

LORTON DATA, INC. LIST RENTAL TERMS AND CONDITIONS

- (1) **Invoicing.** Unless otherwise provided for under Order Billing Information, Lorton Data, Inc. ("Lortondata") will invoice the ordering customer ("You" or "Your") for services rendered and goods provided in accordance with Lortondata's price schedule in effect on the date of Your Order. In addition, Lortondata will invoice You for all out-of-pocket costs and expenses including postage, freight, shipping and handling, and insurance. Invoices are due upon receipt or such later date as pre-approved by Lortondata's credit department. Invoices not paid in full within fifteen (15) days of the due date will accrue a service charge at the rate of 1½% per month on the unpaid balance from the due date.
- (2) **Specifications and Approvals.** If You wish Your Order to comply with a certain job specification, You must provide such job specification to Lortondata with Your Order. All additions or changes to job specifications must be in writing and acknowledged by an authorized Lortondata employee. If You do not provide Lortondata with complete, written job specifications or two or more elements of Your written job specifications are contradictory, then Lortondata's standard job specifications and best judgment will govern. Lortondata may conclusively rely upon its interpretations of, and will not be liable for failure to comply with, any verbal instructions. When Lortondata submits counts, samples or other interim results to You for Your review and approval, You shall promptly review the same, including reviewing the same for reasonableness, and advise Lortondata of any faults, inaccuracies or problems. Unless and to the extent You promptly and specifically object, Lortondata shall be entitled to continue processing Your Order based upon the correctness of such interim results.
- (3) **Deadlines.** Lortondata will use its best efforts to meet specific deadline requests made at the time You place Your Order. Deadline requests are, however, not binding on Lortondata, and Lortondata is not liable, in any way, for failure to meet a specific deadline request.
- (4) **List Rental.** Any Lists rented hereunder by You from Lortondata may be used only **ONCE** in a direct mail program, unless otherwise specified in writing by Lortondata. All orders for Lists are subject to the final approval by the Lists' owners. All material describing the Lists is intended to provide You with a general idea about the Lists and may not be relied upon as a "basis of the bargain" for this Agreement. Lists may be seeded or otherwise monitored, and no method may be used to detect, alter, or eliminate such monitoring. Other than disclosure to a service provider to effect the use contemplated herein and in compliance herewith, You agree not to disclose to any third party all or any portion of the List(s) in any form whatsoever. You covenant that You will cause any service provider to comply with the terms herein.
- (5) **Cancellations.** Any orders cancelled or changed by You shall be subject to any and all work in process charges and out-of-pocket expenses incurred by Lortondata and Lortondata's standard cancellation fee in effect from time to time. No cancellation or change shall be allowed or effective if received by Lortondata after the date of shipment of a List; and You shall pay Lortondata the full rental price on such shipped List.
- (6) **Customer Responsibilities.** To enable Lortondata to timely and properly complete Your Order, You are responsible for and will (i) provide Lortondata with all necessary lists, records and other data applicable to Your Order, (ii) provide Lortondata with complete job specifications, in writing and/or on the input screen(s) of a program provided by Lortondata, (iii) provide Lortondata with layouts for Your data. If no layouts are provided, Lortondata will, at Your cost, make a reasonable effort to interpret Your data and be entitled to rely conclusively on its interpretations thereof, (iv) promptly review Lortondata counts, samples or other interim results, including reviewing same for reasonableness, and approve such results or advise Lortondata of any faults, inaccuracies, or problems, (v) maintain adequate back-up copies of data furnished to Lortondata to enable Lortondata to regenerate such data which, for any reason, is lost, damaged or destroyed. If You do not maintain adequate back-up data, Lortondata's liability for lost, damaged or destroyed data shall be limited solely to media costs not to exceed the liquidated damages sum of \$250. Lortondata shall not be liable for data or material damaged in transit, and (vi) promptly examine all final output data received from Lortondata for validity prior to use.
- (7) **Customer Warranties and Representations.** You hereby warrant and represent that (i) You own or have obtained proper authorization or approval to use or reuse all data provided to Lortondata for processing on Your behalf. You agree to indemnify and hold Lortondata and Lortondata's officers, directors, agents and employees harmless against any and all claims, causes of action, suits, proceedings, losses, damages, demands, fees, expenses, fines, penalties and costs (including reasonable attorneys' fees and expenses) arising directly or indirectly out of Lortondata's processing of such data on Your behalf, and (ii) You understand that use of the data obtained may be governed by rules, regulations, marketing association guidelines, or State or Federal Law (collectively "Applicable Laws"), including but not limited to all "DO NOT CALL," "CAN-SPAM," "DO NOT MAIL," and similar legislation relating to telemarketing, privacy and email activities. You represent that Your purposes for obtaining this data through this processing are legitimate under these laws, and agree to abide by all Applicable Laws regarding the use of such data.
- (8) **Lortondata's Warranties and Representations.** Lortondata hereby warrants and represents that (i) all of its services shall be performed in a workmanlike manner in accordance with generally accepted industry standards, and (ii) it shall not knowingly infringe upon any then existing intellectual property right of a third party.
EXCEPT AS PROVIDED IN THIS SECTION (8), LORTONDATA MAKES NO WARRANTIES OF ANY KIND AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARE HEREBY DISCLAIMED, INCLUDING WITHOUT LIMITATION THAT THE SERVICES, PRODUCTS AND RELATED OPERATIONS PERFORMED HEREUNDER WILL BE ACCURATE OR FREE FROM ERROR, AND INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND THOSE ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE IN THE TRADE.
- (9) **Disclaimers.** **LORTONDATA SHALL NOT BE LIABLE TO YOU OR TO ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE WORK OR PRODUCT HEREIN AUTHORIZED INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOST PROFITS, LOST SAVINGS, OR LOST DATA, OR FOR ANY DAMAGE RELATED TO THE USE OF OR INABILITY TO USE THE PROCESSED DATA GENERATED BY LORTONDATA EVEN IF LORTONDATA HAS BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH DAMAGES. LORTONDATA'S TOTAL LIABILITY SHALL BE FOR THOSE DIRECT DAMAGES SUFFERED BY YOU DUE TO LORTONDATA'S PERFORMANCE UNDER THIS ORDER IN AN AMOUNT NOT TO EXCEED FEES ACTUALLY PAID BY YOU TO LORTONDATA FOR SERVICES DIRECTLY RELATED TO THE DAMAGES SUFFERED.**
- (10) **Confidentiality.** Lists, records, spreadsheets, manuscripts, diagrams, and/or graphics that You provide to Lortondata shall be considered "Confidential Information". Lortondata will disclose Confidential Information only to its employees and/or vendors who may need to know it in order to process Your Order, and to authorized persons designated by You. Lortondata also agrees not to use such Confidential Information on its own behalf or for its own interest without Your prior consent. Confidential Information shall not include any information that (i) is or becomes available to the public through no fault of Lortondata, (ii) is lawfully received by Lortondata from a third party that is not subject to disclosure restrictions, (iii) is independently developed by Lortondata without using Confidential Information, (iv) has been approved for public release by Your authorization; or (v) is known to Lortondata without a duty of confidentiality prior to first receipt of it from You.
For quality control purposes only, Lortondata may compile statistical information that in no way identifies individual lists, records, persons or addresses. Such statistical information shall belong to Lortondata and shall not be considered Confidential Information as defined in this Section (10).
- (11) **Force Majeure.** Lortondata shall not be in default by reason of any failure in its performance if such failure to perform is otherwise due to causes beyond the reasonable control of Lortondata, which may include, without limitation, the failure of computers, equipment, or software, or the illness, disability or resignation of Lortondata's personnel or contractors, to the extent that such default could not be resolved by Lortondata with reasonable efforts.
- (12) **Subcontractors.** Lortondata shall have the right to subcontract any or all of its obligations to one or more parties, provided that Lortondata shall oversee all work performed by subcontractors, and provided that Lortondata shall remain responsible for the delivery and quality of the goods and/or services ordered herein.
- (13) **Governing Law.** The provision of goods and services covered hereby and all Terms and Conditions hereof shall be governed by, construed and enforced under the internal laws (and not the laws of conflicts) of the State of Minnesota. All actions with respect hereto shall be brought in the state and federal district courts of Hennepin County, MN, and in no other jurisdiction.
- (14) **Entire Agreement.** This Document is the final expression of the Terms and Conditions that govern all Orders placed by You with Lortondata for the provision of goods and/or services and may not be contradicted by evidence of any alleged oral agreement or other written agreement. Please read it and keep it for your records. Any unilateral purchase order shall be effective only to specify the services and/or goods ordered and the quantities, and shall be otherwise governed by these Terms and Conditions.