

# **Lead Co-op Terms and Conditions**

Version 1.0

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This agreement is entered into between:

**A. Lead Co-op**, a trading name of Online Finance Expert Limited, company registered in England and Wales with company No. 07478703, whose registered office is The Garden Suite, 23 Westfield Park, Redland, Bristol, BS6 6LT ("**Lead Co-op**") and

**B. You** (the "**User**")

and is subject to the terms and conditions attached hereto (the documents collectively being referred to as the "**Agreement**").

Lead Co-op agrees to provide and the User agrees to engage the services specified in the Agreement on the terms and conditions contained herein:

## 1. Definitions

1.1 The following words have the following meanings in this Agreement:

"**Acceptable Use Policy**" means the policy on acceptable use of the Lead Co-op Website set out in Schedule 2 to this Agreement;

"**Act**" means the Data Protection Act 1988 as amended;

"**Acknowledgement**" means the notification from Lead Co-op, via the Buyer Account, that a Bid has been accepted in line with Clause 4.5 (and "**Acknowledge**" and "**Acknowledged**" shall be construed accordingly);

"**Approved Customer Lead Form**" means either the Hosted Solution or a Web Service form;

"**Bid**" means an offer to purchase the next available Customer Lead in a particular Lead Category in return for the sums specified in such bid;

"**Buyer**" means the User (or its agents) acting in its capacity as a suitably authorised (registered with the Financial Services Authority where appropriate) adviser on, or provider of, Products;

"**Buyer Account**" means a User's Product Account as defined by Clause 3.9;

"**Buyer Payment**" means the payment made by a Buyer to Lead Co-op in consideration for a Customer Lead as defined by Clause 4.8;

"**Confidential Information**" means any and all secret or confidential commercial, financial, marketing, technical information, know-how, trade secrets and other information (including without limitation user names and passwords) in written, electronic or any other form or medium whether disclosed orally or in writing before, on or after the date of this Agreement;

"**Customer**" means a person who has expressed an interest in purchasing a Product;

"**Customer Lead**" means the Customer specific data submitted via a Seller Account to Lead Co-op comprising of, but not limited to:

- (i) the Customer's contact details,
- (ii) details of the Product the Customer has expressed an interest in purchasing, and
- (iii) express consent from the Customer to being contacted by a Buyer regarding the provision of such Product;

**"Data Feed"** means any marketing information made available to the User by Lead Co-op for the purposes of providing information to Customers about Products including without limitation best-buy tables;

**"Financial Services Regulations"** means, without limitation, the FCA Handbook Mortgage Conduct of Business, the FCA Handbook New Conduct of Business, Insurance: New Conduct of Business sourcebooks and the Consumer Credit Act Advertising Regulations, where appropriate and as amended;

**"Force Majeure"** means any event outside the reasonable control of either party affecting its ability to perform any of its obligations under this Agreement including without limitation: fire; flood; lightning; war; revolution; terrorism; riot; strike; lock-out or other industrial action; failure of supplies of power, fuel, transport, equipment, raw materials or other goods or services;

**"Hosted Solution"** means the web form as set out on the User Control Panel as amended from time to time by Lead Co-op and hosted by Lead Co-op and displayed on the Seller Website;

**"Intellectual Property Rights"** means any patent, copyright, database right, moral right, design right, registered design, trade mark, service mark, domain name, metatag, know-how, model, unregistered design (and any application for any such right) or other intellectual property right anywhere in the world;

**"Invalid Lead"** has the meaning given to it in the Lead Invalidation Policy;

**"Invoicing Day"** means the first working day of a calendar week as defined in Clause 6.3;

**"Lead Category"** means the categorisation of a Product and Customer, defined in its absolute discretion by Lead Co-op;

**"Lead Co-op Website"** means the website at the URL [www.leadcoop.co.uk](http://www.leadcoop.co.uk) (or such other URL as Lead Co-op may notify the User from time to time);

**"Lead Invalidation Policy"** means the policy on invalidation of Customer Leads as set out in Schedule 1 to this Agreement;

**"Master Account"** means the User's system interface made available to the User on the Lead Co-op Website, incorporating the User Control Panel and all Buyer and Seller Accounts;

**"Product"** means a financial services product or service;

**"Prospect Lead"** means a Customer Lead as defined by Clause 6.3;

**"Purpose"** means the purpose of Lead Co-op submitting the data received from a User to Buyers to provide Products to Customers and for the purpose of Lead Co-op and its partners marketing Lead Co-op services and/or third party services directly to Customers;

**"Registration"** means the process by which the User accepts the terms and conditions of this Agreement on the registration page of the Lead Co-op Website and registers for a Master Account (and **"Register"** shall be construed accordingly);

**"Resource Code"** means the resource code provided on the User Control Panel for use by the User in creating an Approved Customer Lead Form;

**"Sample Set"** means the number of Customer Leads required by Lead Co-op to be bought by a User in order to vary Bids for that Seller Account as set out on the User Control Panel;

**"Seller"** means a User supplying Customer Leads to Lead Co-op through a Seller Account;

**"Seller Payment"** means the payment per Success Lead as displayed on the User Control Panel (or such other sum as varied by the parties in accordance with the Agreement);

**"Success Lead"** means a Customer Lead as defined by Clause 6.3;

**"Seller Website"** means the website or websites owned, operated or managed by the Seller for the purpose of supplying Customer Leads to Lead Co-op with its domain or domains being located at the URL(s) notified to Lead Co-op on Registration;

**"User Control Panel"** means the User's interface with the Lead Co-op system;

**"User Website"** means the User's website which it uses to to generate Customer Leads for supply to the Lead Co-op system;

**"Web Service"** means the optional service allowing a Seller to design its own web form or a web form derived from the Resource Code, both to comply with the Web Service Policy.

- 1.2 The headings contained in this Agreement are for convenience of reference only and shall not affect its interpretation.
- 1.3 References to persons include an individual, company, corporation, firm or partnership.
- 1.4 Words indicating the singular shall include the plural and vice versa. Words indicating a gender shall include each gender.
- 1.5 The words and phrases "including" and "in particular" shall be without limitation to the generality of any preceding words and any preceding words shall not be construed as being limited to a particular class where a wider interpretation of those words and phrases is possible.
- 1.6 All sums payable hereunder are inclusive of VAT or any other applicable tax or duty payable upon such sums.
- 1.7 For the purposes of this Agreement, the terms "personal data" and "data controller", "data processor" and "data subjects" shall be as defined in the Act.

## **2. Duration**

- 2.1 This Agreement shall come into force on Registration and shall continue unless and until terminated under the provisions of Clause 11.

## **3. Master Account**

- 3.1 The User will Register for a Master Account by selecting a password and user identification through the Lead Co-op Website. Lead Co-op shall be entitled to change such password and user identification from time to time on notice to the User.
- 3.2 The User may allow another User delegate access to any of its Master Account, or sub-accounts.
- 3.3 The User shall be responsible for the security of the password and user identification and Lead Co-op shall not be responsible for any misuse of the password or user identification or use of the same by a third party.
- 3.4 In the event that the User has cause to believe the password or user identification may be used by an unauthorised person the User shall notify Lead Co-op immediately.
- 3.5 Upon Registering for a Master Account, the User undertakes:
  - a) to comply with the Lead Co-op Acceptable Use Policy;
  - b) not to allow any use of the Lead Co-op Website by any third party.
- 3.6 Upon Registering for a Master Account, the User warrants to Lead Co-op that:
  - a) it has full capacity and authority to enter into this Agreement;

- b) it shall use reasonable skill and care in the performance of its obligations;
- c) it shall not solicit or attempt to solicit, entice away or attempt to entice away the custom of (or enter into a referral relationship with) any referrer, introducer, or any other person the details of whom were obtained from Lead Co-op under or in connection with this Agreement for the duration of this Agreement, and for a period of six months after termination of this Agreement; and
- d) it shall not conduct any activity that may have an adverse impact on the reputation of Lead Co-op, its customers, employees, agents or contractors.

3.7 The User shall:

- a) notify Lead Co-op within thirty days of Registering for a Master Account if the Lead Co-op Website is not provided in accordance with this Agreement, and the User shall be deemed to accept the Lead Co-op Website in the event that it has not provided any such notice to Lead Co-op; and
- b) obtain all necessary consents, licences and permissions which are necessary in order for the User to use the Lead Co-op Website, save in respect of the rights to use the Lead Co-op Website granted by Lead Co-op under this Agreement.

3.8 Where a Master Account remains Inactive for a period of six calendar months, an administration fee of up to £10 per week shall immediately become payable, save that Lead Co-op may not induce a negative balance of a Master Account by charging such a fee.

3.9 The User may open a sub-account within their Master Account for the purpose of trading in Customer Leads relating to a specific Product with Lead Co-op:

- a) upon electing to use a sub-account for the purpose of buying Customer Leads from Lead Co-op (a "**Buyer Account**"), the User makes the further undertakings and warranties contained in Clause 4.
- b) upon electing to use a sub-account for the purpose of selling Customer Leads to Lead Co-op (a "**Seller Account**"), the User makes the further undertakings and warranties contained in Clause 5.

3.10 The User acknowledges that:

- a) nothing in this agreement creates a relationship that entitles it to a claim of the the share capital or ownership of Lead Co-op; and
- b) Lead Co-op is only a co-operative insofar as it relates to sellers of Customer Leads cooperating to provide a central place to sell Customer Leads.

## 4. **Buying Customer Leads**

4.1 Upon opening a Buyer Account, the Buyer undertakes:

- a) to pay monies into the Buyer Account as appropriate to the Buyer by such method as selected by the Buyer on the User Control Panel and to complete any further documentation as requested by Lead Co-op to effect such transfer of monies;
- b) to use the Lead Co-op Website solely for its internal business purposes and not to use the Lead Co-op Website to provide any form of bureau services, managed services, outsourced services, sub-licensing, time sharing, rental, facility management, or to process data on behalf of a third party or provide any other form of services or access to the Lead Co-op Website to any third party;

- c) to use the Customer Lead in the relevant Lead Category solely for the purposes of marketing the Product referred to in the Customer Lead to the Customer for the duration set out in Clause 4.6 and for no other purposes whatsoever;
- d) that it has all consents, licenses and regulatory authority to conduct its business and to provide the advice and or products and services that are the subject of a Customer Lead for which the Buyer has placed a Bid;
- e) that no information posted on the Lead Co-op Website by the Buyer (either directly, or indirectly using a third party website) will be false, misleading or inaccurate, offensive, threatening, abusive, defamatory or in breach of any intellectual property rights, fraudulent, in breach of any applicable laws or regulations, obscene, indecent, contain any computer viruses or anything designed to interrupt or damage software or the Lead Co-op Website,

4.2 The Buyer warrants to Lead Co-op that:

- a) it is regulated by the Financial Services Authority (or such other appropriate regulatory body) to conduct business in the Products for which it makes a Bid and the Buyer shall indemnify and keep indemnified Lead Co-op against all losses, costs, damages, claims and expenses arising as a result of a breach of the warranty contained in this Clause 4.2 a); and
- b) it shall use its reasonable endeavours to complete the feedback forms contained on the Lead Co-op Website to allow Lead Co-op to assess and improve the performance of the Lead Co-op Website.

4.3 Lead Co-op shall make available the appropriate Lead Categories to the Buyer through the Buyer Account.

4.4 The Buyer may place a Bid in a Lead Category to receive the next available Customer Lead in that Lead Category subject to:

- a) the limitation on Bid variations set out in Clause 4.9.
- b) there being sufficient funds in the Buyer Account to cover that Bid.

4.5 At such time that a Bid placed by the Buyer:

- a) is above the specified minimum Bid price (if applicable);
- b) is the highest Bid at the time that the next Customer Lead becomes available; and
- c) does not exceed the current balance of the Buyer Account,

Lead Co-op shall Acknowledge such Bid and forward that Customer Lead to the Buyer Account.

4.6 By sending the Acknowledgement Lead Co-op grants the User a six month exclusive non-transferable licence of the Customer Lead in respect of the Lead Category for the sole purpose of contacting the Customer and providing advice on the Product detailed in the Customer Lead.

4.7 Once a Bid is placed on the Lead Co-op Website it may be amended or withdrawn by notification to Lead Co-op through the Buyer Account at any time up to Acknowledgement. In the event that Lead Co-op does not receive notification of any amendment or withdrawal of a Bid prior to issuing Acknowledgement then such Bid shall be binding on the User.

4.8 In consideration of the receipt of the licence of the Customer Lead following Acknowledgement, the Buyer shall pay a sum equal to the second-highest Bid plus £1, or the minimum Bid price, together with VAT if appropriate, (the "**Buyer Payment**") and immediately upon Acknowledgement of such Bid authorise the transfer of the Buyer Payment from the Buyer Account to Lead Co-op.

- 4.9 After a Buyer has purchased a Seller Account's Sample Set of Customer Leads, the User may place unique Bids for Customer Leads supplied from that Seller Account.
- 4.10 Where a Buyer has not actively placed a Bid through the Buyer Account for more than three months that Account shall have its bid lines deleted.

## **5. Selling Customer Leads**

5.1 Upon opening a Seller Account, the Seller undertakes:

- a) to comply with the restrictions on withdrawal of funds from the Master Account set out in Clause 5.4;
- b) to use an Approved Customer Lead Form for the generation of Customer Leads or, where the User uses the Web Service, to comply with the requirements of the Web Service Policy;
- c) to include, within thirty calendar days from Registration and for the duration of this Agreement, the Approved Customer Lead Form on the User Website;
- d) to arrange for the Approved Customer Lead Form to provide the captured data in a format acceptable to Lead Co-op (as specified by Lead Co-op from time to time);
- e) to obtain the consent of all Customers entering their personal data into the Approved Customer Lead Form, in a timely and reasonable manner before the Customers' data is submitted to Lead Co-op, such that the User ensures that:
  - (i) Lead Co-op is the data controller in respect of the personal data; and
  - (ii) Lead Co-op can use the personal data for the Purpose,
- f) to collect the information entered into the Approved Customer Lead Form in a manner that is compliant with all Financial Services Regulations applicable at the time and the User shall indemnify Lead Co-op against all losses, costs damages and expenses arising as a result of a breach of this Clause 5.1 f);
- g) to supply Customer Leads, including all Customer Leads generated directly or indirectly through the Data Feed, exclusively to Lead Co-op and not to use such Customer Leads for any other purposes, or to supply such Customer Leads to a third party;
- h) to provide details of the User Website used to generate each Customer Lead and the method by which each Customer Lead was generated;
- i) to provide Lead Co-op with five working days notice, through the User Control Panel, of any web site other than the User Website on which an Approved Customer Lead Form will be displayed;
- j) not to delay the Customer Leads being delivered to Lead Co-op or send the Customer Leads together in batches; not to provide any discount, rebate or gift as an incentive for Customers to complete the Approved Customer Lead Form;
- k) not to undertake any act or omission which would result in Lead Co-op being in breach of any laws, regulations (including without limitation the Act) or codes of conduct and, by obtaining the personal data and/or using it for the Purpose, the User will only act in accordance with the instructions of Lead Co-op in respect of the personal data and the User will take appropriate technical and security measures for the protection of the personal data;
- l) not to market to any Customer;
- m) not to include on the User Website any content which is illegal, defamatory, obscene, pornographic, racist, or derogatory; and

- n) not to undertake any act or omission which causes damage to Lead Co-op's brand or reputation.

5.2 The Seller warrants that:

- a) all Customer Leads supplied to Lead Co-op are supplied on an exclusive basis and that the Seller shall not use a Customer Lead for its own purposes or supply a Customer Lead to a third party; and
- b) the Seller shall not, for the duration of this Agreement, and for a period of six months after termination of this Agreement, solicit or attempt to solicit, entice away or attempt to entice away the custom of (or enter into a referral relationship with) any Buyer or any other person the details of whom were obtained from Lead Co-op under or in connection with this Agreement.
- c) the Seller shall not conduct any activity that shall have an adverse impact on the reputation of Lead Co-op or its customers, employees, agents or contractors.

5.3 Lead Co-op shall pay the Seller as follows:

- a) when Lead Co-op receives a Customer Lead which it then forwards to a Buyer, then that Customer Lead shall constitute a "Prospect Lead" for the purposes of this Agreement,
- b) when, in respect of a Prospect Lead, a Buyer pays a Buyer Payment to Lead Co-op which is neither refunded to the Buyer, nor cancelled by the Buyer, in the event of the Customer Lead being an Invalid Lead, then that Prospect Lead shall constitute a "Success Lead" for the purposes of this Agreement, and
- c) Lead Co-op shall deposit in the Seller Account an amount equal to the Seller Payment for that Success Lead.

5.4 On the first working day of each week (an "**Invoicing Day**") Lead Co-op will generate an invoice showing total number of Success Leads generated in the seven day period beginning two week's prior to the Invoicing Day and transfer that amount from the Seller Account to the Master Account.

5.5 The minimum value that the User may withdraw from the Master Account shall be one hundred pounds (£100).

5.6 Lead Co-op shall apply an administration charge of twenty pounds (£20) for each withdrawal required to be made:

- a) to a Non-UK bank account; or
- b) via Paypal.

5.7 The Seller Payment may be amended from time to time by Lead Co-op provided that Lead Co-op provides the Seller with at least seven calendar days notice of any change to the Seller Payment. Such changes shall not apply retrospectively.

## **6. Lead Invalidation**

6.1 Users and Lead Co-op shall comply with the Lead Invalidation Policy for determining the validity of Customer Leads.

6.2 Any refund made by Lead Co-op in accordance with the provisions of this Clause 6 shall be the sole and exclusive remedy of the Buyer in respect of any Invalid Lead.

6.3 Lead Co-op shall be entitled to deduct and set off any refunds for Invalid Leads or any other sums owed to it by the User in accordance with this Agreement from further Bids made by the User.



- 6.4 In the event that the Buyer has not notified Lead Co-op of the invalidity of a Customer Lead in accordance with the Lead Invalidation Policy the User shall be deemed to have accepted the Customer Lead and such Customer Lead shall not become an Invalid Lead under any circumstances.
- 6.5 In the event that a Buyer Payment to Lead Co-op is refunded to the Buyer or cancelled by a Buyer, then Lead Co-op shall notify the Seller of this, and the Seller Payment in respect of that Success Lead will immediately become repayable by the Seller to Lead Co-op if paid, or void if remaining to be paid, and Lead Co-op shall be entitled to set off any outstanding amounts against future invoices.

## 7. Warranties and Obligations

### 7.1 Lead Co-op warrants that:

- a) it shall use reasonable skill and care in the performance of its obligations;
- b) it has full capacity and authority to enter into this Agreement;
- c) the Lead Co-op Website, when used in accordance with this Agreement, will not infringe the Intellectual Property Rights of a third party; and
- d) once a Bid has been Accepted in respect of a Customer Lead, Lead Co-op will not make such Customer Lead available to a third party for a period of six months from the Acceptance, provided that Lead Co-op shall be entitled to use the Customer Lead at any time for the purposes of contacting the Customer in respect of Products other than those specifically referred to in such Customer Lead.

7.2 The Lead Co-op Website is a service which aggregates Customer Leads provided by Sellers and offers them to Buyers simultaneously. Lead Co-op is not acting as an auctioneer in selling the Customer Leads.

7.3 Lead Co-op shall make the Lead Co-op Website available to the User at all reasonable times, subject to providing the User twelve hours notice of any periods of unavailability of the Lead Co-op Website due to maintenance undertaken by Lead Co-op or its contractors ("**Maintenance Notice**"), save that such Maintenance Notice shall not be required when:

- (i) in Lead Co-op's absolute discretion, such maintenance work is essential for the availability of the Lead Co-op Website; or
- (ii) the unavailability of the Lead Co-op Website is by virtue of a Force Majeure.

7.4 in the event that Lead Co-op fails to comply with Clause 7.2 or 7.3, then Lead Co-op will at its sole discretion, either:

- a) correct the Lead Co-op Website without any additional charge; or
- b) refund the charges in respect of the Lead Co-op Website or those services which have not been satisfactorily performed.

7.5 The User agrees that Clause 7.2 represents its sole and exclusive remedy in respect of unsatisfactory performance of the Lead Co-op Website or the services.

## 8. Intellectual Property Rights

8.1 All Intellectual Property Rights in the Lead Co-op Materials shall remain vested in Lead Co-op and/or its licensors.

8.2 Other than as strictly necessary for the purpose of Clause 5, the User does not have any right to use any of Lead Co-op's intellectual property rights (including without limitation Lead Co-op's

copyright and trade marks (whether registered or unregistered), the Hosted Solution and Resource Code) or any materials supplied by Lead Co-op without Lead Co-op's prior written approval.

- 8.3 All Intellectual Property Rights in the data submitted by the Seller to Lead Co-op under this Agreement shall vest in Lead Co-op and the Seller hereby assigns to Lead Co-op with full title guarantee free from all charges, liens, licences and other encumbrances all Intellectual Property Rights in such data together with the right to obtain remedy in respect of any infringement thereof prior to Registration and to hold the same to the Lead Co-op absolutely.
- 8.4 Lead Co-op grants the Seller a non-exclusive, non-transferable licence of the Resource Code or Hosted Solution (as necessary) for the duration of this Agreement for the sole purpose of creating and using an Approved Customer Lead Form on the Seller Website.
- 8.5 Lead Co-op accepts no liability for any loss suffered by the Seller resulting from use of the Resource Code or Hosted Solution.

## **9. Confidentiality**

- 9.1 Subject to Clause 9.2, all Confidential Information disclosed or obtained as a result of this Agreement shall be kept confidential by the parties and neither party shall use or disclose such Confidential Information. Where such Confidential Information is disclosed by a party to its employees, agents or sub-contractors, it shall be subject to confidentiality obligations equivalent to those set out in this Agreement. Each party shall procure that any such employee, consultant, sub-contractor or agent complies with such obligations.
- 9.2 The obligations of confidentiality in Clause 9.1 shall not extend to any disclosure of Confidential Information which either party can show:
  - a) is necessary for the proper performance of its obligations under this Agreement;
  - b) has been carried out with the prior consent of the other party;
  - c) is in, or has become part of, the public domain other than as a result of a breach of the obligations of confidentiality under this Agreement; or
  - d) was in its records prior to the Registration (other than in contemplation of this Agreement); or
  - e) was independently disclosed to it by a third party entitled to disclose the same; or is required to be disclosed under any applicable law, or by order of a court or governmental body or authority of competent jurisdiction.

## **10. Limitation of Liability**

- 10.1 Nothing in this Agreement shall restrict or exclude Lead Co-op's liability for death or personal injury resulting from that party's negligence. Nothing in this Agreement shall restrict or exclude Lead Co-op's liability for fraud, nor for fraudulent misrepresentation.
- 10.2 Subject to Clause 10.4, Lead Co-op shall not be liable in any circumstances to the User for consequential, special or indirect losses, or the following losses whether direct or indirect: loss of profits, loss of revenue, economic loss, loss of business or contracts, loss of anticipated savings or goodwill, loss of data, (or any losses arising from a claim by a third party for any of the above losses); whether arising under contract, statute, tort (including without limitation, negligence), or otherwise.
- 10.3 Subject to Clauses 10.1 and 10.2 the aggregate liability of Lead Co-op for all claims arising under or in connection with this Agreement (whether arising under contract, statute, tort including without limitation negligence or otherwise) shall be limited to:

- a) where the User has a Buyer Account, the total value of Buyer Payments received by Lead Co-op from the User; and
- b) where the User has a Seller Account, the total value of monies paid to the Seller in respect of Success Leads.

10.4 The charges have been calculated on the basis that each party will exclude or limit its liability as set out in this Agreement.

10.5 Lead Co-op will not be liable for:

- a) any failure to comply with the provisions of this Agreement if such default is attributable to any extent to the acts or omissions of the User, its agents, employees or contractors, including without limitation the failure of the User to perform its obligations under this Agreement;
- b) any consequences arising from Lead Co-op complying with the User's instructions or requirements;
- c) any consequences arising from the User failing to secure any necessary consents, licences or permissions; or
- d) any consequences arising from software or equipment not supplied by Lead Co-op or the Internet or the User's Internet connection.

## 11. Termination

11.1 Either party may terminate this Agreement upon thirty days prior written notice to the other party.

11.2 Either party may terminate this Agreement immediately upon notice in writing to the other party in the event that the other party commits a breach of its obligations under this Agreement and:

- a) such breach is material and cannot be remedied; or
- b) such breach is material and possible to remedy and that the other party fails to remedy such breach within thirty days of having been required in writing to remedy such breach.

11.3 Either party may terminate this Agreement immediately upon notice in writing to the other party (the "**Defaulting Party**") in the event that the Defaulting Party shall present a petition or have a petition presented by a creditor for its winding up, or shall convene a meeting to pass a resolution for voluntary winding up, or shall enter into any liquidation (other than for the purposes of a bona fide reconstruction or amalgamation), shall call a meeting of its creditors, or shall have a receiver of all or any of its undertakings or assets appointed, or shall be deemed by virtue of the relevant statutory provisions under the applicable law to be unable to pay its debts.

11.4 Lead Co-op shall be entitled to terminate this Agreement immediately in the event that:

- a) the User is in breach of any of its undertakings in this Agreement; or
- b) in its absolute discretion, Lead Co-op considers the Seller to have submitted a Customer Lead containing data that does not meet the requirements of Clause 6;
- c) where appropriate, the Buyer ceases to be regulated by the Financial Services Authority to conduct business in the financial services products relevant to the Lead Co-op Website; or
- d) the User commits a written or verbal breach of the Acceptable Use Policy.

11.5 In the event that a Customer makes a complaint in respect of a Buyer, Lead Co-op shall be entitled to immediately suspend the Buyer Account and the User's use of the Lead Co-op Website. Lead

Co-op shall investigate such complaint as soon as reasonably practicable and if at the end of such investigation Lead Co-op agrees there are valid grounds for complaint then Lead Co-op shall be entitled to immediately terminate this Agreement.

## **12. Consequences of Termination**

12.1 The termination of this Agreement shall be without prejudice to the rights and remedies of either party which may have accrued up to the date of termination.

12.2 Upon and following termination of this Agreement, the provisions of this Agreement which are intended or expressed to survive termination (including without limitation the provisions relating to confidentiality, and limitations and exclusions of liability), shall so survive.

12.3 Each party shall immediately return to the other party all of the other party's property (including without limitation Confidential Information) in its possession at the date of termination.

12.4 Upon termination of this Agreement, the Seller will immediately remove the Approved Customer Lead Form from the Seller's Website, and all licences, including without limitation the licence referred to in Clause 8.4, provided by Lead Co-op to the Seller will immediately terminate.

12.5 Lead Co-op shall return to the User any sums in the Buyer Account after payment of all outstanding amounts owing by the Buyer to Lead Co-op. These sums shall be returned to their originating funding source and, where this originating funding source is disputed by a User or Users, Lead Co-op shall not be obliged to return such sums until clarification of the rightful ownership of the sums has been ascertained and Lead Co-op's decision in respect of sourcing is final.

12.6 Unless termination of this Agreement has occurred due to one or more breaches by the Seller, or pursuant to Clause 11.4 Lead Co-op shall, within thirty calendar days of termination, pay to the Seller any unpaid Seller Payments, including any balance in the Master Account still held by Lead Co-op due to Clause 5.5.

## **13. Force Majeure**

13.1 If either party is affected by Force Majeure it shall not be in breach of this Agreement or otherwise liable to the other by reason of any delay in performance or non-performance of any of its obligations due to such event.

13.2 If such Force Majeure persists for a period of three months then the party prevented from complying with its obligations by such event shall be entitled while the Force Majeure persists, to terminate this Agreement immediately upon notice to the other party.

## **14. Assignment and Sub-contracting**

14.1 The User may not assign, delegate, sub-contract, transfer or otherwise dispose of any of its rights or responsibilities under this Agreement without the prior written consent of Lead Co-op.

14.2 Lead Co-op shall be permitted to assign, delegate, sub-contract, transfer or otherwise dispose of any of its rights or responsibilities under this Agreement without the prior written consent of the User.

## **15. Contracts (Rights of Third Parties) Act 1999**

15.1 The Parties to this Agreement do not intend any third party to have any benefit under this Agreement. The Parties therefore agree that no third party shall have the right to enforce any term of this Agreement

## **16. No Partnership**

16.1 Nothing in this Agreement shall create, or be deemed to create, a partnership or joint venture or relationship of employer and employee or principal and agent between the parties to this Agreement.

## **17. Variations**

17.1 Subject to paragraph 5 of Schedule 1, paragraph 3 of Schedule 2 and paragraph 3 of Schedule 3, this Agreement may be varied by Lead Co-op by notifying such changes to the User by way of email or by supplying the User with a URL containing the updated Agreement, and any continued use of the Lead Co-op Website by the User after such notice shall be considered acceptance of the varied Agreement. In the event that the User does not accept the varied Agreement, the User shall be entitled to terminate this Agreement on notice without liability to Lead Co-op. No other variation of this Agreement shall be effective unless it is in writing and is signed by an authorised representative of each party.

## **18. Severability**

18.1 If at any time any part of this Agreement or a clause of this Agreement becomes void or unenforceable under any applicable law it shall be deemed to be deleted from this Agreement and the remaining provisions of this Agreement shall continue unaffected.

## **19. No Waiver**

19.1 No provision of the Agreement shall be waived unless agreed to be waived by both parties in writing. If any provision is waived, then that waiver shall operate for that instance only and not future instances, unless agreed otherwise by both parties in writing.

## **20. Notices**

20.1 Unless expressly stated in this Agreement, all notices relating to this Agreement must be provided in writing, in the case of Lead Co-op, to its registered address and, in the case of the User, to the address provided on Registration, by post, courier, fax or email or (solely in the case of Lead Co-op) by way of a system notification to users of its web sites where the User is a user of such site. A notice will be deemed to be served: in respect of notices delivered by post two working days after the date of posting or by courier, on the date the notice is received by a party as indicated by the signature of the party on the courier receipt. A notice will be deemed to be served in respect of notices delivered by fax, email or system notification on the day that such notice is successfully sent (if sent before 5pm on a working day, otherwise it will be deemed served at 9.30am the next working day) provided that the sending party retains a copy of a successful transmission report or other evidence that such notice was sent.

## **21. Entire Agreement**

21.1 This Agreement contains the entire agreement between the parties with respect to the subject matter of this Agreement and supersedes all other written and oral communications between the parties. The express terms, conditions and warranties of this Agreement are in lieu of all warranties, conditions, terms, representations, statements, undertakings and obligations whether express or implied by statute, common law, custom, usage or otherwise all of which are hereby excluded to the fullest extent permitted by law. The parties hereby confirm that they have not relied upon any representations, communications or other matters which have not been expressly stated in this Agreement. Notwithstanding any provision to the contrary, nothing in this Agreement limits or excludes either party's liability for fraudulent misrepresentations.

## **22. Law and Jurisdiction**

22.1 This Agreement and any dispute or claim arising in connection with it shall be governed by the laws of England and shall be subject to the exclusive jurisdiction of the English Courts to which the parties irrevocably submit.

## Schedule 1 - Lead Invalidation Policy

### 1. Validity of Customer Leads

1.1 A Customer Lead is valid where:

- a) a Customer consents to being contacted by a specialist from the Buyer's named company;
- b) the Customer submits their contact data
- c) the Customer Lead matches the Buyer's bidding criteria, where the criteria are applicable, of:
  - (i) Product type;
  - (ii) Product value; and
  - (iii) Postcode.

1.2 A Customer Lead will be deemed invalid if, in Lead Co-op's opinion, it is submitted according to paragraph 2 (Submission) and it meets the criteria set out in either paragraph 3 (Grounds for Invalidation), or it is auto invalidated according to paragraph 5 (Auto Invalidation).

### 2. Submission

2.1 The Buyer has seven calendar days from receipt of the Customer Lead to submit it through the Buyer Control Panel for analysis. No refunds will be provided for Customer Leads which have not submitted within this time frame.

2.2 Lead Co-op will use reasonable endeavours to process submissions within three working days.

2.3 A Buyer may withdraw a Customer Lead from analysis at any point up until Lead Co-op has completed its analysis of the Invalid Lead submission.

### 3. Grounds for Invalidation

3.1 A Customer Lead is invalid if:

- a) the telephone numbers provided do not ring ("**Invalid Contact Details**"); or
- b) the Buyer receives a duplicate Customer Lead within three calendar days of receiving the original ("**Duplication**"); or
- c) the Customer Lead is an obvious hoax, e.g. the name is 'Mickey Mouse' or 'John Doe' (a "**Hoax Lead**"); or
- d) the Customer Lead has been generated for test purposes, e.g. the name is 'test test' (a "**Test Lead**"),

3.2 Lead Co-op's analysis on whether a Customer Lead is a Hoax Lead or a Test Lead shall be based on visual assessment only.

3.3 Lead Co-op will not investigate any other reasons for possible invalidation of Customer Leads beyond these outlined in this Clause 3.

### 4. Auto Invalidation

4.1 Customer Leads containing invalid telephone numbers (incorrect numbers) will be recognised at the point of customer submission and will be automatically invalidated.

4.2 By providing this auto invalidation service Lead Co-op does not guarantee that all telephone numbers received by the Buyer will be valid, and all Customer Leads received by the Buyer are still eligible for submission as invalid as detailed in the relevant clauses above.

## **5. Variation**

5.1 Lead Co-op reserves the right to amend this policy at any time.

5.2 Any revisions to this policy will be published on the Lead Co-op Website and all changes will be notified through the User Control Panel.

5.3 Use of the Lead Co-op Website after changes to this policy are posted on the Lead Co-op Website will constitute acceptance of any new or additional terms of the policy that result from those changes.

## **Schedule 2 - Acceptable Use Policy**

### **1. Acceptance of Acceptable Use Policy**

- 1.1 the User shall be deemed to have accepted this Acceptable Use Policy by accessing any part of the Lead Co-op Website or using Lead Co-op systems and services. The User must leave the Lead Co-op Website immediately and not use any Lead Co-op systems and services if the terms of this Acceptable Use Policy are not accepted to the User.
- 1.2 This Acceptable Use Policy will form a part of each contract that the User has with Lead Co-op including any additional contract entered into with Lead Co-op for Lead Co-op goods and services via the Lead Co-op Website or otherwise.
- 1.3 This Acceptable Use Policy sets out important information regarding the User's rights and obligations including the consequences of breaching this Acceptable Use Policy.

### **2. Acceptable Use**

- 2.1 In using the Lead Co-op Website and Lead Co-op systems or services the User should not:
  - a) say or do anything that would cause annoyance, inconvenience, harassment or needless anxiety to others;
  - b) advertise or promote third party or the User's own products or services by way of the distribution of 'spam' mail;
  - c) use foul, defamatory, threatening, offensive, or sexually explicit language;
  - d) make insulting remarks to or about other users of the Lead Co-op Website or Lead Co-op systems or services, Lead Co-op or third parties;
  - e) distribute illegal, indecent or offensive material or any messages or content that may incite or encourage illegal activities including, without limitation, distributing files that contain viruses, trojans or other harmful programs or any material infringing the intellectual property rights of any person,;
  - f) impersonate Lead Co-op or another person;
  - g) use the Lead Co-op Website, Lead Co-op systems or services to conduct any fraudulent activity;
  - h) breach or otherwise fail to comply with relevant licence terms in connection with any hardware or licensed content that the User may access via the Lead Co-op Website, Lead Co-op systems and services;
  - i) connect any insecure computer hardware or other machines to the Lead Co-op systems which may be exploited by third parties to carry out activities that are in breach of this Acceptable Use Policy;
  - j) monitor or make bids by means of any automated process, computer programs or software other than that provided by Lead Co-op; or
  - k) access or attempt to access the accounts of other users or to penetrate or attempt to penetrate the Lead Co-op Website or Lead Co-op's security measures.
- 2.2 Lead Co-op may take any or all of the following action:
  - a) remove any material that, in Lead Co-op's sole discretion, may be inappropriate or that Lead Co-op may suspect to be illegal, may subject Lead Co-op to liability, damage Lead Co-op's reputation or where Lead Co-op is required to do so by law;
  - b) issue verbal or written warnings;



- c) suspend or terminate the User's access to any or all of the Lead Co-op Website or Lead Co-op systems and services without notice at any time;
- d) inform the appropriate authorities and provide them with information regarding any suspected illegal activity; or
- e) bring legal action against the User in relation to any breach by the User of this Acceptable Use Policy or any illegal or suspected illegal activity.

2.3 Lead Co-op will determine what action is appropriate to be taken against a User on a case by case basis.

2.4 The User's breach of this Acceptable Use Policy constitutes an irremediable breach of the Agreement which entitles Lead Co-op to terminate immediately under Clause 11.4 (d) of the Agreement and may also give rise to termination of or further action under any other contract that the User may have with Lead Co-op which incorporates this Acceptable Use Policy.

### **3. Variation**

3.1 Lead Co-op reserves the right to amend this policy at any time.

3.2 Any revisions to this policy will be published on the Lead Co-op Website and all changes will be notified through the User Control Panel.

3.3 Use of the Lead Co-op Website after changes to this policy are posted on the Lead Co-op Website will constitute acceptance of any new or additional terms of the policy that result from those changes.

## **Schedule 3 - Web Service Policy**

### **1. Seller's Obligations**

- 1.1 The Seller's web form must comply with the requirements of this Web Service Policy in order for Lead Co-op, in its absolute discretion, to consider it an Approved Customer Lead Form.

### **2. Web Form**

- 2.1 The Seller must ensure that:

- a) the web form captures the same mandatory information as the Hosted Solution;
- b) all Product categorisation questions (including, without limitation, adverse categorisations) are as detailed as the questions in the Hosted Solution and use the definitions contained in the Hosted Solution; and
- c) if the Seller wishes to alter the appearance of any of the questions taken from the Hosted Solution, the substance of each question is un-altered on the web form.

- 2.2 The Seller must ensure that the express consent text:

- a) displays the Buyer's name in bold font;
- b) appears in the same font and size as the text used for the questions;
- c) refers to telephone as means of contacting the Customer;
- d) contains a clear and direct link to the Seller's data protection policy; and
- e) is located above the button the Customer will use to submit the web form.

- 2.3 The Seller must ensure that the web page clearly indicates that the Buyer will contact the Customer by telephone or email, in addition to the express consent text referred to in paragraph 2.2 above.

- 2.4 The Seller must ensure that the Seller's data protection policy obtains the consent of all Customers entering their personal data into the web form, in a timely and reasonable manner before the Customers' data is submitted to Lead Co-op, such that the Seller ensures that:

- a) Lead Co-op is the data controller in respect of the personal data; and
- b) Lead Co-op can use the personal data for the Purpose.

- 2.5 The Seller must ensure that:

- a) the IP addresses of Customers are submitted to Lead Co-op;
- b) Customer data is submitted directly to the Lead Co-op system; and
- c) any address finder software used in the web form accepts all UK postcodes and provides the Customer's complete address;

- 2.6 The Seller must ensure that:

- a) Lead Co-op has approved, through the User Control Panel, the User Web site on which the web form will be used before the Seller uses the web form to capture data; and
- b) Lead Co-op is notified through the User Control Panel of any changes to a web form or User Website on which it is used.

### **3. Variation**

- 3.1 Lead Co-op reserves the right to amend this policy at any time.
- 3.2 Any revisions to this policy will be published on the Lead Co-op Website and all changes will be notified through the User Control Panel.
- 3.3 Use of the Lead Co-op Website after changes to this policy are posted on the Lead Co-op Website will constitute acceptance of any new or additional terms of the policy that result from those changes.