

**Focus Direct  
Credit Application**

Amount of Credit Requested: \_\_\_\_\_

Payment Terms Requested: \_\_\_\_\_

Date: \_\_\_\_\_

Salesperson: \_\_\_\_\_

Please answer all questions completely.

Applicant: \_\_\_\_\_

Taxpayer ID No: \_\_\_\_\_

Phone No: \_\_\_\_\_

Fax No: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_ Zip: \_\_\_\_\_

Billing Address (if different): \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_ Zip: \_\_\_\_\_

**Check One:**

Applicant is an  Individual

Applicant is a  Corporation

Applicant is a  Partnership

Applicant is a  Limited Liability Company

Applicant is  Non-Profit\*

Applicant is  Other \_\_\_\_\_ (specify)

\* If any of your purchases are exempt from sales tax, please forward a copy of your sales tax exemption certificate.

**Banking References**

Name of Bank: \_\_\_\_\_

Bank Loan Officer or other Contact Person: \_\_\_\_\_

Phone No: \_\_\_\_\_ Fax No. \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_ Zip: \_\_\_\_\_

Name of Bank: \_\_\_\_\_

Bank Loan Officer or other Contact Person: \_\_\_\_\_

Phone No: \_\_\_\_\_ Fax No. \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_ Zip: \_\_\_\_\_

**Types of Accounts:**

1) \_\_\_\_\_

Account No: \_\_\_\_\_

Bank: \_\_\_\_\_

2) \_\_\_\_\_

Account No: \_\_\_\_\_

Bank: \_\_\_\_\_

3) \_\_\_\_\_

Account No: \_\_\_\_\_

Bank: \_\_\_\_\_

Has Applicant defaulted on any payments to a bank or other creditor in the past 3 years?  Y  N

Has Applicant been denied credit in the past 3 years?  Y  N

**Trade References**

(with credit equal to the amount applied for)

(1) Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone No: \_\_\_\_\_ Fax No. \_\_\_\_\_

(2) Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone No: \_\_\_\_\_ Fax No. \_\_\_\_\_

(3) Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone No: \_\_\_\_\_ Fax No. \_\_\_\_\_

(4) Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone No: \_\_\_\_\_ Fax No. \_\_\_\_\_

**CUSTOMER**

By \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By signing this Application, Applicant warrants the above information to be true and correct and authorizes Focus Direct to contact the references listed and to obtain Applicant's credit report. If this Application is accepted by Focus Direct, Applicant will receive a letter of acceptance from Focus Direct advising as to the credit limit established for Applicant and setting forth any other conditions that apply to the credit extended. By signing this Application, Applicant acknowledges that (i) it has read, understood, and has had the opportunity to seek professional advice about the credit terms, and (ii) agrees to be bound by the terms of the Credit Agreement attached to this Application if the Application is accepted by Focus Direct.

**GUARANTOR**

By \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Guarantor unconditionally agrees to pay and perform all of the obligations and agreements of Customer in the Credit Agreement. Guarantor authorizes Focus Direct to obtain Guarantor's credit report.

# Credit Agreement

THIS CREDIT AGREEMENT (this "Agreement") is between FOCUS DIRECT LLC., a Delaware corporation having its principal office at 9707 Broadway, San Antonio, Texas 78217 ("Focus Direct") and the Customer whose name and address appears on the Credit Application ("Customer").

WHEREAS, Focus Direct is engaged in the business of providing direct mail services including printing, personalization, and mail shop to its customers in the United States ("Direct Mail Services"); and

WHEREAS, Customer has submitted a Credit Application to Focus Direct to establish a line of credit ("Application"), which Application is attached to and made a part of this Agreement; and

WHEREAS, this Agreement will not be effective and no credit will be extended by Focus Direct unless Focus Direct delivers to Customer a letter accepting the Application and establishing a credit limit for Customer ("Acceptance");

WHEREAS, the parties wish to set forth the terms and conditions governing the line of credit to be established by Focus Direct under the Application is accepted.

NOW, THEREFORE, FOR VALUE RECEIVED and in consideration of the foregoing premises and the mutual covenants and contained in this Agreement, the parties agree as follows:

**1. DIRECT MAIL SERVICES.** "Direct Mail Services" are those services set forth in each proposal/purchase order of Customer (a "Purchase Order"), delivered to and accepted by Focus Direct. All requests for Direct Mail Services must be in writing and on a Purchase Order form provided by Focus Direct or another form approved by Focus Direct.

## 2. Term and Termination.

**2.1 Term.** The initial term of this Agreement is one year from the Acceptance, after which time this Agreement will automatically renew for successive one year renewal terms unless terminated by either party.

**2.2 Termination.** This Agreement may be terminated by either party at any time by delivery of written notice at least 60 days in advance of the termination date to the other party. In the Event of Default by Customer (defined below), Focus Direct may terminate this Agreement immediately by delivery of written notice to Customer. Upon termination of this Agreement, no further credit will be extended to Customer and Focus Direct will be entitled to payment of all reasonable legal fees and expenses it incurs in ensuring the performance by Customer of its obligations under this Agreement.

**3. CREDIT LIMIT AND CREDIT LINE.** The credit limit established by Focus Direct for Customer is indicated in the Acceptance (the "Credit Limit"), and the Credit Limit may be adjusted from time to time by Focus Direct in its sole discretion. Focus Direct reserves the right to decline a Purchase Order that exceeds the Credit Limit. Customer and Focus Direct acknowledge that the Credit Limit is the maximum amount of credit extended by Focus Direct to Customer at any one time, and that payment of invoices in accordance with the terms of this Agreement will enable Customer to purchase future Direct Mail Services on credit to the extent of any unused portion of the Credit Limit.

## 4. PAYMENT.

**4.1 Pricing.** Customer will pay Focus Direct for Direct Mail Services the amount stated in each Purchase Order.

**4.2 Advanced Costs.** Customer will advance postage costs, mailing and permit fees ("Advanced Costs") to Focus Direct as stated in the Purchase Order. Focus Direct will be under no obligation to provide Direct Mail Services until the Customer remits the Advanced Costs.

**4.3 Other Costs.** Customer will pay any other costs to Focus Direct as may be included in the Purchase Order or agreed by the parties.

**4.4 Invoicing.** Focus Direct will endeavor to prepare and deliver an invoice to Customer for completed Direct Mail Services rendered within three (3) business days after the Drop Date shown on the Purchase Order.

**4.5 Notice of Errors.** Focus Direct and Customer agree to use their commercially reasonable efforts to resolve any billing matters in a timely manner. Customer must provide written notice of any suspected errors within 15 calendar days after the date of the disputed invoice, which notice must include (a) Customer name and Purchase Order number, (b) dollar amount of the suspected error, and (c) description of the suspected error and the reason that Customer believes there is an error. Focus Direct will provide a written response to Customer within 10 business days after receiving the notice. Customer acknowledges that its failure to provide written notice of suspected billing errors within the 15-day period is a waiver of any rights it may have to dispute charges appearing on the Focus Direct invoice. Customer may contact Focus Direct by telephone, but doing so will not preserve Customer's rights.

**4.6 Payment Terms.** On or before the Due Date, Customer will pay Focus Direct the full amount of all charges. The "Due Date" is specified in the Acceptance as a number of days after the date of the Focus Direct invoice. Payments should be mailed to Focus Direct LLC, PO Box 678106, Dallas, Texas 75267-8106. Payments will be applied first to any accrued interest on the account, next to any collection costs incurred by Focus Direct, and the balance will be applied to the unpaid balance of Customer's invoice amount.

**4.7 Interest.** Interest will begin to accrue at the rate of 1.5% per month on any unpaid balance owed on Customer's account from the Due Date until the balance is paid in full.

**5. LICENSE TO USE CUSTOMER MAILING LIST.** Customer will furnish a mailing list ("List") to Focus Direct with each Purchase Order. If Customer owns the List, to the extent permitted by law, Customer grants Focus Direct a non-exclusive, royalty-free perpetual license to rent or otherwise use the List as Focus Direct determines to generate revenues to offset delinquent amounts owed by Customer to Focus Direct. Focus Direct may not exercise any rights as a licensee to use the List unless an Event of Default (defined below) occurs.

**6. EVENTS OF DEFAULT.** Any one or more of the following events constitutes an "Event of Default" under this Agreement:

- failure of Customer or any Guarantor (defined below) to pay any amount owed to Focus Direct under this Agreement and such failure continues for 10 days following the Due Date;
- failure of Customer or any Guarantor to perform or observe any of the terms of this Agreement;
- commencement of bankruptcy, insolvency, receivership, reorganization or other debtor-relief proceedings by or against the Customer or any Guarantor;
- any misrepresentation or misstatement by Customer to Focus Direct about the contents of its mailings or the source or ownership of the List; or
- any misrepresentation or misstatement by Customer to Focus Direct in the Credit Application.

Upon the occurrence of an Event of Default, Focus Direct may, at its option, terminate this Agreement, exercise any rights and remedies in this Agreement as well as those which are available at law or in equity to enforce the provisions of this Agreement and to collect amounts owed by Customer.

**7. CONFESSION OF JUDGMENT.** Customer expressly authorizes and appoints Patrick J. Cronin, an officer of Focus Direct, as Customer's attorney-in-fact to file a Confession of Judgment against Customer upon the occurrence of an Event of Default for failure to pay any amount owed to Focus Direct. The Confession of Judgment must include (a) the amount owed by Customer under this Agreement, (b) the interest from Due Date until full payment by Customer, (c) the cost of filing the Confession of Judgment and recording a Confessed Judgment Order, and (d) the amount of attorneys' fees (up to 25% of the amount owed by Customer) and costs to collect the judgment.

### IMPORTANT NOTICE

THIS AGREEMENT CONTAINS A CONFESSION OF JUDGMENT PROVISIONS WHICH CONSTITUTES A WAIVER OF IMPORTANT RIGHTS YOU MAY HAVE AS A DEBTOR AND ALLOWS FOCUS DIRECT TO OBTAIN A JUDGMENT AGAINST YOU WITHOUT ANY FURTHER NOTICE.

**8. INDEMNIFICATION.** Customer will indemnify and hold Focus Direct harmless from and against (a) breaches of any representations, covenants and warranties made by Customer to recipients of the mailings; (b) the quality, condition or any defects in any of the merchandise or services being offered by Customer through the mailings; (c) any failure of the List or written material in the mailings to comply with applicable federal, state and local laws, rules and regulations; and (d) all costs and expenses, including reasonable attorneys' fees and court costs, incurred by Focus Direct should claims be filed against Focus Direct arising from any of (a), (b) or (c) above.

**9. DISCLAIMER.** Focus Direct disclaims all warranties, whether express or implied (including, but not limited to, any implied warranty of satisfactory quality, fitness for a particular purpose or title) with respect to any of the merchandise or services being offered by Customer in the mailings. Focus Direct makes no representations with respect to the contents of the mailings.

**10. DISPUTE RESOLUTION.** The parties will attempt to resolve any disputes, controversies, claims or differences between them with regard to Direct Mail Services, the payment therefore or any other provision of this Agreement ("Dispute"), by:

(a) First, submitting to non-binding mediation to be held in San Antonio, Texas and conducted according to the rules of the mediator selected by mutual agreement of the parties, the cost of which (other than legal fees) is to be shared equally by Focus Direct and Customer, and no such mediation will continue if either party declares an impasse;

(b) Second, if the Dispute is not resolved through non-binding mediation, submitting to binding arbitration to be held in San Antonio, Texas and administered in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("Rules"). The arbitration will be conducted by an arbitrator selected in accordance with the Rules. The cost of arbitration (other than legal fees) is to be shared equally by Focus Direct and Customer. The arbitrator will render a decision on the Dispute applying the laws of the State of Texas without reference to any conflict or choice of law provisions. The decision of the arbitrator will be in writing and presented in separate findings of fact and law. Unless an appeal is taken by either party, the decision of the arbitrator is final and binding on the parties, and an order confirming the award of the arbitrator may include pre-award interest and equitable relief to the extent the arbitrator deems appropriate.

(c) In addition to the agreement to mediate and arbitrate Disputes, and the right of Focus Direct to file a Confession of Judgment, either party has the right to apply to any circuit court in the State of Texas or any federal court in the Western District of Texas and seek equitable remedies where the nature of the Dispute is not appropriate for mediation or arbitration.

**11. ATTORNEYS' FEES.** In the event that either party to this Agreement determines to engage legal counsel to assess or evaluate its legal rights under this Agreement, all such expenses will be borne by the party retaining such legal counsel. In the event of any Dispute involving mediation, arbitration or litigation relating to Direct Mail Services, or payment for Direct Mail Services under this Agreement, the party prevailing in such Dispute will have all of its reasonable legal fees and expenses reimbursed by the party not prevailing in the Dispute.

**12. GUARANTY.** Any Guarantor whose signature appears on the Credit Application ("Guarantor") agrees to pay and perform all of the obligations of Customer under this Agreement.

**13. CREDIT REPORTS.** By signing the Application, Customer expressly authorized Focus Direct to obtain Customer's credit report. Both Customer and Focus Direct acknowledge that Customer's credit information will be used only in connection with the transactions covered under this Agreement. If Focus Direct takes any adverse action against Customer based upon information obtained in Customer's credit report, Focus Direct must, in accordance with the Fair Credit Reporting Act, (a) provide written notice to Customer of the adverse action being taken by Focus Direct, (b) disclose the name, address and phone number of the consumer reporting agency, (c) provide a statement that the consumer reporting agency is not responsible for taking the adverse action, and (c) advise Customer of its right to obtain a copy of its credit report and to dispute with the consumer reporting agency the accuracy or completeness of any information in the credit report.

**14. PRIVACY MATTERS.** Customer agrees to indemnify and hold Focus Direct harmless from any and all liability associated with violations of the Gramm-Leach-Bliley Act or any regulations promulgated thereunder, the Fair Credit Reporting Act, or any federal or state privacy law (collectively, "Privacy Laws"). Customer represents that the delivery of any information provided to Focus Direct under this Agreement will not violate any of the Privacy Laws.

## 15. GENERAL

**15.1 Notices.** Every notice required or permitted in this Agreement must be in writing and sent by United States registered or certified mail, postage prepaid, return receipt requested, at the address set forth below or at such other address as either party may subsequently designate in writing.

If to Focus Direct:  
9707 Broadway  
San Antonio, Texas 78217  
Attn: Controller

If to Customer:  
At the address indicated  
on the most recent Purchase  
Order delivered to Focus Direct

**15.2 Force Majeure.** Neither party will be liable for any failure or delay in performing an obligation under this Agreement that is due to causes beyond its reasonable control, such as natural catastrophes, interruption of utility services, governmental acts, acts of war, labor strikes or difficulties, transportation or delivery stoppages or slowdowns, or the inability to procure parts or materials. These causes will not excuse Customer from its payment obligations to Focus Direct for Direct Mail Services completed by Focus Direct and for which payment is due.

**15.3 Assignment.** Neither party may assign, delegate or otherwise transfer this Agreement or any of its rights or obligations under this Agreement without the other party's prior written consent. Any attempt to do so without such consent will be void. Focus Direct may assign this Agreement, after notice to Customer, should Focus Direct be involved in a sale, consolidation or other reorganization of its business.

**15.4 Waiver.** Any waiver or other modification of any terms of this Agreement will not be effective unless in writing and signed by both parties.

**15.5 Severability.** If any provision of this Agreement is held to be unenforceable, this holding will not affect the validity of the other provisions of this Agreement.

**15.6 Governing Law and Forum.** This Agreement will be governed by and interpreted in accordance with the laws of the State of Texas, without giving effect to its principles of conflicts or choices of law. Any legal action or proceeding relating to this Agreement must be instituted in any circuit court in the State of Texas or in any federal court in the Western District of Texas.

**15.7 Entire Agreement.** This Agreement, the Application, the Acceptance and each Purchase Order accepted by Focus Direct constitute the entire agreement between Focus Direct and Customer, and supersede all prior agreements and understandings, oral and written, between Focus Direct and Customer concerning Direct Mail Services and extensions of credit by Focus Direct to Customer.

**15.8 No Partnership or Joint Venture.** Nothing contained in this Agreement will be deemed or construed as creating a partnership or joint venture between Focus Direct and Customer. Neither Focus Direct nor Customer will have the power or authority to control the activities and operations of the other, and their status is, and at all times will continue to be, that of independent contractors. Neither party will have any legal power or authority to bind or commit the other to any contract.

**15.9 Amendment.** Focus Direct reserves the right to amend the credit and other terms set forth in this Agreement, including the furnishing of a new credit agreement, at any time by written notice to Customer.

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