, B and C attached hereto form part of and are incorporated by reference into this agreement.

8.8 **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 Customer:

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.

8.9 **Assignment.** Neither party may assign this agreement without the prior written consent of the other.

8.10 **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.

8.11 **Survival.** Sections 2.2, 3.2, 4.0, 5.0, 7.2, 8.1, and 8.8 survive termination of this agreement.

8.12 **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.

8.13 **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.

8.14 **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.

8.15 **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.

(signature page follows)

ACQUISITION ADMAIL AGREEMENT Supplement



From anywhere... to anyone

IN WITNESS WHEREOF, the duly authorized representatives of the parties have executed this agreement.

CANADA POST CORPORATION

Name
Title
I have authority to bind the corporation

[CUSTOMER]

Name
Title
I have authority to bind the corporation

Reference copy only