

## **TERMS AND CONDITIONS FOR USE OF LISTABILITY, INC. DATA PRODUCTS AND SERVICES**

Upon your execution of the agreement to license data from ListAbility, Inc. either written or verbal it is agreed that by rendering payment of all amounts due ListAbility, Inc., you agreed to the terms and conditions made available. By using our services, you signify your consent to these terms. You may not use our services if you do not consent to all our terms. These general terms and conditions apply to and are set forth in addition to any other contract or written "Agreements" that may be part of the transaction. You agree to familiarize yourself with these terms if you choose to use our data products.

ANY DATA PROVIDED BY LISTABILITY (HEREINAFTER "LISTABILITY") IS FURNISHED ON A STRICTLY "AS IS" BASIS. LISTABILITY ACTS AS A THIRD PARTY PROVIDER OF ITS COMPILERS AND DOES NOT ASSURE OR WARRANT THE CORRECTNESS, COMPREHENSIVENESS OR COMPLETENESS OF THE DATA AND, EXCEPT AS PROVIDED IN THE NEXT SENTENCE, LISTABILITY AND ITS COMPILERS DISCLAIMS ANY AND ALL WARRANTIES OF ANY NATURE, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. YOU HAVE 5 DAYS FROM YOUR RECEIPT OF THE DATA TO INSPECT IT AND NOTIFY LISTABILITY OF ANY PROBLEMS OR MISTAKES WITH THE DATA AND IF YOU SO NOTIFY LISTABILITY WITHIN THAT 5-DAY PERIOD. THE PROBLEM OR MISTAKE WILL BE CORRECTED AT NO ADDITIONAL CHARGE TO YOU.

### **Limitation of Liability**

ListAbility will not be liable for any claim, demand, loss, liability, damage, injuries, cost or expense (including reasonable attorneys' fees and legal costs), whether general, direct, special, incidental, consequential or other damage caused in whole or in part or directly or indirectly by any use of the Data or any alleged or actual failure by ListAbility to comply with the terms of the Agreement, whether or not any such damages were foreseeable or whether ListAbility was advised of the possibility of such damages. ListAbility's maximum liability will not exceed the amount you paid ListAbility. ListAbility will not be liable for printing, mail shop or postage costs or any ancillary costs.

- Client warrants any offer made by accepting a list furnished by ListAbility must be in good taste and conform to all federal, state and local laws, statutes and regulations
- ListAbility takes reasonable care in providing this information. However, due to the possibility of human error inherent in compiling database information and everyday turnover of such information, ListAbility does not assume any liability for the correctness of this information, or the information from which it is compiled. Nor does ListAbility warrant the comprehensiveness, completeness, accuracy, or adequacy for any purpose or particular use of this information. Under no circumstances will ListAbility be liable to Client or third parties for incidental, special, consequential or exemplary damages, including, but not limited to lost profits, lost data, lost business, postal charges, costs, expenses, etc. ListAbility's entire liability for any claim whatsoever relating to and/or under this Agreement shall not exceed the total amount of the charges paid by Client to

ListAbility for the data on which the claim is based. Client acknowledges that certain federal and state laws, rules and regulations restrict telemarketing and faxing activities, including provisions that permit consumers to give notice that they do not wish to receive sales solicitation calls. Due to the varying and changing nature of such provisions, ListAbility makes no warranty, expressed or implied that the names, telephone numbers and fax numbers of such individuals have been identified and deleted from ListAbility data. ListAbility shall not be responsible for any laws, rules or regulations relating to Client's use of ListAbility data, including, without limitation, any such laws, rules or regulations that are specific to Client or its business [example: state insurance law or local laws governing real estate agents]. Many states allow civil penalties for using fax lists for unsolicited fax broadcasting; client needs to check their state and local laws on unsolicited faxing. Client assumes legal risk for use of fax lists. The outcome of Client's Marketing Promotions is not guaranteed.

- Client acknowledges that ListAbility's data has not been collected for credit purposes and is not intended to be indicative of any consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of living (as such terms are used in section 603(d) of the Fair Credit Reporting Act ("FCRA"), 15 USC 1681a). Client certifies that it shall not use ListAbility's data as a factor in establishing any consumer's eligibility for (a) credit or insurance used primarily for personal, family or household purposes, (b) employment purposes, or (c) other purposes authorized under Section 604 of FCRA, 15 USC 1681b.
- Fair Information Practices. No solicitation made using a list supplied by ListAbility's data shall make reference to any selection criteria or presumed knowledge regarding the intended recipient of such solicitation, or the source of the recipient's name and address, except to the extent such selection criteria, knowledge or source of information is derived from Client owned data. The Client shall comply with all federal, state and local laws and regulations in connection with any use made of ListAbility data. The Client shall not use or permit others to use such data for purposes of mailing pornographic or sexually explicit material, chain letters, pyramid fund raising solicitations or other similar purposes. Upon ListAbility's request, Client shall furnish ListAbility with a sample mail piece to enable ListAbility to verify Client's compliance with such restrictions.
- Client agrees that the information provided is for their use only and that the names, addresses, etc. will not be duplicated or resold. Our lists are seeded with decoy names to protect against unauthorized use. Client may use ListAbility's data solely for Client's internal direct marketing program [telemarketing and/or direct mail campaign] and for no other purposes. For Marketing Companies that license ListAbility's data, they may use ListAbility's data solely for a specific client's direct marketing program [telemarketing and/or direct mail campaign] and for no other purposes.
- Company will remit payment to: ListAbility the total amount of the invoice as per the terms stated on this invoice. Furthermore, in the event ListAbility engages the services of a collection agency or an attorney to collect on a past due amount, Company agrees to pay all costs of collection including court costs and reasonable attorney's fees. Company acknowledges that it is paying ListAbility for a service and that no guarantees were expressed or implied and that the advertiser understands that ListAbility has a no refund exception policy. All discounts and promotional offers must be presented at time of sale or offer is null and void.
- Due to the fact that our mailing lists can be copied easily, orders cannot be returned for refunds.
- Applicable Law and Venue: This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, and the exclusive jurisdiction and venue for any proceeding brought pursuant to these terms and conditions shall be held in Sarasota County, Florida without regard to conflicts of law principles, and shall benefit and be binding upon the parties hereto and their respective successors and assigns.
- This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the parties reflected hereon as the signatories. A faxed signature or scanned and emailed signature shall have the same legally binding effect as an original signature.

### **Privacy Policy**

ListAbility does not collect information from our website visitors, unless they voluntarily complete a form on our site and give it to us. This information is used only for marketing purposes, and never shared with anyone outside of our company. When visitors browse our websites, they do so anonymously. The choice of whether or not to receive marketing solicitation from ListAbility can be changed at any time by contacting us.

### **Changes with our Privacy Policy**

The privacy policy may be amended at any time, so please check back periodically.

If you have questions, comments or concern about this this policy you can reach us by email at [PrivacyPolicy@ListAbility.com](mailto:PrivacyPolicy@ListAbility.com) or mail to:

ListAbility, Inc.  
Attn: Privacy Policy  
20845 Loggia Ct  
Venice, FL 34293