

## DATABASE LICENSE AGREEMENT

This license agreement is made the \_\_\_\_\_ day of \_\_\_\_\_, 2010 between \_\_\_\_\_ ("Licensee"), and  
**Texas Library Association**, having offices at **3355 Bee Cave Road, Suite 401, Austin, Texas 78746-6763** ("Licensor").

### WITNESSETH

**WHEREAS**, Licensor has developed a valuable and proprietary database containing information regarding names, addresses and other information, and has designed said database to provide information considered by Licensor to be useful in, among other things, identifying key prospects for the Licensee's products, and/or services and Licensor maintains said database; and

**WHEREAS**, Licensee desires to license part of the said database for the use of its marketing department and other business purposes.

**NOW, THEREFORE**, in consideration of the mutual covenants set forth below and for other good and valuable consideration, the parties hereto hereby agree as follows:

1. Definitions.
- 1.1 The Database. The "Database" shall mean the information provided by the Licensor specific to the request of the Licensee. The "Database" will be provided in either a machine readable magnetic medium or electronic mail attachment.
- 1.2 Permitted Uses. "Permitted Uses" shall mean the **one time use** of the Database by Licensee only for the promotion of Licensee's products by direct mail and not for any other operations of Licensee nor any other business, corporation, or entity, including without limitation any other business activity of Licensee. The Database shall be loaded solely on the Licensee's computer, and none other, for access by Licensee's employees only, and not for sale of license to third parties.
2. License. Licensor hereby grants to Licensee a non-exclusive, non-transferable license (the "License") for the term of this Agreement to use the Database for the Permitted Uses.
3. Delivery. Licensee will provide to Licensor a duly executed copy of this Agreement within fifteen (15) days of Licensee receiving one copy of the Database.
4. Term. The term of this Agreement shall be for a **one time use** only.
- 4.1 Termination. Notwithstanding the foregoing, this Agreement may be terminated by either party if either of the following events shall occur: (i) by the terminating party if the other party shall breach any term or covenant of this Agreement, and such material breach shall continue uncured for thirty (30) days after written notice thereof from the non-breaching party detailing such material breach; or (ii) by the terminating party if a petition in bankruptcy shall be filed either voluntarily or involuntarily with respect to the other party, or if the other party shall be adjudicated insolvent by any court, or if a trustee or a receiver of a substantial portion of any property of the other party shall be appointed in any suit or proceeding by or against such party, or if the other party shall make an assignment of the benefit of creditors or shall seek or obtain the benefit of any bankruptcy or insolvency act.
- 4.2 Obligations to pay fees. Notwithstanding that this Agreement may be terminated for any of the reasons in Section 4.1. Licensee shall not be relieved from its obligation to pay to Licensor any and all fees or other amounts due under this Agreement at any time, or for any period through the date of such termination, nor shall termination or expiration affect any rights or remedies any party may have resulting from any breach of this Agreement by the other prior to such termination.

5. Post Termination Provisions. Except as provided below, as soon as practicable after termination of this Agreement for any reason whatsoever, without regard to fault, but no later than thirty (30) days after such termination, Licensee shall:
  - 5.1 Destroy or deliver to Licensor, at Licensor's option, any and all copies of the Database and any Updates thereto, or other machine-readable or human-readable material delivered to Licensee pursuant to this Agreement and then in Licensee's possession or under Licensee's control, containing all or any part of the Database provided to Licensee pursuant to this Agreement; and
  - 5.2 Expurge from any data storage facility owned by or under the control of Licensee any data contained in or derived from the Database delivered to the Licensee pursuant to this Agreement; and
  - 5.3 Certify to Licensor in writing that Licensee has complied with the requirements of this Section.
- 6.1.1 Fees. As consideration for Licensor's furnishing of the License, Licensee shall pay to Licensor a license fee, in respect of the Database, in the sum of money and other costs as set forth in a corresponding invoice.
- 6.2 All magnetic tapes or electronic mail attachments, used to supply the Database shall remain the property of Licensor. After entry of the Database contained in each magnetic tape or electronic mail attachment on Licensee's computer, upon request of Licensor, Licensee shall return such magnetic tapes to Licensor.
7. Limited Warranty: Limitation Of Liability.
  - 7.1 Except as expressly provided herein, licensee and licensor make no, and neither receives any other warranty, expressed or implied, and there are expressly excluded all warranties of merchantability and fitness for a particular purpose. Licensor makes no warranties or representation regarding the accuracy, adequacy, or completeness of the information contained within the database.
  - 7.2 Except with respect to damages for the unauthorized use, disclosure, misappropriation or infringement of intangible property subject to copyright, patent right, trade secret or other proprietary rights, neither party shall be liable to the other for incidental or consequential damages, regardless of whether such damages are foreseeable or whether such damages are deemed to result from the failure or inadequacy of any exclusive or other remedy.
  - 7.3 In the event that any part of this section 7 shall be held unenforceable or invalid under the laws of an applicable jurisdiction, the remaining parts thereof shall nevertheless continue to be valid and enforceable as though the offending portions had not been a part hereof. In addition, if the limitations on warranty or liability thereunder are held to be unenforceable under the law of an applicable jurisdiction, such limitations shall, for purposes of this section 7, be adjusted such that the liability of licensor shall not exceed fifty percent (50%) of the amount of the annual license fee described in section 6 paid, by licensee to licensor.
8. Proprietary Rights.
  - 8.1 Licensee acknowledges that Licensor owns all right, title and interest, including, without limitation, the copyright, in and to the Database and all components thereof. The copyright and title to all property interests in or to the Database are and shall remain in Licensor as owner and this Agreement shall not grant to Licensee any right of ownership therein.
  - 8.2 Licensee shall not alter, remove, obscure or obstruct the display of any copyright, trademark or other proprietary notice placed upon the Database by Licensor and shall ensure that whenever the Database is accessed or printed (whether or not authorized) Licensor's copyright, trademark or other proprietary notice is displayed or reproduced, provided that, Licensor's copyright, trademark or other proprietary notice, shall not be required to be reproduced on individual mailing labels or documents imprinted for the purpose of mailing.
  - 8.3 Licensee shall execute and deliver to Licensor from time to time at Licensor's request any further instruments or documents that may reasonably be required by Licensor to vest and confirm such proprietary rights in Licensor.

- 8.4 Licensee shall use the Database solely in connection with the terms of this Agreement. Licensee shall not (i) alter, modify, or adapt the Database, including but not limited to decompiling, disassembling, or creating derivative works, without the prior written approval of Licensor, or (ii) sell, license or otherwise distribute to third parties, including to Licensee's subsidiaries or affiliates, the Database or any part or parts thereof, or (iii) copy, download, or otherwise reproduce the Database in any medium or in any way in whole or in part, except that Licensee may a) print all or any part of the Database solely in the form of individual names and addresses for the purpose of mailing; or b) copy the Database for the purpose of telephone contact of the names on the Database; or c) copy the Database for the purpose of comparing and analyzing information on the Licensee's databases.
- 8.5 Licensee acknowledges that the Database is the product of Licensor's extensive gathering and coordination of information, selection therefrom of information considered by Licensor to be relevant and useful, and original arrangement of selected information.
9. Indemnification. Each party shall defend and indemnify the other, its directors, officers, agents, and employees from any liability and expense (including, without limitation, reasonable attorneys' fees) imposed upon the indemnified party as a result of any claim arising out of the acts or omissions of, or breach of any representation or warranty hereunder by, the indemnitor under this Agreement and including all costs, expenses and damages incurred or suffered by the indemnified party in connection therewith, subject, however, to the limited liability provision of Section 8 hereof; provided that the party seeking indemnification shall promptly notify the other of any such claim, and permit such other party to control the defense or resolution thereof, and the party seeking indemnification shall fully cooperate with the other in connection therewith.
10. Relationship of the Parties. The parties recognize that they are independent contractors and neither is an agent, employee, partner, or joint venturer of the other. Furthermore, neither party is authorized to waive any right, or assume or create any contract or obligation of any kind in the name of, or on behalf of, the other or to make any statement that it has the authority to do so.
11. Miscellaneous.
- 11.1 This Agreement constitutes that entire agreement between the parties and supersedes any and all prior and contemporaneous understandings, written or oral, concerning the subject matter of this Agreement. Headings in this Agreement are for convenience only and shall have no legal meaning or effect.
- 11.2 Except as otherwise expressly provided herein, any amendment or modification of this Agreement must be approved in writing by a duly authorized representative of each party.
- 11.3 No waiver by either party of any term or condition of this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed a further or continuing waiver of any such term or condition, or a waiver of any other term or condition of this Agreement.
- 11.4 If any provision of this Agreement is found to be invalid by any court, arbitrator, or arbitration panel (pursuant to Section 12.8 below) having competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions hereof.
- 11.5 Notwithstanding termination or expiration of this Agreement the terms of Sections 6 and 9 shall survive termination or expiration and remain in full force and effect.
- 11.6 All notices shall be addressed to such party at the address or applicable facsimile number set forth below or such other address as may hereafter be designated in writing by the addressee to the addressor, and shall be deemed sufficient if sent by United States Registered Mail, postage prepaid return receipt requested, or by facsimile transmission with confirmed answer back to the addresses as set forth below:

If to Licensor: **Texas Library Association**  
**3355 Bee Cave Road, Suite 401**  
**Austin, Texas 78746-6763**  
**Attn: Kasey Hyde**  
**Fax: 512 / 328-8852**

If to Licensee: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Fax: \_\_\_\_\_

Notices shall be effective upon receipt.

- 11.7 Each party represents that all necessary approvals and consents have been obtained for entry into this Agreement.
- 11.8 This Agreement shall be governed by, and construed in accordance with, the laws of the State of Texas, without reference to principles of choice of laws. Except as hereinafter provided any controversy or claim arising out of or relating to this Agreement, or breach thereof, shall be resolved by arbitration in accordance with the Commercial Arbitration Rules, then in effect, of the American Arbitration Association and judgment upon the award may be entered in any court having jurisdiction thereof. Any arbitration shall be held within the City of Austin, Texas unless the parties agree otherwise in writing. Notwithstanding the foregoing, each party shall be at liberty to apply to any court having jurisdiction for injunctive, interim or conservatory relief from any threatened or continuing breach by the other party of its obligations under this Agreement.
- 11.9 This Agreement is binding upon and shall inure to the benefit of the parties and their respective permitted successors, trustees, and assigns. Neither party shall have the right to assign this Agreement without the prior written consent of the other which consent shall not be unreasonably withheld or delayed.
- 11.10 A delay in or failure of performance of either party shall not constitute a default hereunder nor be the basis for, or give rise to, any claim for damages, if and to the extent such delay or failure is caused by force majeure, and the period for performance shall be extended accordingly. Notwithstanding the foregoing, however, should any extension of the period for performance exceed one hundred eighty (180) days, either party may terminate this Agreement by giving notice to the other, and such termination shall not constitute a breach of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized representatives as of the date first written above.

\_\_\_\_\_  
\_\_\_\_\_  
Licensee:  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

**Texas Library Association**

Licensor: Patricia Smith  
By: \_\_\_\_\_  
Title: Executive Director  
Texas Library Association