



**NATIONAL CHANGE OF ADDRESS
(NCOA)
LICENSE AND AGENCY
AGREEMENT**

**NATIONAL CHANGE OF ADDRESS
LICENSE AND AGENCY AGREEMENT**

Between: _____, a corporation incorporated under the
laws of _____, with its address for notice under this agreement at :

Attention: _____

("Licensee")

And: **CANADA POST CORPORATION, a corporation incorporated under the laws of
Canada, with its address for notice under this agreement at :**

**CANADA POST PLACE
2701 RIVERSIDE DRIVE SUITE N0271
OTTAWA ON K1A 0B1
ATTENTION: NCOA ADMINISTRATOR**

("Canada Post")

Background

- A. Canada Post has compiled and maintains a database containing the name and addressing information of individuals and families who request the redirection of their mail to a new address (and who have consented to the disclosure of such information). The NCOA data file may also contain information from other sources, such as but not limited to rural conversion information (the "NCOA data file").
- B. The Licensee wishes to act as a licensee and agent of Canada Post for one or more of the following reasons:
- i) simply to update its own customer database from time to time;
 - ii) to correct a file prior to mailing;
 - iii) to offer updating services by electronically comparing the customer files of clients of the Licensee against the NCOA data file;
 - iv) to use the NCOA data file to develop and maintain software that will be able to update Customer database.

For the purpose of NCOA usage that is outlined in this agreement, the definition of customer for licensees or sub licensees of the NCOA data will follow the definition below. In order for a record to be updated on a NCOA licensee's/ sub licensee's database, there must be an existing business relationship between the NCOA licensee (or sub licensee) and the individual/business provided in the NCOA file.

Definition of Customer (i.e. having an existing business relationship)

An existing business/consumer relationship or current customer relationship exists where a consumer has made a purchase or donation, has rented, leased or contracted for, or has otherwise participated in a organization's provision of products or services within the past 18 months, or a period consistent with that organization's normal buying cycle; and an existing business/consumer relationship is also defined as continuing for six months from the date of an inquiry or application from a consumer.

NOW THEREFORE in consideration of the grant and mutual agreements set forth below, the parties agree as follows:

1.0 The License

- 1.1 Canada Post represents that it is the sole owner of the copyright in the NCOA data file as described in “A” above.
- 1.2 Subject to the terms and conditions contained in this Agreement, Canada Post grants to the Licensee for the 12 month period commencing on _____ and terminating on _____, a non-exclusive non-transferable license to make use of the NCOA data file solely for the purposes described in Section 2.0 below.
- 1.3 Canada Post will provide a copy of the NCOA data file to the Licensee shortly after execution of the Agreement. Updates to the NCOA data file shall be provided monthly (or at such other frequency as Canada Post may determine) to the Licensee on media and format as mutually agreed to by the Licensee and Canada Post.
- 1.4 The Licensee acknowledges receipt of a copy of the NCOA Recognition Handbook. The Licensee is responsible to meet the requirements outlined in the most recent version of the NCOA Recognition Handbook, as such handbook may be amended from time to time.
- 1.5 The Licensee acknowledges that nothing in this Agreement shall be interpreted as preventing Canada Post from offering the Services (as described in Section 2.0 below) through its own corporate means as well as through licensed agents.
- 1.6 NCOA Licensee acknowledges that Canada Post has the right to change the file layout of any Canada Post Data File at any time.

Canada Post agrees to give the Licensee reasonable advance notice of any changes that Canada Post will be making to the file layout of any Canada Post Data File. For the purposes of the preceding sentence, reasonableness will be interpreted relative to the nature of the change in question.

2.0 The Agency

- 2.1 Subject to the requirements of this Agreement, the Licensee may use the NCOA data file for one or more of the following reasons:
- a) updating its own Customer database from time to time using the approved matching software that meets Canada Post’s requirements, as described in Section 1.4 of the NCOA Recognition Handbook;
 - b) to provide the Client Services described in Section 2.2 below to clients who have complied with Section 4.3 (the "Client Services");
 - c) to develop, obtain approval of and maintain “matching software” as provided for in the NCOA Recognition Handbook.

IN NO EVENT SHALL THE LICENSEE PROVIDE THE NCOA DATA FILE TO LICENSEE CLIENTS OR OTHER THIRD PARTIES. THE LICENSEE CLIENTS OR OTHER THIRD PARTIES MUST ENTER INTO AN AGREEMENT DIRECTLY WITH CANADA POST IN ORDER TO USE THE NCOA DATA FILE.

In any event, the Licensee shall be acting as agent of Canada Post with respect to such licensed information.

Refer to Schedule D for additional detail.

2.2 The Client Services consist of:

- (a) comparing the customer database of Licensee's clients to the NCOA data file, updating the customer record by providing the new address of movers whose name and old address match the information contained in the NCOA data file using the approved matching software, and returning to the Licensee's clients the updated information in the manner agreed to: and/or
- (b) using the approved matching software to flag for Licensee's clients, those names on the mailing list that match the information contained in the NCOA data file but whose new address is not available because it is uncertain or because the mover has elected not to have his new address disclosed.

The License granted to the Licensee does not authorize it to perform any other service or to use the NCOA data file in any matter other than as specifically set out in this Agreement including, without limitation, the creation of statistical reports, moving patterns or "recent mover lists". Refer to Schedule D for additional detail.

2.3 The Licensee shall provide all things necessary, including but not limited to, equipment, personnel, maintenance, training, documentation, facilities, and software and customer service as are required to use the NCOA data file in a secure and appropriate manner. The Licensee shall ensure that the matching software used is up to date and approved and maintained in such a manner as to meet the requirements, including the guidelines and processes, contained in the NCOA Recognition Handbook.

2.4 Canada Post may review the Licensee's NCOA system (process audits) as frequently as it determines necessary. Should the Licensee fail a process audit (the pass/fail criteria shall be set by Canada Post at its sole discretion), it shall not be entitled to NCOA data file updates until it demonstrates its system performance to the satisfaction of Canada Post. Canada Post shall have the right to terminate this Agreement immediately for cause if the Licensee fails to pass two process audits in a row.

2.5 The parties recognize that the Licensee operates as an independent business and that nothing in this Agreement shall be construed as creating a relationship of employment, joint venture or partnership between them. No act or omission of either party shall bind or obligate the other except as expressly set forth in this Agreement.

2.6 The Licensee shall ensure that it retains competent personnel and that such personnel are adequately trained. Such training shall include specific instructions regarding the requirements of the *Privacy Act*.

3.0 **Reporting**

3.1 The Licensee shall, on a monthly basis, provide Canada Post with reports in the form set out in the attached Schedules B and C or as may otherwise be required by Canada Post from time to time. Canada Post shall keep confidential all information contained in those reports and will not disclose such information unless required by law or unless written authorization is first obtained from the Licensee (which authorization shall not be unreasonably withheld or denied). These reports will only be used in relation to this Agreement or as otherwise required under law.

4.0 **Privacy Act**

4.1 The Licensee acknowledges that as agent of Canada Post, the Licensee is subject to the *Privacy Act*, as may be amended from time to time, with regard to the information contained in the NCOA data file (the "NCOA data").

4.2 Although NCOA data may only be used for mailing purposes, if the licensee (or sublicensee) has an existing business relationship with a customer, it may use NCOA data to update its customer database in order to maintain correct addressing information. NCOA data may not be use to augment a customer database in the absence of an existing business relationship with the customer, for resale, exchange, lease, license or any other use. See Schedule D for additional detail.

- 4.3 The Licensee shall ensure that its agreements with its clients contain provisions obligating the clients in a manner consistent with Section 4.2. The Licensee shall also ensure that an Acknowledgement Form (as set out in the attached Schedule 'A' (the "Acknowledgement Form") is completed by each client for which the Licensee performs the Client Services. The Licensee shall retain the Acknowledgement Form and will provide copies to Canada Post upon request.
- 4.4 The Licensee shall be responsible for protecting the NCOA data, for keeping accurate records of its use and shall upon request, acquaint Canada Post with all NCOA data it has received from Canada Post.
- 4.5 The Licensee, in addition to its other reporting obligations, shall provide Canada Post with such records and access to its premises as Canada Post may request, acting reasonably, for the purpose of auditing the Licensee's compliance with the privacy obligations set out in Section 4.

5.0 **Advertising**

- 5.1 The Licensee acknowledges that Canada Post, as licensor and principal, has a keen interest in the manner in which the Services are marketed. Therefore, Canada Post shall have the right to review and, at its sole discretion, prohibit any advertising or method of sale, which the Licensee proposes or in which the Licensee is already engaged. Should Canada Post object to any part or the whole of any advertisement submitted to it by the Licensee, it will endeavor to provide assistance in the form of explanations, suggestion and/or corrections within 10 business days from receipt of the request for approval. All material properly submitted to Canada Post shall be deemed approved unless the Licensee is notified otherwise within 10 business days from the date the material was received by Canada Post.
- 5.2 Without limiting the general scope of Section 5.1, the Licensee shall ensure that in all its advertisement:
- (a) any reference to the NCOA data file is accompanied by the acknowledgement of copyright ownership in the form of © Canada Post Corporation [**Licensee to insert current year**];
 - (b) no trademark or official mark of Canada Post is used unless the express written permission of Canada Post is first obtained;
 - (c) that any reference to the license granted by this Agreement makes clear that the license is non-exclusive;
 - (d) that it does not, by the use of any representation, oral or visual, by way of business name, mode of dress or in any other manner, suggest that the Licensee is a part of Canada Post's commercial operations or that the Licensee's employees are Canada Post employees; and,
 - (e) the content complies with all applicable laws and regulations, and that it does not infringe on the rights of any other party (Canada Post's approval of any material pursuant to Section 5.1 shall not constitute an opinion as to the legal appropriateness or adequacy of the material).

6.0 **Payment**

- 6.1 The Licensee agrees to pay a non-refundable Licensing Fee of \$11,500 and all applicable taxes.
- 6.2 The Parties acknowledge that this Agreement shall continue until its termination in accordance with the provisions of Section 1.2 or 7.0 of the Agreement.
- 6.3 The Licensing Fee shall be payable on execution of this Agreement. Payment is due 15 days from date of invoice. Late payments shall be subject to a late payment fee of 1.5% per month (18% per annum) unless otherwise specified on the invoice.
- 6.4 The Licensee shall complete a copy of the Licensee Information form as provided for in the attached Schedule E. The Licensee shall immediately notify Canada Post of any changes to such information.

6.5 Should the licensee require additional full or partial extracts of NCOA data due to system failure or failure to access monthly update from Canada Post FTP site, additional charges may apply. Should the licensee require additional process audits due to problems with their matching software, additional charges may apply.

7.0 **Term and Termination**

7.1 Either party may terminate this Agreement without cause on ninety (90) days written notice to the other party.

7.2 Canada Post may terminate this Agreement for cause immediately upon notice if:

- (a) the Licensee becomes bankrupt or insolvent, or files any proposal or makes any assignment for the benefit of creditors;
- (b) a receiver is appointed for any of the property of the Licensee;
- (c) an order is made for the winding up of the Licensee;
- (d) the Licensee makes a sale in bulk of all, or substantially all, of its assets;
- (e) the Licensee fails two process audits as provided for in Section 2.4;
- (f) the Licensee is in breach of privacy obligations as provided for in Section 4.2, 4.3, or 4.4;
- (g) the Licensee fails to make payment of any amount due, fails to meet the reporting or audit requirements such as those specified in Section 4.5 or is otherwise in breach of a material obligation of this Agreement and continues to be in default ten (10) days after notice of such default.

7.3 Termination if this Agreement shall be without prejudice to the rights of the parties that have accrued prior to termination.

7.4 Upon termination of this Agreement, the Licensee shall promptly return to Canada Post, or at Canada Post's request, destroy, all copies of the NCOA data in the possession or control of the Licensee.

7.5 Upon termination, the Licensee shall immediately cease advertising the Services. If the termination is for cause, the Licensee shall immediately cease all NCOA related activities. Should the termination be for without cause, the Licensee shall have fifteen (15) days to fill any orders for Client Services received before the termination date. After the 15-day period, the Licensee shall be responsible to promptly refund any monies paid by a Licensee's client for orders not filled during the 15-day winding up period.

7.6 It is understood that money damages may not be a sufficient remedy for any breach of this Agreement, and it is hereby agreed 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.

8.0 **Indemnification**

- 8.1 Canada Post shall at all times indemnify and render harmless the Licensee from and against all claims, damages, awards, judgments, actions and proceedings with regard to Canadian copyright infringement involving the NCOA data provided (a) the Licensee provides Canada Post notice of any claim or cause of action upon which Licensee intends to base a claim of indemnification hereunder with sufficient promptness to avoid prejudicing Canada Post's defense thereof, (b) Canada Post has the sole control of the defense and settlement of such claim or cause of action, (c) the Licensee provides reasonable assistance and cooperation to enable Canada Post to defend the action or claim hereunder, and (d) the Licensee refrains from making prejudicial statements associated with such claim without the prior written consent of Canada Post. In no event shall Canada Post be liable for indirect, special, incidental, consequential or other damages. The rights stated in this Section 8.1 shall be the Licensee's sole right and remedy and Canada Post's sole obligation with respect to such copyright infringement.
- 8.2 The Licensee shall at all times indemnify and render harmless Canada Post, its directors, officers, employees and others for which it is responsible for in law (individually and collectively the "Indemnified Parties"), from and against all allegations, claims, damages, awards, actions or proceedings, liabilities, losses and expenses (including legal fees and disbursements, on a solicitor and client basis) by whomsoever made, brought or prosecuted in respect of loss, or damage to or destruction of property or personal injury (including death) or infringement of any intellectual property (including for greater certainty personal information) suffered or incurred by the Indemnified Parties, arising out of or in any way connected with the Licensee's act or omission relating to this Agreement except to the extent caused by the negligence of Canada Post.

9.0 **Limitation of Liability**

- 9.1 Canada Post makes no warranty or representation, either express or implied, with respect to the NCOA data file, including its correctness, quality, performance, merchantability, or fitness for particular purpose.
- 9.2 Except as provided for in Section 8.1, Canada Post shall not be liable for direct, indirect, special, incidental, consequential or other damages arising out of use or inability to use the NCOA data, even if advised of the possibility of such damages.

10.0 **General**

- 10.1 **Entire Agreement:** This Agreement (including Schedules A, B C, D, and E) embody the entire agreement between the parties and no representation, understanding, or agreement, verbal or otherwise exists between the parties except as herein expressly provided.
- 10.2 **Assignment:** The Licensee shall not assign or otherwise encumber any of its interest in this Agreement without the written consent of Canada Post. Any attempt to assign or otherwise encumber this Agreement without such consent shall be void.
- 10.3 **Governing Law:** If the Licensee's address is not in a Canadian province or territory, the Agreement shall be governed by and interpreted under the laws in force in the province of Ontario, Canada.

10.4 Notice: Any notice given by either party shall be in writing and delivered personally, by Registered Mail, by Priority Courier with signature or by Xpresspost with signature. Notices sent by Registered Mail shall be deemed delivered four (4) business days after mailing, except no Saturday, Sunday or holiday will be considered a business day.

Notices shall be sent to Canada Post at:

ATTENTION: DIRECTOR, DATA PRODUCTS AND SERVICES
CANADA POST CORPORATION
2701 RIVERSIDE DRIVE, SUITE N0271
OTTAWA ON K1A 0B1

Canada Post will send notices to the Licensee at the Licensee's mailing address, identified on Schedule C of this Agreement. Either party may, by notice, change its address for notice.

10.5 Severability: If any term of this Agreement is found to be illegal or unenforceable by a court of competent jurisdiction, that term shall be deemed severed from this Agreement.

10.6 Amendment: Canada Post reserves the right to modify, discontinue services or otherwise amend this Agreement by providing the Licensee with reasonable notice.

10.7 Language: The parties declare that it is their express wish that this Agreement and related documents be drawn up in the English language. Les parties confirment qu'il est leur volonté expresse et réciproque que cette convention et tous documents qui s'y rattachent soient rédigés en anglais.

IN WITNESS WHEREOF the parties hereto have executed this Agreement each on the date below the signature of its duly authorized representative.

AGREED

"LICENSEE"

CANADA POST CORPORATION

Signature: _____
Authorized Representative

Signature: _____
Authorized Representative

Name: _____
Please Print

Name: Daryl Lamoureux

Title: _____

Title: Manager, Commercial Data Governance

Telephone: _____

Telephone: (613)734-3000 x55401

Date: _____

Date: _____

SCHEDULE 'A'
NCOA ACKNOWLEDGEMENT FORM

NCOA Service Provider" _____

Address: _____ Telephone: _____

This form must be completed and signed by each organization ("Recipient") requesting any National Change of Address (NCOA) Services before Recipient may receive the service (i.e. updated customer database) from the NCOA Service Provider. The NCOA Services are based on the Canada Post database that includes mover (personal) address information (where the mover has consented to such use.) The purpose of this Acknowledgement Form is to ensure that all parties who receive files in which the NCOA data has been incorporated are aware of restrictions on the use of NCOA data.

For the purpose of NCOA usage that is outlined in this agreement, the definition of customer for licensees or sub licensees of the NCOA data will follow the definition below. In order for a record to be updated on a NCOA licensee/sub licensee's database, there must be an existing business relationship between the NCOA Licensee (or sub licensee) and the individual/business provided in the NCOA file.

Definition of Customer (in an existing business relationship):

A consumer has made a purchase or donation, has rented, leased or contract for, or has otherwise participated in a organization's provision of products or services within the past 18 months, or a period consistent with that organization's normal buying cycle; and an existing business/consumer relationship is also defined as continuing for six months from the date of an inquiry or application from a consumer.

Although NCOA data may only be used for mailing purposes, if the licensee (or sublicensee) has an existing business relationship with a customer, it may use NCOA data to update its customer database in order to maintain correct addressing information.

The Recipient **SHALL NOT**, among other things:

- a) use NCOA information to augment its customer database in the absence of an existing business relationship with that customer or create a movers' or other sub-list (e.g. to target certain individuals or groups)
- b) verify mover information (e.g. for "skip tracing" or correcting individual mail items)
- c) conduct any statistical activities or analyze mover patterns within Canada.

The Recipient shall ensure that additional recipients of the corrected list/information are aware that they are also subject to the limited use of this information under this Acknowledgement Form. The Recipient understands that Canada Post and/or NCOA Service Provider may take legal action if Recipient fails to comply with these obligations.

The Recipient understands that Canada Post makes no warranty or representation, either express or implied, with respect to the NCOA data file, including its correctness, quality, performance, merchantability, or fitness for particular purpose. Canada Post shall not be liable for direct, indirect, special, incidental, consequential or other damages arising out of use or inability to use the NCOA data, even if advised of the possibility of such damages.

The Recipient understands that if it has an ongoing relationship with an NCOA Service Provider, the Recipient will be required to re-acknowledge these obligations at least once every 12 months. The obligations described in this Agreement continue after any termination of any such arrangement.

- AGREED-

Recipient

Signature: _____
(Authorized Representative)

Name: _____
(please print)

Company Name: _____

Address: _____

Telephone: _____ Date: _____

SCHEDULE 'B'

Instructions for recording customer files processed

The Licensee shall provide monthly performance reports in the format specified in this Schedule B. The reports cover one calendar month. Reports must be received by Canada Post within 15 days of the end of the month being reported on. Each report must be sent to:

NCOA ADMINISTRATOR
DATA PRODUCTS
CANADA POST CORPORATION
2701 RIVERSIDE DR SUITE N0271
OTTAWA ON K1A 0B1

or as otherwise agreed to.

Sample Format:

NCOA Client List Monthly Report

<u>Date</u>	<u>Customer Name</u>	<u>Records Processed</u>	<u>NCOA Matches</u>		<u>"No Information"*</u>	
			<u>Number</u>	<u>Percent</u>	<u>Number</u>	<u>Percent</u>
1/12/2004	ABC Corp	100,000	6,000	6%	2,000	2%
1/12/2004	XYZ Ltd.	200,000	10,000	5%	**	
2/12/2004	DEF Ltd.	50,000	4,000	8%	1,000	2%

** Client did not request/require "No Information" service

Total Addresses Processed this month	3,000,000	
Total Address Matches this month	180,000	6%
Total "No Information"	60,000	2%
Number of client lists processed this month	15	
Total Addresses Processed year to date	9,600,000	
Total Address Matches year to date	528,000	5.5%
Total "No Information"	144,000	1.5%
Number of client lists processed this year	50	

* "No Information" refers to moves where new address information is not provided.

SCHEDULE 'C'

Instructions for recording in-house files processed

The Licensee shall provide monthly performance reports in the format specified in this Schedule C. The reports cover one calendar month. Reports must be received by Canada Post within 15 days of the end of the month being reported on.

Each report must be sent to:

NCOA ADMINISTRATOR
DATA PRODUCTS
CANADA POST CORPORATION
2701 RIVERSIDE DR SUITE N0271
OTTAWA ON K1A 0B1

or as otherwise agreed to.

Sample Format:

NCOA In house Monthly Report

<u>Date</u>	<u>Records Processed</u>	<u>NCOA Matches</u>		<u>“No Information”*</u>	
		<u>Number</u>	<u>Percent</u>	<u>Number</u>	<u>Percent</u>
1/12/2004	100,000	6,000	6%	2,000	2%
1/12/2004	200,000	10,000	5%	0	0%
2/12/2004	50,000	4,000	8%	1,000	2%
Total Addresses Processed this month				3,000,000	
Total Address Matches this month				180,000	6%
Total “No Information”				60,000	2%
Total Addresses Processed year to date				9,600,000	
Total Address Matches year to date				528,000	5.5%
Total ”No Information”				144,000	1.5%

* “No Information” refers to moves where new address information is not provided

SCHEDULE 'D'

Understanding Acceptable Uses of the NCOA Data

To assist licensees in understanding the acceptable uses of the NCOA data the following gives some guidelines of acceptable and unacceptable uses. In no event shall this be interpreted as reducing the general obligations outlined in the main body of this Agreement.

General: The NCOA service is a correction service for customer files that will be used for the preparation of mailings. The updating of mailing lists must be done using approved matching software.

Licensees who update their client's customer database must ensure that the Acknowledgement Form (see Schedule A) is completed and signed **by all applicable parties prior to providing NCOA services**. This means all parties, including without limitation, any advertising agency, mail service provider or any other party receiving the list must sign such form. This form helps ensure the parties handling the updated customer file are aware of the applicable restrictions of use

The NCOA Database CANNOT be used:

- to enhance a database by adding the names and addresses of potential (as opposed to existing) customers
- to create movers' lists or other sub-lists to target certain individuals or groups
- **to update rental lists where no relationship exists between individuals on file and licensee (or licensee's customer**
- to verify mover information manually, such as "skip tracing" or to correct returned mail on a "one by one" basis
- to update financial databases or registries such as to update credit bureau information or to assist in credit reporting or collection activities or shared in any manner whatsoever
- to conduct any statistical activities or to analyze mover patterns within Canada
- for any other purposes other than correcting mailing lists and developing and/or maintaining matching software applications for use with the NCOA database as permitted under license.

SCHEDULE 'E'

NCOA Licensee Information

Company Name: _____

Administrative & Billing Contact

Name : _____

E-mail address: _____

Department: _____

Mailing Address:

Street

City

Province

Postal Code

Country

Tel: _____ Fax: _____

Technical Contact / Ship data to:

Same as above, or:

Name : _____

E-mail address: _____

Department: _____

Mailing Address:

Street

City

Province

Postal Code

Country

Tel: _____ Fax: _____