

NONCOMPETITION AGREEMENT

THIS AGREEMENT, made and entered into this, _____ 20____, by and between _____ [COMPANY NAME] _____, a resident of the State of _____ [STATE] _____ (hereinafter "_____"), _____ [COMPANY NAME] _____ a _____ [STATE] _____ corporation (hereinafter "_____ " or the "Purchaser"), and _____ [COMPANY NAME] _____, a _____ [STATE] _____ corporation ("_____ " or the "Seller").

WHEREAS, _____ is a shareholder owning _____ percent (____%) of the issued and outstanding common stock of _____; and

WHEREAS, Purchaser desires to purchase certain assets used in the business of Seller and Seller desires to sell these assets to Purchaser on the terms and conditions contained in the Purchase Agreement by and between Seller and Purchaser of even date herewith (the "Purchase Agreement"); and

WHEREAS, the parties hereto desire to enter into this non-competition agreement to protect the value and goodwill of the assets purchased pursuant to the Purchase Agreement; and

WHEREAS, pursuant to the Purchase Agreement, and as part consideration therefore, without which Purchaser would not have entered into the Purchase Agreement, the parties hereto agree to the terms herein and further agree to execute and perform this Agreement.

NOW THEREFORE, for and in consideration of the foregoing recitals which are incorporated herein by reference and the other covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the parties, the parties agree as follows:

1. Definitions.

(a) "Area" means the geographical territory located within a fifty (50) mile radius of _____.

(b) "Competitor" means any individual or entity engaged in the Current Business of Seller with customers within the Area.

(c) "Confidential Information" shall mean Seller's trade secrets as defined by _____ [STATE] _____ law, as well as other information relating to the Current Business of Seller (i) of which _____ develops, helps develop in conjunction with others, creates, or becomes aware; (ii) which has value to Seller, actual or potential, from not being generally known or readily ascertainable by others who can obtain economic value from its disclosure or use; and (iii) which is treated by Seller as Confidential (whether or not such material or information is marked "confidential"). For purposes of this Agreement, Seller's Confidential Information shall include, but not be limited to, information pertaining to: (1) data and compilations of data relating to the Current Business of Seller; (2) compilations of information about clients, customers or potential customers of Seller; (3) services requested and services performed on behalf of the clients and customers of Seller; (4) data concerning planned products or services; (5) compilations of information about Seller's employees and independent contracting consultants; (6) Seller's

financial information, including Seller's fee structure and amounts charged to customers; (7) proposals submitted to Seller's customers; (8) Seller's marketing strategies and compilations of marketing data; (9) Seller's research and development records and data. Confidential Information also includes any summary, extract or analysis of such information. Confidential Information shall also include information that has been exposed to Seller by any third party as to which Seller has an obligation to treat as confidential. Confidential Information shall not include:

(i) Information generally available to the public other than a result of improper disclosure by _____;

(ii) Information that becomes available to _____ from a source other than Seller or Purchaser (provided _____ has no knowledge that such information was obtained from a source in breach of a duty to Seller or Purchaser.

(d) "Current Business of Seller" means warehousing and fulfillment, direct mail services, and packaging and shipping.

2. Confidential Information. For a period of five (5) years from and after the date of the Closing, as that term is defined in the Purchase Agreement, _____ will not directly or indirectly use, copy, publish, disclose, appropriate, or communicate any Confidential Information to any third party, except to the extent that such use, copying, publication, disclosure, appropriation, or communication is required in the course of the performance of _____'s duties (if any) for Purchaser or as may be authorized by Purchaser from time to time in writing.

(a) For a period of five (5) years from and after the date of the Closing, _____ will not take any action to cause the Confidential Information to lose its character as such, nor will _____ fail to take any action that may be necessary to prevent the Confidential Information from losing its character as such.

(b) The Confidential Information and the physical embodiments thereof were the sole property of Seller, which shall have been sold to Purchaser. Accordingly, _____ assigns to Purchaser and, at Purchaser's request, will assign to Purchaser in the future, any and all of _____'s right, title, and interest in the Confidential Information.

(c) At Purchaser's request, _____ will do all things and sign all documents or instruments that are reasonably necessary, in _____'s sole opinion, to eliminate any ambiguity as to Purchaser's right, title, or interest in the Confidential Information including, but not limited to, cooperating fully with Purchaser in any litigation or other legal proceedings that may relate to such right, title, or interest.

(d) _____ will promptly deliver to Purchaser all of Seller's property that is in _____'s custody, control, or possession including, but not limited to, all Confidential Information and physical embodiments thereof, all originals and copies of books, catalogs, sales brochures, customer lists, prospect lists, price lists, employee

manuals, and operations manuals, and all other materials furnished to or acquired by _____ while _____ was a shareholder of, or was employed by, Seller.

3. Agreement Not to Compete. For a period of five (5) years from and after the date of the Closing, _____ will not, except on behalf of Purchaser or with the prior written consent of Purchaser, provide to a Competitor within the Area the same or substantially similar services that _____ provided to Seller during the twelve (12) month period immediately preceding the Closing.

4. Agreement Not to Solicit Customers. For a period of five (5) years from and after the date of the Closing, _____ will not, either directly or indirectly, personally or for another individual or entity (other than Purchaser), solicit or attempt to solicit any customer of Seller for the purpose of providing products or services substantially similar to the Current Business of Seller if _____ had regular or material contact with such customer in furtherance of the Current Business of Seller during the twelve (12) month period immediately preceding the Closing.

5. Agreement Not to Solicit Employees. For a period of five (5) years from and after the date of the Closing, _____ will not, either directly or indirectly, personally or for another competitor, solicit or attempt to solicit any other person employed by Seller or Purchaser with whom _____ had regular contact during the twelve (12) month period immediately preceding the Closing in order to induce such person to leave his or her employment with Seller or Purchaser to provide the same or substantially similar services that such employee provided to Seller.

6. Acknowledgment. _____ acknowledges and agrees: that the covenants, promises, and agreements contained in Sections 2 through 5 herein are of the essence of this Agreement; that each of these covenants, promises, and agreements is reasonable and necessary to protect and preserve the interest, properties, and business of Purchaser, including the Purchase Assets (as that term is defined in the Purchase Agreement); that each of these covenants, promises, and agreements is reasonable as to scope, geography, and duration; that irreparable loss and damage will be suffered by Purchaser should _____ breach any of these covenants, promises, and agreements, including a substantial diminution of the value of the Purchase Assets; that each of these covenants, promises, and agreements is separate, distinct, and severable not only from the others but also from the other provisions in this Agreement; and that the unenforceability of any of these covenants, promises, and agreements, or any portion thereof, will not affect the validity or enforceability of the other covenants, promises, and agreements, or any of the other portions thereof, or any of the other provisions in this Agreement.

7. Rights and Remedies for Breach.

(a) If _____ breaches or threatens to breach any of the covenants, promises, and agreements contained in Sections 2 through 5 herein, Purchaser will have the following rights and remedies, each of which is independent of the others and severally enforceable, and all of which are in addition to, and not in lieu of, any other rights and remedies that may be available to Purchaser under law or in equity:

(i) Purchaser will have the right to have the covenants, promises, and agreements specifically enforced by a court of competent jurisdiction, sitting in _____ County, including, but not limited to, the right to an entry of restraining orders and injunctions (temporary, preliminary, and permanent) against _____'s violations, threatened or actual, and whether or not then continuing, of such covenants, promises, and agreements; and

(ii) Purchaser will have the right to require _____ to account for and pay over to Purchaser all compensation, profits, monies, accruals, increments, and other benefits derived or received by _____ primarily as a result of the events that constitute _____'s breach.

(b) In the event that Purchaser seeks an injunction against _____ pursuant to the provisions of this Section 7, _____ hereby waives any requirement that might otherwise exist, as a condition to temporary relief, for Purchaser to submit any proof of the economic value of any Confidential Information, post a bond, or post any other security.

(c) The existence of any claim, demand, action, or cause of action by _____ against Purchaser or Seller, whether predicated upon this Agreement or otherwise, will not constitute a defense to Purchaser's enforcement of any provisions of this Agreement.

(d) In the event that Purchaser prevails in any suit or other legal proceeding involving the enforcement of the provisions of this Agreement, in addition to its other damages and any other relief to which it may be entitled, _____ will be liable for Purchaser's reasonable attorneys' fees and litigation expenses incurred in connection therewith.

8. Miscellaneous Provisions.

(a) Governing Law. This Agreement has been entered into under the laws of the State of [STATE] , and the rights and obligations of the parties hereunder shall be determined according to such laws.

(b) Severability. If any provision of this Agreement is determined to be illegal, invalid, or unenforceable under present or future laws effective during the term hereof, such provision will be fully severable and this Agreement will be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part hereof. The remaining provisions of this Agreement will remain in full force and effect, and will not be affected by the illegal, invalid, or unenforceable provision, or by its severance herefrom. If any of the covenants set forth in Sections 2 through 5 of this Agreement are held to be unreasonable, arbitrary, against public policy, or otherwise unenforceable, such covenants will be considered divisible with respect to scope, time, and geographic area, and the court holding such provision invalid is authorized to

"bluepencil," modify or restate such invalid provision to a lesser scope, time or geographic area that will be effective, binding and enforceable against _____.

(c) Entire Agreement, Modification, and Waiver. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and no change or modification of this Agreement shall be valid unless the same is in writing and signed by all of the parties hereto. The waiver by any party of a breach of any provision of this Agreement will not operate or be construed as a waiver of a subsequent breach of such provision, nor will such waiver operate or be construed as a waiver of any other provision of this Agreement.

(d) Counterparts. This Agreement may be executed in several counterparts, each of which shall be considered an original and all of which together shall constitute one and the same instrument.

(e) Construction. Whenever the context so requires, the singular shall include the plural and the plural shall include the singular, and the gender of any pronoun shall include the other genders. All schedules and exhibits referred to in this Agreement as being attached shall be incorporated into it by reference. No party shall be subject to the rule of construction that in the event of a dispute as to the meaning of a term of this Agreement, the language will be construed against the party who drafted the Agreement, it being expressly agreed that all parties had the opportunity to and did participate in the drafting of this Agreement.

(f) Captions. Titles or captions or articles, sections or subsections of this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Agreement or the intent or the meaning of any provision hereof.

(g) Prior Agreements. Except for the Purchase Agreement and other written agreements executed by one or more of the parties at Closing, this Agreement sets forth the entire understanding between the parties with respect to the subject matter hereof, and supersedes any and all prior or contemporaneous agreements or understandings between the parties with respect to such subject matter, whether written or oral.

(h) Notices. Any and all notices, designations, consents, offers, acceptances or other communications provided for herein shall be given by certified mail, return receipt requested, to the addresses as provided in Section 13(1) of the Purchase Agreement, or to such other addresses which may be designated by a party.

(i) Time of the Essence. Time is of the essence of this Agreement.

(j) Venue; Consent to Jurisdiction. The parties agree that the state and federal courts sitting within _____ County, **[STATE]** will have exclusive jurisdiction of any matter arising from this Agreement, including any suit or other legal proceeding that may be brought to enforce or contest the enforceability of any provisions contained in Sections 2 through 5 herein.

IN WITNESS WHEREOF, the parties have executed under seal, or caused to be executed by their duly authorized corporate officers and their corporate seals affixed, this Agreement, all as of the date first above written.

SELLER, INC.,
Seller

By: _____
_____, President

[CORPORATE SEAL]

_____ [L. S.]

Individually

PURCHASER, INC.,
Purchaser

By: _____
_____, President

[CORPORATE SEAL]