

LINKING AND LICENSE AGREEMENT

THIS LINKING AND LICENSE AGREEMENT (“Agreement”), entered into and effective this _____ day of _____ 20____ (the “Effective Date”), is made by and between:

Avery Products Corporation, with offices at 50 Pointe Drive, Brea, California 92821, and _____, with offices at _____ (“**LICENSEE**”).

APC and LICENSEE are each referred to herein individually as a “Party” and collectively as the “Parties.”

Background

- A. LICENSEE operates a business on the worldwide web and wishes to provide its users with the ability to format and print onto Avery Products.
- B. APC is the owner of the Avery® Design & Print Online software, developed for purposes of presenting various printing projects online (i.e., on a web page) for selection, personalization, formatting, previewing, and printing.
- C. LICENSEE wishes to make Avery® Design & Print Online software and/or web based services available to its End Users from its web site via the method described in Exhibit A. APC and/or its subsidiaries are the exclusive owners of the trademarks/names identified in Exhibit B hereto.
- D. LICENSEE desires a non-exclusive and royalty-free license to use APC’s trademarks identified in Exhibit B for purposes of promoting the services described in paragraph C above.

Agreement

The Parties agree as follows:

1. DEFINITIONS

- 1.1 The term “**APC Products**” shall mean any product offered by APC (*e.g.*, labels, address labels, binders, dividers, indexes, writing instruments, T-shirt transfers, templates, and software).
- 1.2 The term “**APC Product Template**” shall mean a visual representation of one or more APC Products (including APC stock keeping unit (SKU) designation(s)), that may be produced through use of the APC Software, substantially in the form represented in Exhibit A.
- 1.3 The term “**APC Software**” shall mean the Avery® Design & Print Online web printing application.
- 1.4 The term “**APC Web Site**” shall mean Avery.com and/or all related APC web sites.
- 1.5 The term “**End User**” shall mean LICENSEE’s customer authorized to use LICENSEE products who desires to use the APC Software to create personalized Avery Products.
- 1.6 The term “**Licensed Marks**” shall mean APC’s trademarks and/or names identified in Exhibit B.

- 1.7 The term “**LICENSEE Web Site**” shall mean _____ and/or all related _____ web sites.
- 1.8 The term “**Predesigned Products**” shall mean a representation of a sample APC Software project with regular text and/or graphics, that is created by APC for an APC Product.
2. **GRANT OF LICENSE:** APC grants LICENSEE a royalty-free, non-exclusive, non-transferable license to:
 - 2.1 Create a hyperlink on the LICENSEE Web Site to the APC Software on the APC Web Site; *provided*, that LICENSEE shall not place any APC web pages in a “frame” within the LICENSEE Web Site, without specific prior written permission from APC; and
 - 2.2 Present APC product categories (business cards, address labels, *etc.*) on LICENSEE’s Web Site in the form of APC Product Templates and/or in the form of Predesigned Projects for APC Products for End User selection; and
 - 2.3 Identify and pass to the APC Web Site data in format interoperable with the APC Software for presentation and printing of the selected project file; and
 - 2.4 Use the Licensed Marks on the LICENSEE Web Site to promote the use of the APC Software and related services.
3. **CONDITIONS OF USE:** All of the foregoing license grants shall be subject to the following conditions.
 - 3.1 LICENSEE shall state plainly on the LICENSEE Web Site that the APC Software shall be used solely with APC products. The LICENSEE Web Site shall not refer to non-APC Products.
 - 3.2 LICENSEE shall not claim any proprietary rights of any sort in the APC Software or any part thereof.
 - 3.3 The LICENSEE Web Site may provide a gallery of the APC Product Templates and/or Predesigned Projects specifically suited for APC Products only, substantially in the form depicted in Exhibit A. LICENSEE shall not provide its End Users with any desktop or web publishing capabilities that are in APC’s sole opinion designed to produce products that compete directly with APC Products. LICENSEE’s End Users ultimately will be interacting with the APC Software for presentation, previewing, further styling and modification, printing and, if desired, saving of the End User’s project file.
 - 3.4 APC currently produces and plans to continue to develop and expand the features and functionality of the APC Software. Nothing in this Agreement shall, therefore, be construed to prohibit or restrict APC from making improvements to, upgrading the functionality of, or adding features to the APC Software and other software products, LICENSEE shall at no time and in no manner claim rights to implementations and/or functionality added to APC software by APC, regardless of the source of the implementations and/or functionality. LICENSEE acknowledges and agrees that APC retains all of its right, title and interest in the APC Software, and that all use of the APC Software by LICENSEE shall inure to the benefit of APC.

4. TRADEMARK USAGE.

- 4.1 Non-sponsorship. LICENSEE will not state or imply that APC is endorsing, sponsoring or affiliated with LICENSEE. LICENSEE acknowledges and agrees that APC retains all of its right, title and interest in the Licensed Marks, and all use of the Licensed Marks by LICENSEE shall inure to the benefit of APC. LICENSEE acknowledges that the Licensed Marks have acquired secondary meaning. LICENSEE is prohibited from using the Licensed Marks in a manner that is likely to cause confusion with, dilute or damage the reputation or image of APC or any APC Products.
- 4.2 Mark Policies and Standards. LICENSEE shall display the Licensed Marks in accordance with APC's guidelines for using trademarks as set out in Exhibit C attached hereto and by this reference incorporated herein, or as otherwise in effect from time to time and as provided to LICENSEE. APC retains the right to specify and approve the quality and standards of all materials on which the Licensed Marks are displayed and to inspect from time to time samples of such materials. Failure of LICENSEE to adhere to such standards of quality shall be grounds for APC to terminate LICENSEE's rights hereunder.
- 4.3 Validity and Enforceability of Marks. LICENSEE shall not at any time during or after this Agreement assert any claims or interest that may in any way adversely affect the validity or enforceability of any of the Licensed Marks. LICENSEE shall not at any time during or after the effective term of this Agreement dispute and/or contest, either directly or indirectly in any manner, APC's exclusive right and title to the Licensed Marks. LICENSEE shall not use any of the Licensed Marks or similar marks without APC's prior written consent. LICENSEE shall not apply for and/or register, seek to register, or cause to be registered any of the Licensed Marks or similar marks. If LICENSEE creates or otherwise acquires any goodwill or reputation in any of the Licensed Marks, all such goodwill and/or reputation will automatically vest in and inure to the benefit of APC when and as such goodwill or reputation is created or acquired. LICENSEE shall take all actions necessary to effect such vesting and/or inuring. LICENSEE will not make negative or disparaging references to APC, APC Products and/or APC Software or otherwise compare APC Products unfavorably to other products and/or software.
- 4.4 Non-Alteration. LICENSEE shall not alter, modify, dilute, or otherwise misuse any Licensed Mark, or bring a Licensed Mark into disrepute.
- 4.5 No Use of Similar Marks. LICENSEE agrees not to use any other trademark, common law trademark, design, service mark, domain name, trade name, logo, symbol, device, or the like, in combination with a Licensed Mark without the prior written consent of APC. Specifically, LICENSEE shall not link, connect, or refer a Licensed Mark to any non-APC product. The License granted herein is conditioned upon LICENSEE's full and complete compliance with the terms of this Agreement and with the laws of the United States of America including without limitation all trademark and copyright rules and regulations.
- 4.6 Non-Registration. LICENSEE agrees not to apply for registration and/or register in any country any domain name or mark that resembles, or is confusingly similar to, any Licensed Mark.
- 4.7 Infringement and Further Assurances. LICENSEE shall promptly notify APC of any claim, action, suit, proceeding, or litigation that is instituted by any person

against it involving the Licensed Marks. LICENSEE agrees to report all infringement or improper or unauthorized use of the Licensed Marks which come to the attention of LICENSEE to APC, and to reasonably assist APC in protecting same, but LICENSEE acknowledges and agrees that only APC shall have the right to bring an action, claim, or suit in connection with any such infringement. LICENSEE agrees to execute all reasonable documents and further assurances required by APC to register or protect APC's right in the Licensed Marks.

5. CONTROL OF USE

- 5.1 LICENSEE shall submit samples of proposed uses of the Licensed Marks for any web page or Google Ad Word and/or similar Ad Word campaign Program Ad using a Licensed Mark and/or any other proposed depictions of the Licensed Mark to APC, at no cost, for approval prior to any publication. APC shall review and approve or disapprove the samples of proposed uses, in writing, within ten (10) days of receipt thereof; *provided*, however, that if APC fails to approve or disapprove any sample within that time period those items shall be deemed disapproved, and LICENSEE shall immediately discontinue such use of the Licensed Mark.
- 5.2 If at any time, APC determines that the use of any Licensed Mark by LICENSEE is not satisfactory to APC, APC will promptly notify LICENSEE of the non-conformance, and LICENSEE will immediately correct the nonconformity. Upon such notification, LICENSEE shall promptly cease use of the Licensed Mark on such nonconforming uses until the use of the Licensed Mark is proven to be satisfactory to APC.

6. INDEMNIFICATION BY LICENSEE.

LICENSEE agrees to hold harmless, defend, and indemnify APC (and its subsidiary, associated and affiliated companies, including each of their respective officers, directors, agents and employees) against any and all claims of liability, demands, judgments or causes of action, damages and losses, and costs and expenses related thereto (including but not limited to reasonable attorneys' fees and costs which may include, without limitation, an allocation for in-house counsel), arising from LICENSEE's failure to comply with the terms of this Agreement or LICENSEE's unauthorized use of a Licensed Mark, as well as any claims for unfair trade practice, false advertising, trademark infringement, or the like in connection with the use of the Licensed Marks. LICENSEE's obligation to indemnify APC shall continue beyond the termination or expiration of this Agreement.

7. TERM; METHODS OF TERMINATION

- 7.1 Term. The licenses to use the Licensed Marks herein granted shall be contemporaneous and coterminous with this Agreement and are granted solely for the purposes expressed in this Agreement. All rights to use the Licensed Marks granted herein shall immediately end upon termination or expiration of this Agreement and be of no further force or effect and LICENSEE shall not thereafter use, advertise, or display any name, trademark, trade name, designation or logo which is, or any part of which is, to any extent similar to or confusing with any of the Licensed Marks.
- 7.2 Two Year Term. This Agreement and all rights hereby granted shall remain in effect for two years from the date first above written, and may thereafter with the written agreement of the Parties be extended in one year increments on successive

anniversaries thereof. Upon termination, LICENSEE will be allowed ten (10) days to discontinue use of the Licensed Mark.

- 7.3 Termination for Cause. Should LICENSEE fail to comply with any provision of this Agreement, APC may terminate this Agreement on fifteen (15) days' written notice; provided, however, that such notice shall be void and of no effect if LICENSEE corrects such default during the fifteen (15)-day notice period.
- 7.4 Termination Without Cause. This Agreement may be revoked and terminated at any time by either Party without cause on sixty (60) days' written notice to the other Party.
- 7.5 Non-Impairment. Termination of this Agreement shall not impair any accrued rights of APC.

8. MODIFICATION AND WAIVER

- 8.1 This Agreement may be modified from time to time by means of a written agreement signed by both Parties.
- 8.2 No waiver by either Party hereto of any breach of any of the provisions herein set forth shall be deemed a waiver as to any subsequent and/or similar breach.

9. ADDITIONAL TERMS

- 9.1 Assignment. This Agreement shall inure to the benefit of APC, its subsidiaries, successors, and assigns, but shall be personal to LICENSEE and shall be assignable by LICENSEE only with the prior written consent of APC.
- 9.2 Notice. Any notice required or permitted to be given under this Agreement shall be in writing and shall be delivered personally or sent by facsimile transmission, overnight delivery or first class mail, addressed in the case of APC to Group Manager, Software & Web, at Avery Products Corporation's address set forth above (*with a copy* to its chief legal officer), and in the case of LICENSEE to its address set forth above. Notices shall be deemed given upon receipt or three (3) days after mailing, whichever is earlier. Either party may change the address to which such notices are to be addressed by giving the other party notice in the manner herein set forth.
- 9.3 Governing Law; Venue. This Agreement will be construed in accordance with the laws of the State of California, and the Parties submit to the sole jurisdiction and venue of the state and federal courts located in Los Angeles and Orange County, California.
- 9.4 Entire Agreement. This Agreement contains the entire agreement between the Parties with regard to the subject matter hereof and supersedes all other statements and representations pertaining to this subject matter.
- 9.5 Nature of Relationship. Neither Party shall be or be deemed to be an agent, employee, partner nor a party to a joint venture with the other Party, and neither Party has the power to obligate or bind the other in any manner whatsoever.
- 9.6 Rights Cumulative. The rights, powers, remedies and privileges provided in this Agreement are cumulative and not exclusive of any rights, powers, remedies and privileges provided at law or in equity.
- 9.7 Survival. The provisions of Sections 4.3, 6, 7.1 and 9 of this Agreement shall survive any expiration, cancellation or termination of this Agreement.

IN WITNESS WHEREOF, the Parties have signed this Agreement as of the date shown on the first page.

Avery Products Corporation (“APC”)

(“LICENSEE”)

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

EXHIBIT A

1. Method for transferring address data from LICENSEE website to Avery Design & Print for formatting and printing.

The data management will take place on the LICENSEE website, and the data that will be passed to the APC website is the URL of the merge data file, in this instance a csv file but Excel can also be imported.

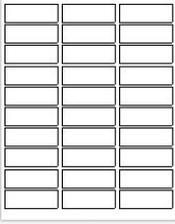
An HTML form is constructed on the LICENSEE website to gather this information in hidden fields. Then a call is made to a Java servlet on the APC website that passes the hidden fields as URL parameters to the Avery Design & Print application. The servlet opens the data file, converts it to an xml format and prepares to merge the data.

The End User data is merged into an identified APC Predesigned Project which may have been selected on the LICENSEE website or, if not, the Predesign selection is made on the APC site. The End User data is then displayed in the merged project on the APC Software Design Canvas for the End User to edit, print and save if desired.

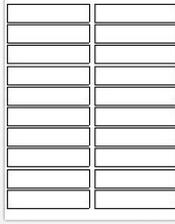
2. Sample images of LICENSEE screens for selecting Avery products

Avery Product Selection

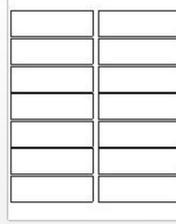
Select your Avery product:



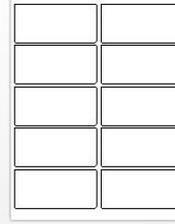
Avery 5160 & 8160
30/sheet (1 X 2 5/8)



Avery 5161 & 8161
20/sheet (1 X 4)



Avery 5162 & 8162
14/sheet (1 1/3 X 4)



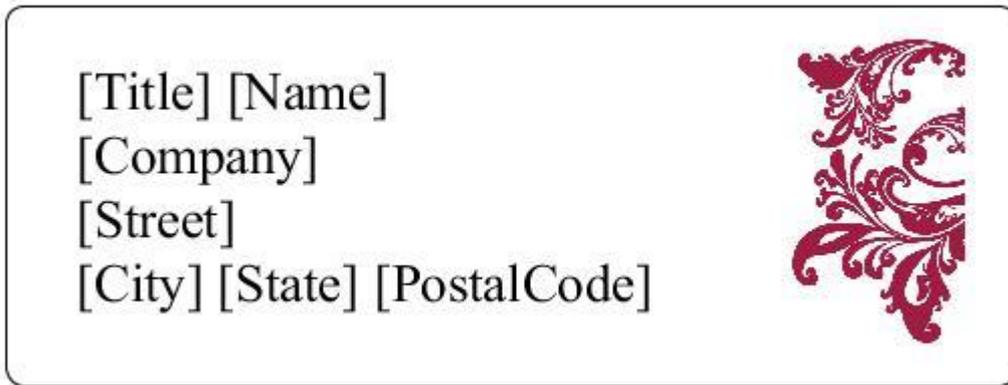
Avery 5163 & 8163
10/sheet (2 X 4)

Include an image on my design

Home Address **Work Address**

[Continue to Avery.com](#)

After these dialogs have been presented on the LICENSEE site, the data derived here (selection of Avery® product type, indication of whether target project will contain image or not, and identification of address list) is passed through a URL to Avery Design & Print Online. A special predesigned template has been created by APC to serve as a 'container target' for the End User data. The Predesign will appear something like this:



Container fields for the data (*i.e.*, Name, Street, City, *etc.*) are present in the Predesign and when the End User data is submitted with the identified data, this data is merged to create the quantity of labels required by the project.

EXHIBIT B

Licensed Marks



Avery® Design & Print Online

EXHIBIT C

AVERY TRADEMARK USAGE GUIDELINES

1. Use, reproduction, copying, or redistribution of APC's trademarks, logos, and/or copyrighted or copyrightable materials, or those of its subsidiaries and affiliates, is strictly prohibited without written permission from APC, or as stipulated in the Agreement to which these guidelines are attached as an exhibit.
2. LICENSEE shall not use APC's trademarks, logos and/or copyrighted or copyrightable material in any of the following ways:
 - (a) In a product name or publication title or any other materials not owned, controlled or approved by LICENSEE; or
 - (b) In, as, or as part of LICENSEE's own trademarks, logos and/or copyrighted or copyrightable material; or
 - (c) To identify products or services not owned, controlled or approved by APC; or
 - (d) In a manner likely to cause confusion; or
 - (e) In a manner that disparages APC; or
 - (f) Other than in association with genuine APC Products as provided in the Agreement; or
 - (g) Except in accordance with Avery's branding guidelines.
3. APC's trademarks, logos and/or copyrighted or copyrightable material may not be used in any manner that expresses or might imply LICENSEE's affiliation, sponsorship, endorsement, certification or approval, other than as contemplated by the Agreement.
4. LICENSEE shall not use APC's trademarks, logos and/or copyrighted or copyrightable material in association with any third party trademarks, logos and/or copyrighted or copyrightable material in a manner that might suggest co-branding with the third party or that is otherwise likely to create confusion as to the source, sponsorship or ownership of APC's trademarks, logos and/or copyrighted or copyrightable material, other than as contemplated by the Agreement.
5. APC's trademarks may not be incorporated into or used as part of any trade name, business name, domain name, social media website, Google or similar Ad words program, product or service name, logo, trade dress, design, slogan, or other trademark not owned, controlled or approved by LICENSEE. This restriction applies whether APC's trademarks, logos and/or copyrighted or copyrightable material are used alone or are combined with any other symbols, be they words, logos, icons, graphics, photos, slogans, numbers, or other design elements.
6. LICENSEE may use the Licensed Marks only in the forms provided electronically or in hard copy by APC. Except for size and subject to the restrictions herein, such Licensed Marks may not be altered in any manner, be it in proportion, color, movement, element, *etc.*, or animated, morphed, or otherwise distorted in perspective or dimensional appearance. Any changes in size of Licensed Marks made by LICENSEE shall retain the full graphical integrity of the original image. Any use of the Licensed Marks on a website shall be of low-resolution and not easily duplicated by other third parties from LICENSEE's website.