

United States Postal Service
LICENSE AGREEMENT
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THIS LICENSE AGREEMENT FOR DPV®

LICENSED PRODUCT (this "Agreement") is made as of the ___ day of _____, 20___, by and between:

(Licensee) _____,

a _____, having its principal place of business at:

(Address) _____

(City) _____ (State) _____ (ZIP+4) _____ - _____,

and the United States Postal Service (USPS), with offices at 225 N Humphreys Blvd Ste 501, Memphis TN 38188-1001.

LICENSE AGREEMENT Number: 671440-01-DPV- XXXX

In consideration of the grant and mutual covenants set forth herein, the parties agree as set forth below in the Introduction, and with more specificity after the Introduction:

Introduction

USPS has created a confidential and proprietary hash table herein referred to as the DPV Product, and

Licensee acknowledges that said DPV Product and any subsequent revisions thereof that may be issued by USPS are confidential and proprietary property of USPS, and

USPS represents that it is the sole owner of copyrights and other proprietary rights in and to the DPV Product, and that it will remain the sole owner in subsequent revisions thereof, and

USPS has determined that significant public interest exists in the commercial offering of DPV and to that end is making DPV available for the express purpose of facilitating access to the data contained therein by the mailing public, and

Licensee is a CASS Certified™ software developer, and

Licensee will comply with the most current copy of the Licensee Performance Requirements, Exhibits, Appendices, and

Licensee wishes to acquire a nonexclusive license to incorporate the DPV Product into Licensee-developed applications to confirm valid delivery points, and

Licensee shall not use the DPV Product technology to artificially compile a list of delivery points not already in Licensee's possession or to create other derivative products based upon information received from or through the DPV Product technology.

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1. Definitions

- 1.1 As used in this Agreement, the term DPV means the new USPS proprietary technology product designed to help mailers validate the accuracy of address data, right down to the physical delivery point, which is more fully described in the attached License Performance Requirements incorporated herein by reference, and
 - 1.1.1 Any materials, know-how, source code, and technical information that USPS provides to Licensee in written or oral form for use in connection with the product; and
 - 1.1.2 All whole or partial copies on any media, adaptations, Improvements (as defined in paragraph 3.2 of this Agreement), translations, derivative works, compilations, partial copies within modification, merges with other materials from whatever source and updated works based on the foregoing that are provided by USPS or are created by Licensee in accordance with this Agreement.
- 1.2 Collectively, the above also may be referred to as "Licensed Materials".

2. Sole Purpose and Scope

- 2.1 The sole purpose and scope of this License is limited to providing Licensee with access to Licensed Materials that Licensee will incorporate into one or more products to be marketed by Licensee in its own name to mailers and subsequent software integrators in their own name in accordance with this Agreement and the License Performance Requirements.
- 2.2 Licensee may not use and may not permit any of Licensee's customers to use Information obtained or derived from the DPV Product for any purpose inconsistent with this Agreement, including but not limited to creating or maintaining any derivative products that incorporate data obtained from use of DPV Licensed Materials in either whole or in part for the benefit of Licensee or its customers other than as expressly agreed to herein.
- 2.3 No proprietary Licensee address list(s) or service products or other system of records that contain(s) address attributes updated through DPV processing shall be rented, sold, distributed or otherwise provided in whole or in part to any third party for any purpose containing address attributes derived from DPV processing.
- 2.4 Neither Licensee nor any of Licensee's customers may use the DPV technology to artificially generate address records not already within the possession of Licensee or Licensee's customers.

3. Grant of Rights

- 3.1 USPS hereby grants to Licensee, as a CASS Certified software developer, a single use, non-exclusive, non-transferable license (the "License") for the period of one year to use DPV solely within the scope and for the Purpose described above and in accordance with the terms and conditions set forth in this Agreement. The License under this Agreement does not include any express or implied right to use, display, reproduce, distribute, or sublicense, disassemble or reverse compile DPV except within the limited scope expressly defined in this Agreement, in particular as defined within the attached Licensee Performance Requirement. Licensee may
 - 3.1.1 Combine DPV with other computer software as expressly permitted by this Agreement or as authorized by USPS in writing provided that such combinations also shall be considered Licensed Materials under this Agreement;

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- 3.1.2 After performing all necessary security integration of the DPV Product as defined in paragraph 4.3 of the Licensee Performance Requirements, sublicense DPV as it is incorporated into Licensee's product(s) and the rights to DPV granted in paragraphs 3.1 and 3.1.1 of this Agreement in that secure form to other software integrators so that they may integrate the secure DPV form into their products in accordance with the Licensee Performance Requirements. Rights granted to these software integrators are limited to the use of the DPV-integrated product in the secure form as provided by Licensee without modifications.
- 3.2 Neither Licensee, nor any person acting for Licensee, may jointly or individually make any invention, improvement or enhancement ("Improvement"), whether patentable or unpatentable, on or relating to DPV or any portion thereof without the prior written approval of USPS, which USPS may withhold in its sole discretion.
- 3.2.1 Licensee may not modify the DPV technology except to the extent necessary to fit in the data processing environment of Licensee or Licensee's commercially supplied product.
- 3.2.2 Licensee may modify DPV solely for the purpose and within the limited scope of the License granted by this Agreement. Licensee shall have no right to market or otherwise use the DPV Product technology outside of the scope of the License granted by this Agreement, whether alone or in conjunction with said Improvement, without the specific written approval of USPS, which USPS may withhold in its sole discretion.
- 3.2.3 Licensee shall forfeit to USPS all rights in any subject Improvements that Licensee fails to report to USPS and/or upon which USPS has not granted prior approval.
- 3.3 Any sublicense of DPV and/or any of the rights granted under this Agreement must (i) be in writing; (ii) not contain terms that are any less restrictive than the terms of this Agreement; and (iii) ensure that all obligations of Licensee's customers referred to in this Agreement are binding upon Licensee's customers and inure to the benefit of USPS. Upon request of USPS, Licensee shall provide copies of such sublicense agreements to USPS.
- 3.4 Licensee may only make copies of the DPV Product as specifically authorized and provided for within this Agreement or the Licensee Performance Requirements under this Agreement.
- 3.5 Licensee may not use the Licensed Materials provided or obtained under this License for any purpose other than the fulfillment of requirements under this License.

4. Conformance With License Performance Requirements

- 4.1 In conforming to this License, Licensee shall adhere to the most current copy of the Licensee Performance Requirements, Exhibits, and Appendices. The most current copy shall be that copy maintained by USPS upon its designated web site and available for Licensee's access. Under no circumstance shall USPS be responsible for Licensee's failure to possess the most current copy of the DPV Licensee Performance Requirements.
- 4.2 Licensee shall use the USPS required text when communicating with their customers to provide a consistent industry-wide approach and facilitate a clear understanding by all customers.
- 4.3 USPS reserves the right to make any and all changes within the Licensed Materials as it deems necessary in the design, function, reporting requirements, or other components established within the DPV Licensee Performance Requirements or the DPV Interface Developers Guide.

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5. Term Of License

- 5.1 The term of this Agreement shall be for one (1) year starting from October 1 of each year, plus any extensions made pursuant to this paragraph 5. Each year the Licensee shall have the option to extend the term of this Agreement for an additional year by payment to the USPS of the required annual license fee (See Payments) no less than thirty (30) days prior to the expiration of the Agreement.

6. Payments

- 6.1 In consideration for the use of the DPV Product, Licensee shall pay USPS within ten (10) calendar days of the execution of this Agreement, a prorated License fee in the amount of Eleven Thousand Two Hundred Fifty Dollars (\$11,250) for the initial year of this Agreement. Payment of the standard fee allows Licensee to write an interface for resale to third parties. After the initial year, the yearly payment and method of payment will be determined by USPS taking into consideration, among other things, the number of licensees, the estimated operating costs and overhead in the subsequent year, and a portion of the remaining development costs. Yearly payments shall be made to USPS no later than thirty (30) calendar days prior to the expiration of the then-existing Agreement.

7. Termination and Suspension

- 7.1 Either party shall have the right to terminate this Agreement upon sixty (60) days written notice to the other party of such termination. If Licensee at any time during the term of this Agreement shall fail to comply with or fulfill any of the terms or conditions thereof, USPS may, at its discretion, terminate the Agreement by sending Licensee a notice of termination. The notice shall state the reasons for the termination and may, but shall not be required to, provide Licensee with a period of thirty (30) calendar days to cure all defects and avoid termination. Said termination shall be without liability to USPS.
- 7.2 Licensee shall, upon the termination date, cease advertising and selling and filling orders for Licensee products that incorporate DPV pursuant to this Agreement. Monies received for orders not yet filled as of the termination date shall be refunded to purchasers within fifteen (15) business days of receipt of the termination notice.
- 7.3 At the sole discretion of the Contracting Officer or his designees, USPS may, as an interim measure, send Licensee a suspension directive. A suspension directive will state the reasons for suspension and direct Licensee to cease the activities specified in the suspension directive until Licensee makes the necessary corrections and the corrections are verified by USPS. Upon receipt of the suspension notice, Licensee shall immediately cease such specified activities until authorized in writing by the Contracting Officer that such activities may be resumed.

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- 7.4 Upon expiration or termination of the Agreement, Licensee shall, at the direction and to the satisfaction of USPS, destroy or return to USPS the DPV Product materials and all whole or partial copies thereof. Notwithstanding any such expiration or termination, Licensee shall remain obligated to abide by the confidentiality provisions of this Agreement.

8. Limitation of Liability

OTHER THAN AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, USPS MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AS TO MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE OR OTHERWISE WITH RESPECT TO DPV, NOR SHALL USPS BE LIABLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES EVEN IF IT HAS BEEN OR IS HEREAFTER ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. USPS SHALL NOT BE LIABLE FOR ANY DESIGN, PERFORMANCE OR OTHER FAULT OR INADEQUACY OF DPV, OR FOR DAMAGES OF ANY KIND ARISING OUT OF OR IN ANY WAY RELATED TO OR CONNECTED WITH SUCH FAULT OR INADEQUACY. IN NO EVENT SHALL USPS' LIABILITY TO LICENSEE UNDER THIS AGREEMENT, IF ANY, EXCEED THE PRO RATA PORTION OF THE ANNUAL LICENSE FEE BASED ON THE EFFECTIVE DATE OF CANCELLATION WITHIN THIRTY (30) CALENDAR DAYS OF THE DATE OF CANCELLATION.

9. Indemnity

- 9.1 USPS agrees to hold harmless, defend and indemnify Licensee for infringement of any U.S. copyright, trademark, or service mark in the material provided by USPS to Licensee under this Agreement. The foregoing obligation shall not apply unless USPS shall have been informed within ten (10) calendar days by Licensee of the suit or action alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in the defense thereof.
- 9.2 Licensee agrees to hold harmless, defend and indemnify USPS for infringement of any U.S. patent, copyright, trademark, or service mark arising out of Licensee's modification to or development of applications, materials, and interfaces for use with DPV under this Agreement. In addition, Licensee agrees to hold harmless, defend and indemnify USPS and its officers, agents, representatives, and employees from all claims, losses, damage, actions, causes of action, expenses, and/or liability resulting from, brought for, or on account of any injury or damage received or sustained by any person, persons or property growing out of, occurring, or attributable to any work performed under or related to this License, resulting in whole or in part from any breach of this Agreement or from the negligence or intentional misconduct, including any unauthorized disclosure or misuse of the Licensed Materials, including data derived from DPV, by Licensee, or any employee, agent, or representative of Licensee.

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10. Product Changes

- 10.1 USPS reserves the right to make any changes, modifications, or enhancements (Product Changes) to the DPV Product during the term of this Agreement.
- 10.2 Licensee is required to include all Product Changes in DPV to its commercial product within thirty (30) calendar days of receipt of such Product Changes or such longer period expressly authorized by USPS in writing.
- 10.3 Licensee must utilize the most current copy of the DPV Licensee Performance Requirements. Updates to the Licensee Performance Requirements may be published at USPS discretion and will be submitted to Licensee at the address of record. In addition, USPS will make available a full copy of the DPV Licensee Performance Requirements upon its designated web site for Licensee's access. Under no circumstances shall USPS be responsible for Licensee's failure to possess the most current copy of the DPV Licensee Performance Requirements.

11. Confidentiality of the DPV Product and Customer Address Information

- 11.1 DPV Product is confidential and proprietary to USPS and shall remain the property of USPS. Nothing contained in this Agreement shall give Licensee any right, title, or interest in or to DPV except as a licensee under the terms of this Agreement.
- 11.2 Licensee agrees to hold all information concerning DPV in trust, to disclose said information only in accordance with the provisions of this Agreement, to take all reasonable steps (including as a minimum, but not limited to, those steps necessary to comply with paragraphs 11.4 and 19 of this Agreement) to safeguard the confidentiality of DPV and any or all parts thereof and to prevent unauthorized disclosure thereof by Licensee's employees, agents, representatives, and customers.
- 11.3 Unauthorized disclosure includes using DPV for artificially creating address lists; providing DPV or any portion thereof to any third party for any purpose or under any conditions except as expressly authorized by this Agreement; or any other use of DPV and/or the provided source code, that is not specifically authorized by this Agreement.
- 11.4 Licensee agrees to provide security for all Licensed Materials that is equal to or greater than the level of security necessary for compliance with the USPS *ADP Security Handbook* (Handbook AS-805).
- 11.5 The DPV Product processing requires the potential Licensee to have access to address information (i.e. addresses and return addresses) that appear on mailpieces. To ensure the confidentiality of this address information, except as permitted, no supplier or subcontractor, and no employee or former employee of any supplier or subcontractor may, at any time, during or after the period of this License, disclose to any third party any address information obtained in the performance of this License. This License does not give the supplier proprietary interest in address information, and the supplier's right to have, use, and disclose address information is restricted by the License. The Licensee agrees to control and restrict access to address information to persons who need it to perform work under this License and prohibit the unauthorized reproduction of this information.

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12. Compliance Audits

- 12.1 USPS may perform DPV process quality reviews (process audits) as frequently as USPS, in its sole discretion, determines necessary.
- 12.2 To ensure the integrity of the DPV Product, Licensee shall be prepared to demonstrate its system performance and pass at least one DPV process review to be conducted on or offsite each year, at USPS' discretion.
- 12.3 USPS or its designated representatives, on an announced or unannounced basis, shall have the right to visit and examine Licensee's sites. USPS or its designated representatives shall have the right to examine, on or off Licensee's premises, Licensee's computer systems, processing files, documents, administrative records, and other materials to ensure Licensee's compliance with the provisions of this Agreement.
- 12.4 USPS or its authorized representatives will, until three (3) years after final payment under this Agreement, have access to and the right to examine any directly pertinent books, documents, papers, records or other materials of Licensee involving transactions related to this Agreement.

13. Proprietary Notice

- 13.1 All copies of DPV Product produced by Licensee shall have a notice identifying the same as the confidential and proprietary property of USPS.
- 13.2 USPS hereby grants a license to Licensee Third Party Provider to use the marks "DPV" and "Delivery Point Validation" to reference the USPS DPV Product to be provided by Licensee in accordance with the terms of this Agreement and the standards set by USPS. All use shall inure to the benefit of USPS.

14. Advertising

- 14.1 Licensee shall publicly advertise DPV (including any of its products incorporating DPV) at its own expense. Licensee may advertise DPV Product only as follows:
 - a. The legend "Non-exclusive Licensee of the United States Postal Service" shall appear once, and not more than once in each advertisement.
 - b. Licensee shall not suggest by any business or trade name any association with the USPS or the United States Government.
 - c. Licensee shall not employ in its advertising or marketing activities any language, conduct, mode of dress, or other representation or sales technique from which a prospective purchaser might infer that Licensee or its agent is an employee or representative of the USPS or the United States Government.
 - d. All Licensees advertising shall clearly and conspicuously state that the price at which its DPV Product(s) is being offered by Licensee is not established, controlled, or approved by the USPS or the United States Government.

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15. Approval Of Advertising And Method Of Sale

- 15.1 In order to assure that prospective purchasers are not misled by any aspect of the advertising or method of sale of DPV enabled products, and to specifically assure that the relationship between Licensee and USPS is correctly represented, USPS shall have the right to review all of Licensee's proposed methods of sale and proposed advertising.
- 15.1.1 For the purposes of this paragraph, advertising means Licensee's public disclosures concerning DPV, including but not limited to proposed copy for news releases, radio, Internet, television, magazine and newspaper advertisements, telephone and direct mail solicitations.
- 15.2 Licensees shall not publish or distribute any advertising or engage in any method of sale, that has not been approved by USPS. The granting or withholding of approval shall be at the sole discretion of USPS.
- 15.3 USPS shall within twenty (20) business days of receipt of proposed advertising or a proposed method of sale, approve it in writing or provide a written statement of the reasons for disapproval and, at its discretion, a statement of the changes necessary for approval. USPS failure to respond within twenty (20) business days shall be deemed approval of a proposed advertisement or method of sale.
- 15.4 USPS reserves the right to require Licensee to immediately withdraw and/or modify any advertising material bearing reference to DPV Product Materials that have not previously been reviewed or approved by USPS. USPS shall not be liable for any Licensee costs to perform said withdrawal and/or modification.

16. Coding Accuracy Support System (CASS) Certifications And Periodic Verification Of DPV Matching Capability

- 16.1 Licensee shall maintain current Coding Accuracy Support System (CASS) certification for ZIP+4 Coding and Delivery Point Coding. To meet this requirement Licensee must be re-certified at each CASS cycle (i.e., yearly). In addition to the CASS certification, USPS shall have the right to test the accuracy of the DPV process at anytime without advance notice. Licensee failure to meet the standards established by the CASS certification process or for DPV processing as defined within the Licensee Performance Requirements may result in suspension or termination of this License.

17. Notices

- 17.1 Any notice to be given under this Agreement shall be given in writing at the address of each party set forth in this Agreement, or to such other address as either party may designate by written notice to the other.

18. Governing Law

- 18.1 This Agreement shall be governed by the federal laws of the United States of America, or, when no such law is applicable, then by the laws of the State of New York as interpreted by the United States Court of Appeals for the Second Circuit.

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19. Title 39 Compliance

- 19.1 The address information within the DPV Product materials is covered under 39 USC § 412. Accordingly, Licensee shall take all steps necessary to secure the DPV Product materials in a manner that fully complies with Section 412 constraints prohibiting the disclosure of address lists.
- 19.2 Licensee shall ensure that neither Licensee nor Licensee's customers are using the DPV Product materials for the purpose of creating mailing lists. Licensee must adopt at a minimum all security measures as identified within the Licensee Performance Requirements to detect cases where address records have been artificially generated and presented to the DPV Product for the apparent purpose of creating a mailing list.

20. Entire Agreement

- 20.1 This Agreement constitutes the entire Agreement between USPS and Licensee concerning the subject matter thereof and supersedes all previous agreements and understandings. This Agreement may not be altered, amended, or modified except by a written instrument signed by authorized representatives of USPS and Licensee.

21. Non-Transferable

- 21.1 This License shall not be transferable, in whole or in part. The rights and obligations of Licensee shall be terminated immediately (pursuant to paragraph 7) in the event of the death of Licensee (if an individual) or, dissolution, merger, buy-out, or transfer (of any kind) of the assets of Licensee (if other than an individual).

22. Furnishing of DPV Product

- 22.1 All Licensed Materials associated with DPV will be furnished directly to Licensee at Licensee's address as set forth in this Agreement, unless Licensee specifies another address in writing. Licensed Materials shall be updated on a frequency defined within the Licensee Performance Requirements. Licensee shall be prepared to accept all updates of the Licensed Materials via electronic file transfer that shall be made available at the discretion of USPS.

23. Liquidated Damages/Equitable Relief

- 23.1 Due to the sensitive nature of the confidential and proprietary information contained in the Licensed Materials, Licensee acknowledges that unauthorized use and/or disclosure of Licensed Materials will irreparably harm USPS' rights to control its intellectual property. Accordingly, Licensee (i) agrees to reimburse USPS for any unauthorized use and/or disclosure at a rate of treble (3 times) the current annual fee charged to Licensee under this Agreement or treble the average total revenue Licensee obtained through its use of the Licensed Materials, whichever amount is greater, and (ii) consents to such injunctive or other equitable relief as a court of competent jurisdiction may deem proper.
- 23.2 Upon the assessment of a penalty under this Agreement, Licensee shall forfeit all rights provided under this Agreement and shall be prohibited from reacquisition of a license for a period of not less than 5 years.

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24. Survival Obligations

- 24.1 Notwithstanding the expiration or termination of this Agreement, the obligation set forth in paragraphs 3, 7, 11, 12, 13, 14, 18, and 19 shall survive such expiration or termination.
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IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date first written above:

LICENSEE:

BY: _____

NAME: _____

TITLE: _____

DATE: _____

UNITED STATES POSTAL SERVICE

BY: _____

NAME: James D. Wilson

TITLE: Director, Addressing & Geospatial Technology

DATE: _____