

BEFORE THE  
POSTAL RATE COMMISSION  
WASHINGTON, D.C. 20268-0001

RATE AND SERVICE CHANGES TO IMPLEMENT  
BASELINE NEGOTIATED SERVICE AGREEMENT  
WITH BOOKSPAN

Docket No. MC2005-3

**REQUEST OF THE UNITED STATES POSTAL SERVICE  
FOR A RECOMMENDED DECISION ON CLASSIFICATIONS AND RATES  
TO IMPLEMENT A BASELINE NEGOTIATED SERVICE AGREEMENT  
WITH BOOKSPAN**

UNITED STATES POSTAL SERVICE

By its attorneys:

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July 14, 2005

Documents relating to this request may be served upon Mr. Foucheaux at the above address.

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(July 14, 2005)

Pursuant to chapter 36 of title 39, United States Code, the United States Postal Service has determined that it would be in the public interest, and in accordance with the policies and applicable criteria of that title, to implement the attached Negotiated Service Agreement (NSA) with Bookspan. Accordingly, the Postal Service requests that the Postal Rate Commission submit to the Governors of the Postal Service a decision recommending the rate and classification changes proposed in the attachments to this filing.

The Bookspan NSA, appended here as Attachment F, is a negotiated contract between the Postal Service and Bookspan. The Agreement provides Bookspan with declining block rates for Standard Mail letters soliciting book club membership. Witness Plunkett, in his testimony, sets forth the policies underlying the NSA, which is the first involving Standard Mail. Moreover, as explained by witness Yorgey, the NSA

is designed to provide incentives to Bookspan to increase its use of Standard Mail letters for the purpose of soliciting members for its various book clubs. Without such an incentive, solicitation volumes are expected

to be flat or falling. The incentives are based on volumes of, and apply only to, Bookspan's Standard Mail solicitation letters. These are defined as letters sent as Standard Mail by Bookspan, seeking nonmembers of a particular book club to join that club or seeking renewal of expiring memberships. The incentives will encourage Bookspan to mail additional solicitation letters, increasing the number of memberships for Bookspan. The Postal Service benefits from the additional revenue generated by an increased volume of Standard Mail letter solicitations, as well as from the additional revenue generated by an increased volume for each new book club member in the form of Standard Mail catalogs, Bound Printed Matter book fulfillment, and First-Class Mail correspondence. This is the "multiplier effect" described fully by Mr. Posch in his testimony.<sup>1</sup>

In addition, the NSA contains a number of provisions designed to mitigate risk, which are discussed in detail by witness Yorgey, including:

- an annual volume commitment which must be met before discounts are payable that is set well above both the before-rates forecast and the initial discount volume level;
- an annual adjustment mechanism for those volume commitments, based on actual experience;
- an automatic termination clause if volumes exceed a specified cap;
- and an unconditional right of cancellation for both parties.

These provisions were specifically tailored to the circumstances of the relationship between Bookspan and the Postal Service, but also were fashioned to take into account the concerns expressed in previous NSA cases. Accordingly, the Postal Service believes that this NSA provides an opportunity for gain for all concerned—Bookspan, the Postal Service, and postal ratepayers overall—with minimal, if any, risk of loss to any stakeholder.

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<sup>1</sup> USPS-T-2, at 1-2 (footnotes omitted).

The Commission's rules for consideration of NSAs separate "baseline" NSAs from those that are "functionally equivalent" to baselines.<sup>2</sup> The Bookspan NSA is the first new "baseline" NSA since the original NSA with Capital One Services, Inc. (Capital One).<sup>3</sup> The other NSAs currently in effect are considered "functionally equivalent" to the Capital One NSA.<sup>4</sup>

The Bookspan NSA is also the first baseline NSA to be filed under the Commission's rules applicable to NSA requests, established in Docket No. RM2003-5 (Order No. 1391, February 11, 2004). The rule specifically governing baseline NSAs is intended "to establish procedures which provide for maximum expedition of review consistent with procedural fairness, and which allows for the recommendation of a baseline Negotiated Service Agreement."<sup>5</sup>

Rule 195(a)(1) requires that the Postal Service provide a "written justification for requesting a Negotiated Service Agreement classification as opposed to a more generally applicable form of classification" and rule 195(a)(2) requires a "description of the operational bases of the Negotiated Service Agreement, including activities to be performed and facilities to be used by both the Postal Service and the mailer under the agreement."

As to the question of an NSA versus a generally available classification, the Postal Service believes that an NSA is appropriate in these circumstances. The terms and conditions of the NSA were specifically tailored to reflect the relationship between

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<sup>2</sup> 39 C.F.R. §§ 3001.190–3001.198 (2004).

<sup>3</sup> Docket No. MC2002-2.

<sup>4</sup> Discover Financial Services (Docket No. MC2004-4), Bank One (Docket No. MC2004-3), and HSBC (Docket No. MC2005-2).

<sup>5</sup> 39 C.F.R. § 3001.195(a) (hereinafter "rule 195(a)").

the Postal Service and Bookspan, which appears to be unique for the reasons set forth in the testimonies of witnesses Posch (Bookspan-T-1), Epp (Bookspan-T-2) and Yorgey (USPS-T-2). Of course, other mailers who can demonstrate that they are similarly situated would be welcome to negotiate a functionally equivalent NSA with the Postal Service. Any such NSA would similarly have to be tailored to the specific mailing profiles of those customers. Thus, a generally available classification would not be a reasonable substitute for the NSA presented in this Request. As to the operational bases and facilities used, this NSA does not envision or require any changes to the current operations and facilities utilized by the Postal Service and Bookspan. Bookspan's mailing practices and postal handling of Bookspan's mail were scrutinized during the course of negotiations and no significant opportunities for additional substantive postal savings were identified.

Rule 195(b) provides that “[t]he Commission will treat requests predicated on a baseline Negotiated Service Agreement as subject to the maximum expedition consistent with procedural fairness.” The rule further provides that “[a] schedule will be established, in each case, to allow for prompt issuance of a decision.” Accordingly, no separate motion for expedition accompanies this Request, although the Postal Service notes that, given the simplicity of the agreement, assuming the relevant recommendations and approvals, it intends to implement the agreement as soon thereafter as practicable. This Request is accompanied by a Request for Establishment of Settlement Procedures.

The overall cost, volume, and revenue effects of the Bookspan NSA are relatively modest, both in the first year and in later years of the proposed agreement. The

proposed NSA would apply to only one, discretely-positioned mailer. The duration of the rates, fees and classifications would be limited to three years by the terms of the NSA. The proposed changes would apply to the rates and classifications for just Standard Mail letters. No other mail classes or special services would be changed.

The economic impacts of the proposal are described fully in the testimony of Michelle Yorgey (USPS-T-2). The Postal Service estimates it will benefit by \$7.4 million over the life of the NSA.

To implement the Bookspan NSA, the Postal Service requests that the Commission recommend the classification and rate schedules changes attached hereto, which propose the addition of Domestic Mail Classification Schedule 620 and Rate Schedule 620A, 620B, and 620C, one for each year of the agreement. Among other provisions, DMCS 620 prescribes the criteria for determining eligibility of Bookspan's mail for the proposed rate changes, describes the manner and conditions under which discounts would be applicable to Bookspan volume, and specifies a duration of three years for the NSA. As explained in witness Yorgey's testimony, the requested changes would conform to the criteria of 39 U.S.C. §§ 3622(b) and 3623(c).

The NSA provides a foundation for these changes. Among other provisions, the Bookspan NSA specifies: (1) the key conditions making the NSA possible, including the "multiplier effect," by which each new book club member generates a continuing stream of mail of various classes; (2) a limitation of eligibility for the declining block rates to "Bookspan Letter Mail Solicitations" sent as Standard Mail; (3) annual volume commitments (set higher than both before-NSA forecast and the volume level at which discounted rates begin); (4) annual adjustment mechanisms for these volume

commitments; (5) automatic termination of the agreement in the event an unanticipated, high volume level is reached; (6) the unconditional right of either party to terminate with 30 days' notice to the other party; (7) a transaction penalty; and (8) information concerning other issues, such as monitoring, compliance, regulatory review, implementation, withdrawal, public communications, amendments, and notices.

Pursuant to the Commission's Rules of Practice and Procedure (particularly, 39 C.F.R. §§ 3001.193 and 3001.195), the Postal Service is filing with this Request its prepared direct evidence on which it proposes to rely. Other evidence on which the Postal Service intends to rely is being filed today by Bookspan and is referred to in the Compliance Statement attached hereto. Accordingly, the Postal Service believes it is appropriate for the Commission to recommend the requested rate and classification changes, under the procedures specified in the Commission's Rules of Practice and Procedure for baseline NSAs.

The page following this Request is an index of Attachments. Attachment A to this Request contains proposed Domestic Mail Classification Schedule (DMCS) language necessary to implement the Bookspan NSA, and Attachment B contains proposed Rate Schedule language. Attachment C contains the financial certification. The testimony and exhibits have been marked for identification as shown in Attachment D. The Compliance Statement is in Attachment E, which refers to evidence filed by both the Postal Service and Bookspan. A signed copy of the NSA is Attachment F. The proposed data collection plan is contained in the testimony of witness Yorgey.

The Postal Service believes that its submissions comply with the Commission's filing requirements in Rules 193 and 195 of the Rules of Practice and Procedure (39

C.F.R. §§ 3001.193 and 195). If the Commission later concludes that any specific requirement has not, need not, or cannot be met, the Postal Service respectfully reserves the right to move for a waiver of the pertinent filing requirements at that time.

WHEREFORE, the Postal Service respectfully requests that the Commission submit a recommended decision in accordance with this Request.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

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Chief Counsel, Ratemaking

Scott L. Reiter

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**INDEX OF ATTACHMENTS TO REQUEST, MC2005-3**

**Rate and Services Changes to Implement  
Baseline Negotiated Service Agreement with Bookspan**

- Attachment A: Domestic Mail Classification Schedule 620 Language
- Attachment B: Rate Schedules 620A, 620B, 620C
- Attachment C: Certification
- Attachment D: Index of Testimonies, Exhibit Titles, and Associated Attorneys
- Attachment E: Compliance Statement
- Attachment F: Negotiated Service Agreement between the United States Postal Service and Bookspan

NEGOTIATED SERVICE AGREEMENTS  
CLASSIFICATION SCHEDULE

620            BOOKSPAN NEGOTIATED SERVICE AGREEMENT

620.1           Eligible Standard Mail

620.11          Bookspan

Eligible Standard Mail under this section is defined as letter shaped pieces sent by Bookspan for the purpose of soliciting book club membership of persons who are not current subscribers to the book club or clubs Bookspan is promoting in the mailing or to book club members whose membership is expiring. Such pieces may be sent by Bookspan, by entities in which Bookspan holds controlling shares, or by their vendors on their behalf. Such letters may include promotions of Bookspan's strategic business alliances.

620.12          Other Mailers

Funtionally equivalent NSAs, involving declining block rates for Standard Mail letter solicitations for book or analogous club memberships, may be entered into with other customers demonstrating a similar or greater multiplier effect, as specified by the Postal Service, and implemented pursuant to proceedings under Chapter 36 of Title 39, of the United States Code.

620.2           Standard Mail Declining Block Rates

620.21          Volume Commitments

The following volume commitments for otherwise eligible letter-shaped Standard Mail pieces must be met before any discounts under this section are payable:

- a.     94 million for the first year of the agreement;
- b.     95 million for the second year of the agreement, subject to adjustment as specified below; and,
- c.     105 million for the third year of the agreement, subject to adjustment as specified below.

If Bookspan does not mail at least 73 million pieces during the first year of this agreement, it will pay the Postal Service a one-time transaction fee of \$200,000.

620.22      Volume Commitment Adjustment Mechanism

At the end of each year of the agreement other than its final year, the volume commitment for the following year will be adjusted, as follows.

- a.      If, at the end of the year, actual volume is 12 percent or more above that year's volume commitment, the following year's commitment will be revised to be the average of the completed year's actual volume and the original volume commitment for the following year.
  
- b.      If, at the end of the year, actual volume is 5 percent or more below that year's volume commitment, the following year's commitment will be decreased by the percentage difference between the completed year's original volume commitment and its actual volume, but in no case to lower than 90 million.

620.23      Incremental Discounts

Bookspan's eligible Standard Mail is subject to the otherwise applicable Standard Mail postage in Rate Schedule 321A or 321B, less the discounts shown in Rate Schedule 620A for the first year of the agreement, in Rate Schedule 620B for the second year of the agreement, and in Rate Schedule 620C for the third year of the agreement, if Bookspan meets the applicable volume commitments specified in 620.21, or as adjusted in accordance with 620.22. Each incremental discount applies only to the incremental volume within each volume block.

620.24      Volume Block Adjustments for Mergers and Acquisitions:

In the event that Bookspan merges with and/or acquires an entity or entities and/or purchases a portfolio with annual Standard Mail volume in excess of 5 million pieces, the volume blocks will be adjusted to add the volume of Standard Mail sent by the merged or acquired entity during the 12 months preceding the merger, acquisition, or purchase. The adjustment becomes effective for the succeeding fiscal quarter immediately following the date that mail volumes due to the merger, acquisition, or purchase begin to be mailed through the threshold permit accounts.

620.25      Termination

The agreement automatically terminates and eligibility for all discounts under this section ceases if Bookspan's Standard Mail letter solicitation volume exceeds 150,000,000, or if the agreement is terminated by either party with 30 days' written notice to the other party.

620.4      Rates

The rates applicable to this Agreement are set forth in Rate Schedules 620A, 620B, and 620C.

620.5      Expiration

This provision (Section 620) expires 3 years from the implementation date set by the Board of Governors.

620.6      Precedence

To the extent any provision of section 620 is inconsistent with any other provision of the Domestic Mail Classification Schedule, the former shall control.

**BOOKSPAN NSA  
RATE SCHEDULE 620A  
(First Year of Agreement)**

<u>Volume Block<sup>1</sup></u>	<u>Incremental Discount</u>
<u>87,000,001 to 120,000,000</u>	<u>2.0¢</u>
<u>120,000,001 to 150,000,000</u>	<u>3.0¢</u>

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<sup>1</sup> Volume block beginning and ending thresholds are subject to adjustment for mergers or acquisitions by adding the new entities' volume in accordance with DMCS § 620.24

**BOOKSPAN NSA  
RATE SCHEDULE 620B  
(Second Year of Agreement)**

<u>Volume Block<sup>1</sup></u>	<u>Incremental Discount</u>
<u>85,000,001 to 110,000,000</u>	<u>2.0¢</u>
<u>110,000,001 to 150,000,000</u>	<u>3.0¢</u>

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<sup>1</sup> Volume block beginning and ending thresholds are subject to adjustment for mergers or acquisitions by adding the new entities' volume in accordance with DMCS § 620.24

**BOOKSPAN NSA  
RATE SCHEDULE 620C  
(Third Year of Agreement)**

<u>Volume Block<sup>1</sup></u>	<u>Incremental Discount</u>
<u>94,000,001 to 100,000,000</u>	<u>1.0¢</u>
<u>100,000,001 to 120,000,000</u>	<u>2.0¢</u>
<u>120,000,001 to 150,000,000</u>	<u>3.0¢</u>

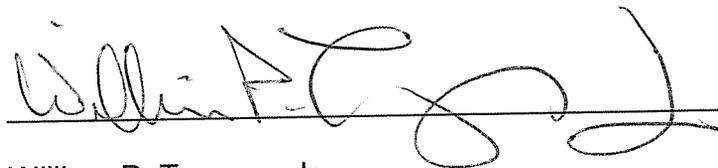
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<sup>1</sup> Volume block beginning and ending thresholds are subject to adjustment for mergers or acquisitions by adding the new entities' volume in accordance with DMCS § 620.24

**CERTIFICATION**

I, William P. Tayman, Jr., Manager, Corporate Financial Planning, United States Postal Service, am familiar with the attached Request of the United States Postal Service for Rate and Service Changes to Implement Baseline Negotiated Service Agreement with Bookspan, together with the accompanying direct testimony and exhibits.

Pursuant to Rule 193(i) of the Postal Rate Commission's Rules of Practice and Procedure, 39 C.F.R. § 3001.193(i), I hereby certify that I have read the Request, that the cost statements and supporting data submitted as part of that Request, which purport to reflect the books of the Postal Service, accurately set forth the results shown by such books, and that, to the best of my knowledge, information, and belief, every statement contained in the Request is proper.

A handwritten signature in black ink, appearing to read "William P. Tayman, Jr.", written over a horizontal line. The signature is stylized and cursive.

William P. Tayman, Jr.

INDEX OF TESTIMONIES: DOCKET NO. MC2005-3

<b>WITNESS</b>	<b>TESTIMONY</b>	<b>EXHIBIT</b>	<b>WORKPAPERS</b>	<b>ATTORNEY</b>	
		<b>TITLE</b>	<b>NO.</b>		
Mr. Plunkett	USPS-T-1	None		None	Scott Reiter 202-268-2999
Ms. Yorgey	USPS-T-2	None		None	Scott Reiter 202-268-2999

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ATTACHMENT E

**COMPLIANCE STATEMENT**

This Attachment contains a statement of the manner in which the Postal Service has supplied the information requested in sections 193 and 195 of the Commission's Rules of Practice and Procedure (39 CFR §§3001.193 and 3001.195). Where information required by these rules is not included in direct testimony or exhibits of the Postal Service's witness, it is contained in the Request or its attachments, or has been incorporated by reference in the Request, testimony, exhibits, or attachments made available to the Commission in Docket No. R2005-1. Alternatively, if it is subsequently determined that the Postal Service has not fulfilled any particular filing requirement, the Postal Service reserves its right thereafter to request waiver of such requirement.

RULE: 193(b)

REQUIREMENT: This rule requires that a copy of the Negotiated Service Agreement be filed with the Request.

A copy of the Negotiated Service Agreement is filed as Attachment F to the Request.

RULE: 193(c)

REQUIREMENT: This rule requires a description of the proposed rates, fees, and/or classification changes, including proposed changes, in legislative format, to the text of the Domestic Mail Classification Schedule and any associated rate or fee schedule.

Attachment A to this Request includes the proposed additions to the Domestic Mail Classification Schedule. Attachment B sets forth the proposed additions to the Rate Schedule.

RULE: 193(d)

REQUIREMENT: This rule requires a statement describing and explaining the operative components of the Negotiated Service Agreement, and requires that this statement include the reasons and bases for the components in the Negotiated Service Agreement.

The statements required by this rule are contained within the testimony of witnesses Michael Plunkett (USPS-T-1), Michelle Yorgey (USPS-T-2), Robert Posch (Bookspan-T-1), and Matthias Epp (Bookspan-T-2).

RULE: 193(e)(1)

REQUIREMENT: This rule requires an analysis of the effects of the Negotiated Service Agreement on Postal Service volumes, costs and revenues in a one year period intended to be representative of the first year of the proposed agreement. This financial analysis shall:

- (i) set forth the estimated mailer-specific costs, volumes and revenues of the Postal Service for that year, assuming the then effective postal rates and fees absent the implementation of the Negotiated Service Agreement;
- (ii) set forth the estimated mailer-specific costs, volumes, and revenues of the Postal Service for that year which result from the implementation of the Negotiated Service Agreement;
- (iii) include an analysis of the effects of the Negotiated Service Agreement on contribution to the Postal Service for that year (including consideration of the effect on contribution from mailers who are not parties to the agreement);
- (iv) utilize mailer-specific costs for that year, and provide the basis used to determine such costs, including a discussion of variances between mailer-specific costs and system-wide average costs; and
- (v) utilize mailer-specific volumes and elasticity factors for that year, and provide the bases used to determine such volumes and elasticity factors.

If mailer-specific costs or elasticity factors are not available, the bases of the costs or elasticity factors that are proposed shall be provided, including a discussion of the suitability of the proposed costs or elasticity factors as a proxy for mailer-specific costs or elasticity factors.

The analysis required by this rule is contained within the testimonies of witnesses Michelle Yorgey (USPS-T-2), Robert Posch (Bookspan-T-1), and Matthias Epp (Bookspan-T-2).

## RULE: 193(e)(2)

REQUIREMENT: This rule requires that if a Negotiated Service Agreement is proposed to extend beyond one year, the request shall include an analysis of the effects of the agreement on Postal Service volumes, costs, and revenues in each subsequent year of the proposed agreement. This financial analysis shall:

- (i) identify each factor known or expected to operate in that subsequent year which may have a material effect on the estimated costs, volumes, or revenues of the Postal Service, relative to those set forth in the financial analysis provided for the first year of the agreement in response to Rule 193(e)(1). Such relevant factors might include (but are not limited to) cost level changes, anticipated changes in operations, changes arising from specific terms of the proposed agreement, or potential changes in the level or composition of mail volumes;
- (ii) discuss the likely impact in that subsequent year of each factor identified in Rule 193(e)(2)(i), and quantify that impact to the maximum extent practical; and
- (iii) estimate the cumulative effect in that subsequent year of all factors identified in Rule 193(e)(2)(i) on the estimated costs, volumes, and revenues of the Postal Service, relative to those presented for the first year of the agreement in response to Rule 193(e)(1).

The analysis required by this rule is contained within the testimonies of witnesses Michelle Yorgey (USPS-T-2), Robert Posch (Bookspan-T-1), and Matthias Epp (Bookspan-T-2).

RULE: 193(f)

REQUIREMENT: This rule requires an analysis of the impact, over the duration of the Negotiated Service Agreement, of the agreement on:

- (1) competitors of the parties to the Negotiated Service Agreement other than the Postal Service;
- (2) competitors of the Postal Service; and
- (3) mail users.

The Postal Service shall include a copy of all completed special studies that were used to make such estimates. If special studies have not been performed, the Postal Service shall state this fact and explain the alternate basis of its estimates.

The analysis required by this rule and its basis are contained within the testimony of witness Michelle Yorgey (USPS-T-2). No special studies were conducted.

RULE: 193(g)

REQUIREMENT: This rule requires a proposal for a data collection plan, which shall include a comparison of the analysis presented in Rule 193(e)(1)(ii) and 193(e)(2)(iii) with the actual results ascertained from implementation of the Negotiated Service Agreement. The results shall be reported to the Commission on an annual or more frequent basis.

The proposed data collection plan is contained in the testimony of witness Michelle Yorgey (USPS-T-2). It is similar to the Data Collection Plan recommended by the Commission and approved by the Governors of the Postal Service in MC2002-2. If the Commission subsequently concludes that this data collection plan does not fully comply with the requirements of this rule, the Postal Service reserves its right thereafter to request that those requirements be waived.

RULE: 193(h)

REQUIREMENT: This Rule requires seven sets of workpapers to be filed with the Request.

There are no workpapers in this case.

RULE: 193(i)

REQUIREMENT: This Rule requests one or more certifications stating that the cost statements and supporting data submitted as part of the formal request, as well as the accompanying workpapers, which purport to reflect the books of the Postal Service, accurately set forth the results shown by such books. The requested certification is to be signed by one or more representatives of the Postal Service authorized to make such certification.

The certification is submitted as Attachment C to this Request.

**NEGOTIATED SERVICE AGREEMENT**  
**BETWEEN**  
**THE UNITED STATES POSTAL SERVICE**  
**AND**  
**BOOKSPAN**

This Agreement is made as of May 25, 2005 (the "Agreement Effective Date") by and between Bookspan, with its principal place of business located at 401 & 501 Franklin Avenue, Garden City, NY 11530-5945, and the United States Postal Service ("the Postal Service"), an independent establishment of the Executive Branch of the United States Government established by the Postal Reorganization Act, Public Law 91-375, with its principal office at 475 L'Enfant Plaza, SW, Washington, DC 20260. The Postal Service and Bookspan are referred to herein collectively as the "Parties" and each as a "Party."

WHEREAS, it is the intention of the Parties to enter into a Negotiated Service Agreement ("NSA") that will benefit the Postal Service, the postal system as a whole, and Bookspan, and that will comply with the requirements of the Postal Reorganization Act, and

WHEREAS, it is the intention of the Postal Service to make available a functionally equivalent agreement to other mailers that are engaged in similar marketing programs that have documented a "multiplier effect" similar to that specified in Article I.C.,

NOW, THEREFORE, the Parties agree as follows:

**I. Key Conditions for NSA Treatment.**

The Postal Service finds that the following key conditions, taken together, support this Negotiated Service Agreement:

- A. In the last three government fiscal years, Bookspan mailed an average of 87 million Standard Mail letters to consumers who were not then subscribers to the book club or clubs Bookspan was promoting in the mailing and to book club members whose membership was expiring. For purposes of this Agreement, the term "Bookspan Letter Mail Solicitations" shall mean Standard Mail solicitation letters sent by Bookspan, by entities in which Bookspan holds controlling shares, and by their vendors on their behalf. Such letters may include promotions of Bookspan's strategic business alliances.
- B. Bookspan has documented the volume of Bookspan Letter Mail Solicitations and the volume of other types of mailpieces Bookspan enters under its own or its vendors' PostalOne™ permit accounts (including pre-cancelled stamps, imprints, and meters), primarily Bound Printed Matter, First-Class Mail™, and Standard Mail.

U.S. Postal Service – Bookspan NSA

- C. As Bookspan obtains new subscribers through its Letter Mail Solicitations, a continuing stream of catalogs, merchandise, books, and related correspondence results (“multiplier effect”).

**II. Volume Commitments and Declining Block Rates.**

- A. **Volume Commitments.** In consideration of the discounts available to Bookspan under this Agreement, Bookspan shall mail the minimum volumes of Bookspan Letter Mail Solicitations specified below during the term of this Agreement. Standard Mail pieces that will be counted toward these commitments and that will be eligible for discounts set forth in Article II.D, are limited to Bookspan Letter Mail Solicitations. Flats will not be counted toward the volume commitments, nor will they be eligible for block discounts. If Bookspan does not mail at least 73,000,000 Bookspan Letter Mail Solicitations during the first year of this Agreement, it agrees to pay the Postal Service a one-time transaction fee of \$200,000.

1. **Year One.** In the first year of this Agreement, the volume commitment will be 94,000,000 pieces of Bookspan Letter Mail Solicitations.
2. **Year Two.** In the second year of this Agreement, the volume commitment will be 95,000,000 pieces of Bookspan Letter Mail Solicitations, except as follows:
  - a. If, at the end of Year 1, actual volume is 12 percent or more above the Year 1 commitment, the Year 2 commitment will be revised to be the average of Year 1 actual volume and the original Year 2 commitment (95,000,000).
  - b. If, at the end of Year 1, the actual volume is 5 percent or more below the Year 1 commitment, the Year 2 commitment will be decreased by the percentage difference between the Year 1 commitment and Year 1 actual volume, but not lower than 90 million.
3. **Year Three.** In the third year of this Agreement, the volume commitment will be 105,000,000 pieces of Bookspan Letter Mail Solicitations, except as follows:
  - a. If, at the end of Year 2, the actual volume is 12 percent or more above the Year 2 commitment, the Year 3 commitment will be revised to be the average of Year 2 actual volume and the original Year 3 commitment (105,000,000).
  - b. If, at the end of Year 2, the actual volume is 5 percent or more below the Year 2 commitment, the Year 3 commitment will be decreased by the percentage difference between the Year 2 commitment and Year 2 actual volume, but not lower than 90 million.

U.S. Postal Service – Bookspan NSA

- B. Discounts. In exchange for Bookspan’s adherence to the volume commitments in Article II.A for Bookspan Letter Mail Solicitations, declining block rates of postage will be available for volumes within certain blocks of such Standard Mail, as defined in Article II.D. The declining block rates will be calculated by applying the discounts specified below to the otherwise applicable rates of postage. The discounts specified below apply only to the incremental volumes within each volume block.
- C. Credits. Bookspan agrees to pay the otherwise applicable rates of postage at the time the mail is entered. The Postal Service will provide Bookspan with credits of the appropriate amounts of the discounts as specified in Article II.D.
- D. Declining Block Rates.

The declining block rates calculated as shown below are not applicable unless the volume commitments in Article II.A have been met.

1. If the volume commitment specified in Article II.A for the first year is met, declining block rates are calculated for the first year based on the following volume blocks and discounts:

Volume Block		Incremental Discounts
87,000,001	120,000,000	2.0¢
120,000,001	150,000,000	3.0¢

2. If the volume commitment specified in Article II.A for the second year is met, declining block rates are calculated for the second year based on the following volume blocks and discounts:

Volume Block		Incremental Discounts
85,000,001	110,000,000	2.0¢
110,000,001	150,000,000	3.0¢

3. If the volume commitment for the third year specified in Article II.A is met, declining block rates are calculated for the third year based on the following volume blocks and discounts:

Volume Block		Incremental Discounts
94,000,001	100,000,000	1.0¢
100,000,001	120,000,000	2.0¢
120,000,001	150,000,000	3.0¢

## U.S. Postal Service – Bookspan NSA

- F. Acquisition or Merger. Bookspan agrees that the Standard Mail volume blocks will be adjusted to the extent that Bookspan merges with or acquires an entity with annual Standard Mail letter volumes in excess of 5 million pieces in the year preceding the acquisition or merger. Bookspan further agrees that the Standard Mail volume blocks will also be adjusted to the extent that in any Postal Service fiscal year, Bookspan merges with or acquires multiple entities with combined annual Standard Mail letter volume in excess of 10 million pieces. Bookspan must notify the Postal Service of any merger or acquisition with an entity that has annual Standard Mail volume in excess of 5 million pieces.

In addition, at the end of any Postal Service fiscal year during the term of this Agreement, Bookspan will notify the Postal Service if during that fiscal year it has merged with or acquired multiple entities with combined annual Standard Mail volume in excess of 10 million pieces. The notification must include the name of the acquired entities, the existing number of new accounts, the mail volume of the acquired entities for the 12 months preceding the merger or acquisition, and the PostalOne™ permit accounts and meters through which the mail volume was processed. If the merger or acquisition results in a material increase as described herein, the Standard Mail volume blocks will be adjusted to add the volume of Standard Mail sent by the acquired entity during the 12 months preceding the merger or acquisition. All adjustments of volume blocks due to mergers or acquisitions shall be made on a quarterly basis in the succeeding fiscal quarter immediately following the date of acquisition or merger.

G. Volume Accounting.

1. Bookspan will provide the Postal Service with the numbers of the PostalOne permit accounts that will determine Bookspan's eligibility for discounts. The permit accounts may be designated and used to determine the discounts only upon the Postal Service's written acknowledgement. Separate qualifying PostalOne permit accounts will be designated and used for Bookspan Letter Mail Solicitations. Only Bookspan's Letter Mail Solicitations in these permit accounts will be counted toward the Standard Mail volume commitment and volume blocks. The data in these Postal Service permit accounts will be used to determine whether these volumes have been reached, and the Postal Service shall keep such data in a form auditable by Bookspan.
2. If Bookspan's Letter Mail Solicitations volume exceeds the volume commitment for the applicable year, Bookspan will be eligible to receive a credit for discounts on subsequent Bookspan Letter Mail Solicitations volume sent through the designated PostalOne permit accounts during the remaining portion of the applicable year of this Agreement.

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3. At the end of each Postal Service fiscal quarter that follows the conclusion of each year of this Agreement, the Postal Service shall promptly deliver its summary of Letter Mail Solicitations usage and applicable credit due Bookspan. The Postal Service will identify Bookspan's annual Standard Mail volume and corresponding credit due Bookspan. Any applicable credit due Bookspan will be realized at the commencement of the subsequent fiscal quarter, once volumes have been reconciled for the applicable year of this Agreement. The credit shall be paid to Bookspan either by wire transfer or check.
4. Bookspan understands that in the normal course of business, the Postal Service occasionally edits PostalOne permit account data after the close of a quarter to reconcile a discrepancy. If such an edit affects the Standard Mail volume in either the Postal Service's or Bookspan's favor, the change will be accounted for under the terms of this Agreement.

### III. Compliance and Other Issues.

#### A. Compliance.

Bookspan will make necessary records and data available to the Postal Service to facilitate and monitor compliance with this Agreement.

#### B. Appeals.

Bookspan may appeal a Postal Service decision regarding the following: mail counted toward the volume blocks set forth in Article II.A and Article II.D; volume block adjustments set forth in Article II.F; the volume of mail in the PostalOne permit accounts set forth in Article II.C and Article II.G; and the amount of discounts paid set forth in Article II.B, Article II.C, Article II.D and Article II.G. Any such appeal must be made in writing to the Pricing and Classification Service Center, within 30 days of receiving notice of the Postal Service decision. The decision of the Manager, P&CSC, will be final. Any decision that is not appealed as prescribed becomes the final Postal Service decision.

This appeal process relates only to the issues identified above that arise as a result of the implementation of this agreement.

#### C. Effective Date.

The Agreement is effective on the latest date of signing by both Parties. References to "years" of the Agreement refer to periods ending on the anniversary date of the implementation date referred to in Article III.E below.

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D. Regulatory Review.

1. In accordance with the Postal Reorganization Act and the Postal Rate Commission's Rules of Practice and Procedure and upon approval of the Postal Service Board of Governors, the Postal Service will file a request with the Postal Rate Commission ("Commission") for recommended changes in rates, fees, and classifications that would allow the Postal Service to implement this agreement.
2. Bookspan agrees to file with the Commission its direct case supporting the Postal Service's request on the date the Postal Service files its request. Bookspan will file any motions for waiver necessary to support these filings.
3. The Parties agree to provide the other with each full draft of its testimony and accompanying workpapers and library references when available. The Postal Service will approve the final version of these materials.
4. Each party agrees to consult with the other on positions to be taken in pleadings prior to filing. Bookspan agrees not to take any position in the litigation contrary to those of the Postal Service.
5. Each party agrees to bear its own costs related to the subject matter of this Agreement and its costs of participating in Commission and court proceedings resulting from the Postal Service's request for a recommended decision.
6. Each party agrees to bear its own costs associated with any data collection needs associated with this Agreement.

E. Term & Implementation Date.

Pursuant to the Postal Reorganization Act, and upon approval by the Governors of the Postal Service of the changes in rates, fees, and classification recommended by the Commission, the Board of Governors will set the implementation date. It is further agreed that should the Implementation Date fall prior to the commencement of a Postal Service fiscal quarter, then for the period of time between the implementation date and the first full Postal Service fiscal quarter, any applicable volume blocks will be pro-rated as mutually agreed by the Parties, and thereafter the Agreement will continue for a period of two years from the implementation date set by the Board of Governors, with an optional third year under the terms of Article II.D.3, or until (i) the provisions of the Domestic Mail Classification Schedule relative to this Agreement expire or (ii) the Agreement is terminated or cancelled by one of the Parties pursuant to Articles IV.F or IV.G. It is further agreed that should the termination date of this Agreement fall prior to the end of a Postal Service fiscal quarter, then for the period of time between the end of the preceding Postal Service fiscal quarter and the termination date, any applicable volume blocks will be pro-rated as mutually agreed by the Parties.

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### F. Termination.

1. Each party reserves the right to terminate this Agreement, without penalty, with thirty days' written notice to the other party.
2. This Agreement automatically terminates if Bookspan's total volume of Standard Mail letters eligible for the discounts set forth in Article II.D exceeds 150 million pieces per year in any year of this Agreement.

### IV. Public Communications.

The form, substance, and timing of any press release or other public disclosure of matters related to this Agreement shall be mutually agreed to by Bookspan and the Postal Service in writing which consent shall not be unreasonably withheld, except to the extent of disclosure which Bookspan or the Postal Service is required by law to make, in which instance the non-disclosing Party shall be advised and the Parties shall use their reasonable efforts to cause a mutually agreeable disclosure to be issued.

### V. Amendments.

This Agreement shall not be amended except expressly, in writing, by authorized representatives of the Parties.

### VI. Notices.

Service of all notices under this Agreement shall be in writing and sent by either U.S. Certified Mail, return receipt requested, postage paid, addressed to the Party to be served notice, or by nationally recognized overnight mail service, at the following addresses. All such notices and communications shall be effective upon receipt.

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Bookspan  
Attention: Robert Posch, Esq.  
401 Franklin Avenue  
Garden City, NY 11530-5945

Vice President,  
Pricing and Classification  
United States Postal Service  
475 L'Enfant Plaza, SW  
Washington, DC 20260-5014

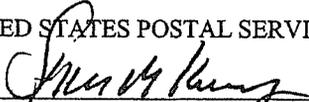
Ian D. Volner, Esq.  
Rita L. Brickman, Esq.  
Venable LLP  
575 7<sup>th</sup> Street, N.W.  
Washington, DC 20004

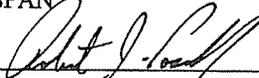
Managing Counsel,  
Legal Policy & Ratemaking  
United States Postal Service  
475 L'Enfant Plaza, SW  
Washington, DC 20260-1100

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the day and year first written above.

UNITED STATES POSTAL SERVICE

BOOKSPAN

By: 

By: 

Printed Name: STEPHEN M. KEARNEY

Printed Name: Robert J. Posch

Title: VP, PRICING & CLASSIFICATION

Title: Sr VP Legal, Postal & Govt. Affairs

Date: MAY 25, 2005

Date: 5/25/05