

Buyer Agreement

This agreement is entered into between Leadbay Limited, a company registered in England and Wales with company No. 04716313, whose registered office is Castlemead, Lower Castle Street, Bristol, BS1 3AG (“**Leadbay**”) and you (the “**Buyer**”) and is subject to the terms and conditions attached hereto (the “**Agreement**”).

In consideration of the mutual obligations set out below **the Parties agree** as follows:

1. Definitions

In this Agreement the following words shall have the following meanings unless otherwise expressly stated:

“**Acceptable Use Policy**” means the policy on what constitutes acceptable use of the Leadbay Website set out in Schedule 4 to this Agreement and contained in the Buyer Control Panel, as may be amended from time to time by Leadbay on notice to the Buyer;

“**Acceptance**” means notification on the Buyer Control Panel from Leadbay that a Bid has been accepted in accordance with Clause 4 and which contains the Customer Lead (and “**Accept**” and “**Accepted**” shall be construed accordingly);

“**Act**” means the Data Protection Act 1988 as amended;

“**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 suitably authorised person, firm or adviser as identified through the Leadbay registration process. May also refer to a representative of the Buyer who will be interpreted as acting as the Buyer in relation to these terms and conditions and who will be liable for compliance with these terms and conditions in all such circumstances;

“**Buyer Account**” means the sums paid to Leadbay by the Buyer or representative of the Buyer in accordance with this Agreement and held by Leadbay on behalf of the Buyer until the Buyer has made a successful Bid;

“**Buyer Control Panel**” means the User’s system interface made available by Leadbay to the Buyer on the Leadbay Website;

“**Buyer Data**” means the data inputted by the Buyer into the Leadbay Website from time to time or any other data supplied by the Buyer to Leadbay in the course of this Agreement;

“**Charging Level**” means, in relation to a Lead Class, that False Invalid Rate which triggers an administration charge, as set out the Invalid Lead Policy;

“**Confidential Information**” means any and all secret or confidential commercial, financial, marketing, technical information, know-how, trade secrets and other information 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 to Leadbay, its group companies and affiliates in purchasing an FSP;

“**Customer Lead**” means the Customer’s contact details and all other information relating to a Customer as set out in the Acceptance including without limitation the specific details of the FSP that the Customer has expressed an interest in purchasing and express consent from the Customer to being contacted by a Buyer regarding the provision of such FSP;

“False Invalid” means any Customer Lead submitted to Leadbay as an Invalid Lead which, after investigation by Leadbay, is rejected as invalid under the Invalid Lead Policy;

“False Invalid Rate” means, in relation to the total number of Customer Leads provided from a Lead Class, the number of False Invalids submitted by a Buyer during the appropriate Measuring Period and expressed as a percentage, as set out in the Invalid Lead Policy;

“Force Majeure” means any event outside the reasonable control of either party affecting its ability to perform any of its obligations (other than payment) 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;

“FSP” means a financial services product or service;

“Hoax Lead” is a lead which contains false, untrue or incorrect enquirer details resulting in the lead not being a genuine consumer enquiry

“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 Invalid Lead Policy;

“Invalid Lead Policy” means the policy on invalid leads set out in Schedule 1 to this Agreement and contained in the Buyer Control Panel as may be amended from time to time by Leadbay on notice to the Buyer;

“Lead Category” means the categorisation of an FSP and Customer, defined by Leadbay in its absolute discretion, as set out in Schedule 3 to this Agreement and contained in the Buyer Control Panel as may be amended from time to time by Leadbay on notice to the Buyer;

“Lead Class” means a class of Lead Categories, as set out in Schedule 3 to this Agreement and contained in the Buyer Control Panel as may be amended from time to time by Leadbay on notice to the Buyer;

“Leadbay Materials” means any documentation, materials, software, equipment, data and all other materials owned by or licensed by Leadbay and used by Leadbay (excluding the Buyer Data) in providing the Leadbay Website or performing its obligations under this Agreement including without limitation the Customer Leads and shall be deemed to include any developments to such materials made during the course of providing the Leadbay Website to the Buyer;

“Leadbay Website” means the website at the URL “www.leadbay.co.uk” (or such other URL as Leadbay may notify to the Buyer from time to time);

“Measuring Period” means, in relation to each Lead Class, the period of time over which Leadbay measures a Buyer’s False Invalid Rate, as set out in the Invalid Lead Policy;

“Professional Leads Category” means a mortgage or life cover lead where the customer has indicated that they fall into one of several professions identified on the enquiry form. Where the customer does not complete this section on the enquiry form or selects the ‘Other’ option rather than a specified profession, the customer will be classed in the appropriate product category.

“Registration” means the process by which the Buyer accepts the terms and conditions of this Agreement on the registration page of the Leadbay Website;

“Telephone Lead Policy” means the policy on telephone generated leads as set out in Schedule 2 to this Agreement and contained in the Buyer Control Panel as may be amended from time to time by Leadbay on notice to the Buyer;

“Test Lead” is a lead that has been created as a way of verifying that the lead process is correctly working and is not intended to be a valid lead

“Tracking System” means the system contained within the Buyer Control Panel that allows the Buyer to track its customer relationships.

“User” may be the Buyer or other such person acting on behalf of the Buyer under the terms of this agreement.

- 1.1 The headings contained in this Agreement are for convenience of reference only and shall not affect its interpretation.
- 1.2 References to persons include an individual, company, corporation, firm or partnership.
- 1.3 Words indicating the singular shall include the plural and vice versa. Words indicating a gender shall include each gender.
- 1.4 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.
- 1.5 All sums payable hereunder are exclusive of VAT (if applicable) or any other applicable tax or duty payable upon such sums, which shall be added if appropriate at the rate prevailing at the relevant tax point.

2. Duration

- 2.1 This Agreement shall come into force on Registration and shall continue unless and until terminated under the provisions of Clause 14.

3. Password and User Identification

- 3.1 The Buyer will select a unique password and user identification through the Leadbay Website which will allow the User to access the Leadbay Website. Leadbay shall be entitled to change such password and user identification from time to time on notice to the User.
- 3.2 The User shall be responsible for the security of the password and user identification and Leadbay shall not be responsible for any misuse of the password or user identification or use of the same by a third party.
- 3.3 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 Leadbay immediately.

4. Lead Generation and Bid Process

- 4.1 Leadbay shall make available the Lead Categories on the Leadbay Website.
- 4.2 The Buyer may place a Bid in a Lead Category to receive the next available Customer Lead in that Lead Category subject to there being sufficient funds in the Buyer Account to cover that Bid.
- 4.3 In the event 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) provided that such Bid does not exceed the current balance of the Buyer Account,

Leadbay shall Accept such Bid.

4.4 By sending the Acceptance Leadbay grants the Buyer a twelve (12) 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 FSP detailed in the Customer Lead.

4.5 Once a Bid is placed on the Leadbay Website it may be amended or withdrawn by notification to Leadbay through the Buyer Control Panel at any time up to Acceptance. The Buyer acknowledges that in the event that Leadbay has not received notification of any amendment or withdrawal of such Bid prior to issuing Acceptance then such Bid shall be binding on the Buyer and Leadbay may deduct the Bid from the Buyer Account in accordance with Clause 10.

5. Invalid Leads

5.1 The Buyer and Leadbay shall both comply with the Invalid Lead Policy for determining the validity of Customer Leads.

5.2 Leadbay shall be entitled to deduct and set off any refunds for Invalid Leads or any other sums owed to it by the Buyer in accordance with this Agreement from further Bids made by the Buyer.

5.3 Leadbay shall have no other liability for Invalid Leads and any refund made by Leadbay in accordance with the provisions of this Clause 5 shall be the sole and exclusive remedy of the Buyer in respect of such Invalid Lead.

5.4 In the event that the Buyer has not notified Leadbay of the invalidity of a Customer Lead in accordance with the Invalid Lead Policy the Buyer shall be deemed to have accepted the Customer Lead and such Customer Lead shall not become an Invalid Lead under any circumstances.

6. Tracking System

6.1 The Tracking System is intended to assist the Buyer in managing its customer prospects and track the development of its sales to customers. The Tracking System is provided free of charge to the Buyer.

6.2 The Buyer is entirely responsible for the Buyer Data entered into the Tracking System, for the security and back-up of such Buyer Data, and for any information and reports generated by the Tracking System. Leadbay has no liability for the use or operation of the Tracking System and makes no warranty about the quality or fitness for purpose of the Tracking System or the security of the data held therein.

7. Buyer Obligations

7.1 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 Buyer Control Panel and to complete any further documentation as requested by Leadbay to effect such transfer of monies;
- b) to comply with the Leadbay Acceptable Use Policy;

- c) to use the Leadbay Website solely for its internal business purposes and not to use the Leadbay Website to provide any form of bureau services, managed services, outsourced services, sublicensing, 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 Leadbay Website to any third party;
- d) not to allow any use of the Leadbay Website by any third party;
- e) to use the Customer Lead in the relevant Lead Category solely for the purposes of marketing the FSP referred to in the Customer Lead to the Customer for the duration set out in Clause 4.4 and for no other purposes whatsoever;
- f) 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;
- g) that none of the Buyer Data or any other information posted on the Leadbay 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 Leadbay Website,
- h) for the duration of this Agreement, and for a period of six (6) months after termination of this Agreement, not to 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 Leadbay under or in connection with this Agreement; and
- i) that it shall not conduct any activity that shall have an adverse impact on the reputation of Leadbay or its customers, employees, agents or contractors.

7.2 The Buyer shall:

- a) notify Leadbay within thirty (30) days of Leadbay making available the Leadbay Website if the Leadbay Website is not provided in accordance with this Agreement, and the Buyer will be deemed to accept the Leadbay Website in the event that it has not provided any such notice to Leadbay; and
- b) save in respect of the rights to use the Leadbay Website granted by Leadbay under this Agreement, obtain all necessary consents, licences and permissions which are necessary in order for the Buyer to use the Leadbay Website.

7.3 The Buyer warrants to Leadbay that:

- a) it has full capacity and authority to enter into this Agreement;
- b) it is regulated by the Financial Services Authority (or such other appropriate regulatory body) to conduct business in the FSPs for which it makes a Bid and the Buyer shall indemnify and keep indemnified Leadbay against all losses, costs, damages, claims and expenses arising as a result of a breach of the warranty contained in this Clause 7.2 b); and
- c) it shall use its reasonable endeavours to complete the feedback forms contained on the Leadbay Website to allow Leadbay to assess and improve the performance of the Leadbay Website.

7.4 The Buyer acknowledges and hereby consents that any telephone call to Leadbay may be recorded for training purposes and for the purpose of recording the details of any transaction conducted or information supplied on such call.

8. Leadbay's Obligations

- 8.1 The Leadbay Website is a mechanism to offer Customer Leads to various Buyers simultaneously. Leadbay is not acting as an auctioneer in selling the Customer Leads.
- 8.2 Leadbay shall make the Leadbay Website available to the Buyer at all reasonable times, subject to providing the Buyer twelve (12) hours notice of any periods of unavailability of the Leadbay Website due to maintenance undertaken by Leadbay or its contractors ("**Maintenance Notice**"), save that such Maintenance Notice shall not be required when:
- a) in Leadbay's absolute discretion, such maintenance work is essential for the availability of the Leadbay Website; or
 - b) the unavailability of the Leadbay Website is by virtue of a Force Majeure.
- 8.3 Leadbay warrants to the Buyer that:
- a) it has full capacity and authority to enter into this Agreement;
 - b) the Leadbay Website, when used in accordance with this Agreement, will not infringe the Intellectual Property Rights of a third party; and
 - c) once a Bid has been Accepted in respect of a Customer Lead, Leadbay will not make such Customer Lead available to a third party for a period of twelve (12) months from the Acceptance, provided that Leadbay shall be entitled to use the Customer Lead at any time for the purposes of contacting the Customer in respect of FSPs other than those specifically referred to in such Customer Lead.
- 8.4 In the event that Leadbay fails to comply with Clause 8.1, 8.2 or 8.3, then Leadbay will at its sole discretion, either:
- a) correct the Leadbay Website without any additional charge; or
 - b) refund the charges in respect of the Leadbay Website or those services which have not been satisfactorily performed.
- 8.5 The Buyer agrees that Clause 8.4 represents its sole and exclusive remedy in respect of unsatisfactory performance of the Leadbay Website or the services.

9. Buyer Data and Customer Leads

- 9.1 The Buyer shall be solely responsible for the accuracy, use and/or misuse of the Buyer Data and acknowledges that the accuracy of the reports and other information created by the Tracking System are entirely dependent on the accuracy of the Buyer Data.
- 9.2 To the extent that any of the Buyer Data or Customer Leads contain personal data the Buyer warrants that:
- a) it has obtained all required consents for the processing of the Buyer Data by Leadbay for the purposes of this Agreement and any other purpose notified by Leadbay to the Buyer;
 - b) it shall act only on the instructions of Leadbay in the processing of the Buyer Data and Customer Leads;
 - c) it will not use the Buyer Data or Customer Leads for any purpose which may be inconsistent with those identified to data subjects on or before the time of collection;

d) it shall operate appropriate operational and technological processes and procedures in place to safeguard against unauthorised access, loss, destruction, theft, use or disclosure of the Buyer Data or Customer Leads.

9.3 Leadbay shall become and remain at all times the data controller and the Buyer shall be the data processor in respect of the Buyer Data or Customer Leads.

9.4 The Buyer shall indemnify Leadbay and keep Leadbay indemnified in respect of all costs, losses, damages, claims and expenses arising as a result of a breach of its obligations under this Clause 9.

9.5 For the purposes of this Clause the terms “personal data” and “data controller”, “data processor” and “data subjects” shall be as defined in the Act.

10. Bid Fees and Administration Charges

10.1 In consideration of the receipt of the licence of the Customer Lead following a successful Bid, the Buyer shall pay the sums specified in the Bid together with VAT (if appropriate) at the applicable rate and immediately upon Acceptance of such Bid authorise the transfer of such sums from the Buyer Account to any other account operated by Leadbay.

10.2 In the event that the Buyer is found to be deliberately misleading the Leadbay Website, or misusing the Invalid Lead Policy then, according to the Invalid Lead Policy, the Buyer shall be liable to pay the applicable administrative charges set out therein, each charge being a genuine pre-estimate of the loss suffered by Leadbay.

11. Intellectual Property Rights

11.1 All Intellectual Property Rights in the Leadbay Materials shall remain vested in Leadbay and/or its licensors.

11.2 The Buyer hereby grants Leadbay a perpetual, non-exclusive, transferable, royalty free licence to use the Buyer Data for its business purposes subject to Leadbay complying with its obligations under the Act in respect of such Buyer Data.

12. Confidentiality

12.1 Subject to Clause 12.2, 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.

12.2 The obligations of confidentiality in Clause 12.1 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 Commencement Date (other than in contemplation of this Agreement); or
- e) was independently disclosed to it by a third party entitled to disclose the same; or

12.3 is required to be disclosed under any applicable law, or by order of a court or governmental body or authority of competent jurisdiction.

13. Limitation of Liability

13.1 Nothing in this Agreement shall restrict or exclude Leadbay's liability for death or personal injury resulting from that party's negligence. Nothing in this Agreement shall restrict or exclude Leadbay's liability for fraud, nor for fraudulent misrepresentation.

13.2 Subject to Clause 13.4, Leadbay shall not be liable in any circumstances to the Buyer 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.

13.3 Subject to Clauses 13.1 and 13.2 the aggregate liability of Leadbay 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 the total value of monies received by Leadbay from the Buyer in respect of successful Bids made by the Buyer.

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

13.5 Leadbay 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 Buyer, its agents, employees or contractors, including without limitation the failure of the Buyer to perform its obligations under this Agreement;
- b) any consequences arising from Leadbay complying with the Buyer's instructions or requirements;
- c) any consequences arising from the Buyer failing to secure any necessary consents, licences or permissions; or
- d) any consequences arising from software or equipment not supplied by Leadbay or the Internet or the Buyer's Internet connection.

14. Termination

14.1 Either party may terminate this Agreement upon thirty (30) days prior written notice to the other party.

14.2 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 (30) days of having been required in writing to remedy such breach.

14.3 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.

14.4 Leadbay shall be entitled to terminate this Agreement immediately in the event that:

- a) the Buyer is in breach of its undertakings in Clause 7.1; or
- b) the Buyer fails to pay the charges payable in accordance with this Agreement; or
- c) the Buyer has not actively placed a Bid through the Buyer Control Panel for more than three (3) months; or
- d) where appropriate, the Buyer ceases to be regulated by the Financial Services Authority to conduct business in the financial services products relevant to the Leadbay Website; or
- e) the Buyer commits a written or verbal breach of the Acceptable Use Policy; or
- f) the Buyer commits a breach of the Invalid Lead Policy.

14.5 In the event that a Customer makes a complaint in respect of a Buyer, Leadbay shall be entitled to immediately suspend the Buyer Account and the Buyer's use of the Leadbay Website. Leadbay shall investigate such complaint as soon as reasonably practicable and if at the end of such investigation Leadbay agrees there are valid grounds for complaint then Leadbay shall be entitled to immediately terminate this Agreement.

15. Consequences of Termination

15.1 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.

15.2 The provisions of Clauses 1, 5, 7, 10, 11, 12, 13, 14, 15, and 18 to 25 (inclusive), together with those provisions which are intended or expressed to survive termination, shall so survive.

15.3 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 and, subject to Clause 15.4, Leadbay shall return to the Buyer any sums in the Buyer Account after payment of all outstanding amounts owing by the Buyer to Leadbay. The sums shall be returned to the originating funding source. Where the originating funding source is in question, Leadbay shall not be obliged to return such sums until clarification of the rightful ownership of the sums has been ascertained if this is deemed necessary to establish. Leadbay's decision is final in the sourcing and interpretation of any clarification it has sought.

15.4 In the event that this Agreement is terminated in accordance with Clause 14.4 c) Leadbay shall not be obliged to refund monies remaining in the Buyer Account.

15.5 With regards to any monies remaining in the Buyer Account as described in the circumstances above in Clause 15.4, Leadbay shall reclaim the balance after a period of twelve (12) months has expired from when the point of inactivity commenced.

15.6 In the circumstances described in Clause 14.4 (c), any dormant or inactive accounts shall have their bid lines deleted.

16. Force Majeure

16.1 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.

16.2 If such Force Majeure persists for a period of three (3) 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.

17. Assignment and Sub-contracting

17.1 The Buyer shall 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 Leadbay.

17.2 Leadbay 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 Buyer.

18. Contracts (Rights of Third Parties) Act 1999

18.1 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

19. No Partnership

19.1 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.

20. Variations

20.1 Subject to paragraph 10 of Schedule 1, paragraph 5 of Schedule 2, paragraph 6 of Schedule 3 and paragraph 3 of Schedule 4, this Agreement may be varied by Leadbay by notifying such changes to the Buyer by way of email or by supplying the Buyer with a URL containing the updated Agreement, and any continued use of the Leadbay Website by the Buyer after such notice shall be considered acceptance of the varied Agreement. In the event that the Buyer does not accept the varied Agreement, the Buyer shall be entitled to terminate this Agreement on notice without liability to Leadbay. No other variation of this Agreement shall be effective unless it is in writing and is signed by an authorised representative of each party.

21. Severability

21.1 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.

22. No Waiver

22.1 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.

23. Notices

23.1 Unless expressly stated in this Agreement, all notices relating to this Agreement must be provided in writing, in the case of Leadbay, to its registered address and, in the case of the Buyer, to the address provided on Registration, by post, courier, fax or email or

(solely in the case of Leadbay) by way of a system notification to users of its web sites where the Buyer 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.

24. Entire Agreement

- 24.1 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.

25. Law and Jurisdiction

- 25.1 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 – Invalid Lead Policy

1. Policy Application

- 1.1 The Industry Standard Policy will apply to those leads with a Bid price of less than £5
- 1.2 The Leadbay Enhanced Policy will apply to those leads with a Bid price of £5 and above.

2. Validity of Leads (both policies)

- 2.1 Leadbay considers a Customer Lead valid where:
 - a) a Customer confirms they wish to be contacted by a specialist from the Buyer's named company;
 - b) the Customer Lead matches the Buyer's bidding criteria, where the criteria are applicable, of:
 - (i) FSP type;
 - (ii) FSP value;
 - (iii) postcode;
 - (iv) professional leads category
 - c) the Customer is contactable on the details contained in the Customer Lead (including a valid UK telephone number); and
 - d) in the case of Telephone Leads only, it is an Acceptable Telephone Lead according to the Telephone Lead Policy.
- 2.2 A Customer Lead will be deemed invalid if, in Leadbay's opinion, it is submitted according to paragraph 3 (*Notification*) below, or it is auto invalidated (see paragraph 8 below) and it meets the criteria set out in either paragraph 4 (for leads below £5 Bid price) or paragraph 5 (for leads at a Bid price of £5 or above).

3. Notification (both policies)

- 3.1 Customer Leads will only be accepted for analysis if Leadbay receives notification through the Buyer Control Panel less than seven (7) calendar days from receipt by the Buyer according to the date/time stamp contained on the Customer Lead. However, please also refer to Clause 8 below regarding automatically invalidated leads.
- 3.2 Customer Leads will be deemed accepted if Leadbay does not receive notification within seven (7) calendar days of receipt by the Buyer and no refunds will be provided for Customer Leads which the Buyer has accepted.
- 3.3 Leadbay will use reasonable endeavours to respond to the Buyer's notification within three (3) working days.
- 3.4 A Buyer may withdraw a Customer Lead from analysis at any point up until Leadbay has completed its analysis of the Invalid Lead submission. The analysis will be complete when the Invalid Lead status has been updated from "submitted", to "accepted" or "rejected" on the Buyer Control Panel.

4. Grounds for Invalidity – Industry Standard policy

4.1 Leadbay will only invalidate Customer Leads if:

- a) the Customer Lead contains contact details that do not enable contact to be made, ie the telephone numbers supplied are either incomplete or incorrect, or the telephone numbers are valid but are not the customers telephone numbers (“**Invalid Contact Details**”);
- b) a Customer completes the same form twice (“**Duplication**”) and within three (3) calendar days of receiving an original Customer Lead the Buyer receives a duplicate Customer Lead regarding that Customer;
- c) where, in the case of mortgage FSPs, the property to be mortgaged is not in the UK (Overseas Mortgage enquiry), or for all FSP’s, if the Customer Lead is a Hoax Lead, a Test Lead or where the Customer Lead is a Telephone Lead, but does not meet the requirements of an Acceptable Telephone Lead (“**Other**”)
- d) the Customer has entered incorrect or untrue details, which means the Customer Lead is misclassified according to the Buyer’s bidding criteria (“**Misclassification**”) and if the Buyer is not bidding in that Lead Category or not pursuing the Customer Lead;

5. Grounds for Invalidity – Leadbay Enhanced policy

5.1 In addition to 4.1 a), b) and c) above, Leadbay will also invalidate Customer Leads if:

- a) after the Buyer’s reasonable attempts to contact the Customer, it is established by Leadbay’s independent analysis that none of the contact details in the Customer Lead enable contact to be made with the Customer (“**Unable To Contact**”);

6. Unfit Grounds for Invalidity – Industry Standard Policy

6.1 Leadbay does not provide refunds for Customer Leads who have sourced their advice elsewhere following submission of their enquiry. Leadbay does all that it can to discourage Customers from seeking advice elsewhere; Leadbay simply recommends that Buyers follow up on a Customer Lead as quickly as possible to ensure it remains as fresh as when it was delivered.

6.2 Leadbay does not provide refunds for Customer Leads who have changed their mind about receiving advice, or whose circumstances have changed, following submission of their enquiry.

6.3 In the case of mortgages, Leadbay does not provide refunds for Customer Leads who might incur redemption penalties and/or have decided to remain with their current lender.

6.4 Leadbay does not provide refunds for Customer Leads where the Buyer has been unable to contact the customer via any of the contact details in the Customer Lead, except where the Customer Lead contains incomplete or incorrect contact details.

6.5 In the case of mortgages, Leadbay does not provide refunds for Customer Leads who are unemployed, on a low income, or want to borrow more than they can afford. Leadbay does carry out quality checks to ensure a reasonable loan-to-value ratio however Leadbay does not ask income questions and does not provide refunds on the basis of income or loan-to-value.

6.6 Leadbay does carry out validity checks on leads, but Leadbay does not ask questions relating to Customer affordability for the product required and does not provide refunds on

the basis of affordability.

6.7 Leadbay will not investigate any other reasons for possible invalidation of leads beyond those outlined in Clause 4.

7. Unfit Grounds for Invalidity – Leadbay Enhanced Policy

7.1 All elements of Clause 6 will apply, with the exception of 6.4 and 6.7.

8. Auto Invalidation

8.1 Invalid telephone numbers (incorrect numbers) will be recognized at the point of customer submission and will be automatically invalidated accordingly.

8.2 Leadbay does not guarantee that all telephone numbers received by the Buyer will be valid, however any leads received by the Buyer are still eligible for submission as invalid as detailed in the relevant clauses above.

8.3 The automated invalidation service is only available to a Buyer that is buying a lead directly for contact by themselves, their firm or when the Buyer is an FSA recognized network, their members.

9. Administration Charge (both policies)

9.1 In the event that the Buyer returns a False Invalid, Leadbay:

- a) may apply an administration charge in respect of any False Invalids or to any other Invalid Leads submitted from this point; and
- b) shall not be required to notify the Buyer of the results of the Invalid Lead analysis and outcome within three (3) working days,

provided that the Charging Level was exceeded at the time the False Invalid was submitted under Paragraph 3 Schedule 1 (*Notification*).

9.2 Leadbay shall use the following time periods, rates and charges when calculating administration charges for False Invalids:

Lead Class	Measuring Period	Charging Rate	Charge
Mortgage	First 30 days of preceding 45 day period	20%	£10 per Lead
Loan	First 30 days of preceding 45 day period	20%	£10 per Lead
Debt	First 30 days of preceding 45 day period	20%	£10 per Lead
Life	First 30 days of preceding 45 day period	20%	£10 per Lead
Protection	First 30 days of preceding 45 day period	20%	£10 per Lead
PMI	First 30 days of preceding 45 day period	20%	£10 per Lead

Wills	First 30 days of preceding 45 day period	20%	£10 per Lead
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- 9.3 The Charging Rate will only be calculated when a minimum of 5 leads have been submitted as invalid by the Buyer during the first 30 days of the preceding 45 day period
- 9.4 If, in Leadbay's absolute discretion, an Invalid Lead is considered to have been generated to deliberately mislead the Leadbay Website by the placing of false information on to the Leadbay Website either directly, or indirectly using a third party website ("**Hoax Lead**"), Leadbay reserves the right to:
- a) conduct Leadbay's own investigation of who is responsible for generating such Hoax Leads;
 - b) immediately and indefinitely suspend the account of the responsible party; or
 - c) deduct an administration charge of up to ten pounds (£10) from the responsible party's account in respect of such Hoax Lead.

10. Refunds

- 10.1 If Leadbay considers a Customer Lead to be an Invalid Lead, Leadbay shall provide the Buyer with a refund of a sum equivalent to the bid price of that Customer Lead.
- 10.2 If the Buyer pursues a Customer Lead which meets the Misclassification criteria, Leadbay will re-price the Customer Lead according, in Leadbay's absolute discretion, to its Lead Category and provide a refund of the balance.
- 10.3 Refunds will be credited to the Buyer's Account.

11. Variation

- 11.1 Leadbay reserves the right to amend this policy at any time.
- 11.2 Any revisions to this policy will be published on the Leadbay Website and all changes will be notified through the Buyer Control Panel.
- 11.3 The Buyer's continued use of the Leadbay Website after changes to this policy are posted on the Leadbay Website will constitute acceptance of any new or additional terms of the policy that result from those changes.

Schedule 2 – Telephone Leads Policy

1. Telephone Leads

1.1 Leadbay considers a Customer Lead to be a telephone generated lead (“**Telephone Lead**”) if at any point in the data capture process:

- a) Customer data is captured following an outbound telephone call; or
- b) Following an outbound telephone call, customer data is entered into the web form used for submitting data to Leadbay on behalf of the Customer.
- c) Customer data is captured following a Customer inbound call which may have originated in response to a reason not initially related to the FSP in question but is the result of a non-advice based dialogue between the Customer and the call handler.

1.2 In order to be classified as an acceptable telephone lead (“**Acceptable Telephone Lead**”) the party introducing such leads to Leadbay (the “**Affiliate**”) must comply with this policy.

2. Acceptable Telephone Leads

2.1 The Affiliate must, by the structure of their telephone call script, positively establish that a Customer conforms to all the requirements of paragraph 2.2, and may not rely on the Customer to indicate that they do not.

2.2 Subject to paragraph 2.3 below, a Telephone Lead is an Acceptable Telephone Lead where, in the opinion of Leadbay:

- a) the Customer is ‘actively seeking advice’, in that:
 - (i) the Customer is interested in advice regarding a specific FSP;
 - (ii) during the call the Customer should not feel under any pressure or obligation to request such advice; and
 - (iii) the Customer is able to act upon the advice within three (3) months of the advisory service and recommendations that are provided,
- b) the Customer contact details in the lead are correct and complete, making it possible for a Buyer to contact the Customer by any of the means submitted in the Telephone Lead;
- c) the Customer has consented to being contacted by a named Buyer before the Telephone Lead is submitted to the Leadbay Website;
- d) the telephone call script generates all mandatory information as Leadbay’s standard Data Sheet;
- e) the telephone call script does not allow for an emphasis or suggestion to be made as to what type of FSP the Customer should be looking for advice upon;
- f) the Affiliate complies with the requirements of Clause 3 (*Call Recordings*) of the contract between Leadbay and the Affiliate (the “**Affiliate Agreement**”) regarding the handling of the call;
- g) the Affiliate complies with the requirements of Clause 4 (*Telephone Lead Sources*)

of the Affiliate Agreement regarding the source of Customer contact data; and

- h) the Affiliate can establish that the Customer is able to speak and comprehend English to a sufficient standard that the Customer knowingly participates in the generation of the lead.

2.3 A Telephone Lead will not be considered an Acceptable Telephone Lead if:

- a) In the case of a mortgage lead, the Customer has more than three (3) months worth of redemption penalties;
- b) the Customer's data has been used to generate a Telephone Lead in the previous twelve (12) months;
- c) in Leadbay's absolute discretion, the call recording shows that there was a degree of coercion or pressure on the Customer to respond and answer affirmatively during the call; or
- d) sufficient information has been obtained to ascertain that there is no FSP in the marketplace suitable for the Customer.

3. Call Recordings

- 3.1 All calls used to generate Telephone Leads must be recorded in full and held by the affiliate for a period of at least twenty eight (28) calendar days from receipt by the Buyer according to the date/time stamp contained on the Customer Lead
- 3.2 Call recordings made in a calendar day must be submitted to Leadbay's ftp server by 12.00pm GMT of the following working day, upon request.
- 3.3 All call recordings must be clearly labelled to indicate the time of the call and the Customer's surname, and the name of the Affiliate.
- 3.4 Call recordings should be submitted with electronically labelled folders or sub-folders which reflect the requirements of paragraph 3.3.

4. Telephone Lead Sources

- 4.1 Telephone Leads are only acceptable from an Affiliate who has had its complete sourcing process reviewed and agreed to be compliant with all applicable FSA (where relevant) and DPA regulations by both the Affiliate's compliance department and Leadbay's compliance officer.
- 4.2 Telephone Leads are not acceptable if they are unrequested outbound calls, i.e. where Customers that have not shown prior indication, either directly to the Affiliate, or through the sourcing of the Customer contact, that they have an interest in receiving advice about an FSP.

5. Variation

- 5.1 Leadbay reserves the right to amend this policy at any time.
- 5.2 Any revisions to this policy will be published on the Leadbay Website and all changes will be notified through the Buyer Control Panel.
- 5.3 Continued use of the Leadbay Website after changes to this policy are posted on the Leadbay Website will constitute acceptance of any new or additional terms of the policy that result from those changes.

Schedule 3 – Lead Categories

1. Mortgage Leads

1.1 The following Customer Leads are classed as Mortgage Leads:

- a) Remortgage, Adverse Remortgage, Self-Cert Remortgage
 - (i) The Remortgage category comprises all types of remortgage clients, except those clients who have indicated they have adverse credit, or those who may need to self-certify their income.
 - (ii) If Remortgage clients indicate they have adverse credit they become an Adverse Remortgage.
 - (iii) If remortgage clients indicate they need to self-certify their income, they become a Self-Cert Remortgage.
 - (iv) If Remortgage clients indicate they have more than £5,000 debt, they become a Remortgage plus Debt lead.
- b) Purchase, First Time Buyer, Self Cert Other, Buy To Let, Adverse Other,
 - (i) The Purchase category comprises all clients who indicate they are looking to purchase a property that are not first time buyers, do not have adverse credit and do not need to self-certify their income.
 - (ii) The First Time Buyer category comprises all purchase clients who indicate that they are a first time buyer.
 - (iii) The Self-Cert Other category comprises all purchase clients who indicate they need to self-certify their income.
 - (iv) The Buy To Let category comprises purchase clients who indicate that they require any type of buy to let mortgage.
 - (v) The Adverse Other category comprises those purchase clients who indicate they have adverse credit (and may include clients who need to self-certify their income and buy-to-let clients).
- c) Telephone Generated Remortgage, Telephone Generated Adverse Remortgage
 - (i) The Telephone Generated Remortgage category comprises clients sourced in accordance with the Telephone Lead Policy who indicate that they wish to remortgage their property but do not have adverse credit (and may include clients who need to self-certify their income).
 - (ii) The Telephone Generated Adverse Remortgage category comprises clients sourced in accordance with the Telephone Leads Policy who indicate that they wish to remortgage their property and do have adverse credit (and may include clients who need to self-certify their income).
- d) Equity release
 - (i) The Equity Release category comprises all clients who have indicated that they require advice through completion and submission of the Equity Release specific enquiry form.
- e) Professional Leads

- (i) The Professional Leads category comprises all clients, regardless of the mortgage type, who have indicated that they fall into one of several named professions.

2. Loan Leads

2.1 The following Customer Leads are classed as Loan Leads:

- a) Secured, Adverse Secured
 - (i) The Secured category comprises all types of secured loan clients, except those clients who have indicated they have adverse credit.
 - (ii) If a secured loan client indicates they have adverse credit they become an Adverse Secured.
- b) Unsecured Homeowner, Adverse Unsecured Homeowner, Tenant, Adverse Tenant.
 - (i) The Unsecured Homeowner category comprises all types of unsecured loan clients who do not have adverse credit and are homeowners.
 - (ii) If an Unsecured Homeowner client indicates they have adverse credit they become an Adverse Unsecured Homeowner.
 - (iii) The Tenant category comprises all types of unsecured loan clients who do not have adverse credit and are not homeowners
 - (iv) If a Tenant client indicates they have adverse credit they become an Adverse Tenant.
- c) Car Finance, Adverse Car Finance
 - (i) The Car Finance category comprises all types of car finance clients, except those clients who have indicated they have adverse credit.
 - (ii) If a Car Finance loan client indicates they have adverse credit they become an Adverse Car Finance.
- d) Unemployed
 - (i) The Unemployed category comprises all types of loan clients who have indicated that they are not employed, self-employed, a home-maker, a student, retired or other.

3. Debt Leads

3.1 The following Customer Leads are classed as Debt Leads:

- a) Debt Management, IVA/Trust Deed
 - (i) The Debt Management category comprises those clients who have indicated they require debt advice.
 - (ii) The IVA/Trust Deed category comprises debt management clients whose circumstances indicate they are suited to an IVA/Trust Deed.

- b) Loan Debt Management, Loan IVA/Trust Deed
 - (i) The Loan Debt Management category comprises loan clients whose circumstances indicate they are suited to debt advice.
 - (ii) The Loan IVA/Trust Deed category comprises loan clients whose circumstances indicate they are suited to an IVA/Trust Deed.

4. Life Insurance Leads

4.1 The following Customer Leads are classed as Life Insurance Leads:

- (i) The Term Assurance category comprises those clients who have indicated that they require life cover for a fixed number of years
- (ii) The Whole of Life category comprises those clients who have indicated that they require life cover for the rest of their life.
- (iii) The Term Assurance and Critical Illness category comprises those clients who have indicated that they require life cover for a fixed number of years, plus Critical Illness cover.
- (iv) The Whole of Life category comprises those clients who have indicated that they require life cover for the rest of their life, plus Critical Illness cover.
- (v) The Professional Leads category comprises all clients, regardless of the life insurance type, who have indicated that they fall into one of several named professions.

5. Accident Sickness Unemployment (ASU)/Income Protection (IP) Leads

5.1 The following Customer Leads are classed as ASU/IP Leads:

- a) The ASU category comprises those clients who have indicated that they require protection for 2 years or less
- b) The Income Protection category comprises those clients who have indicated that they require protection for more than 2 years

6. Private Medical Insurance (PMI) Leads

6.1 The following Customer Leads are classed as PMI Leads:

- a) The Personal category comprises those clients who have indicated that they require cover for personal reasons, including cover for dependants.
- b) The Business category comprises those clients who have indicated that they require protection for business reasons.

7. Will Leads

7.1 The following Customer Leads are classed as Will Leads:

- a) Any client that has indicated that they require a Will through completion and submission of an appropriate enquiry form.

8. Variation

- 8.1 Leadbay reserves the right to amend this policy at any time.
- 8.2 Any revisions to this policy will be published on the Leadbay Website and all changes will be notified through the Buyer Control Panel.
- 8.3 Continued use of the Leadbay Website after changes to this policy are posted on the Leadbay Website will constitute acceptance of any new or additional terms of the policy that result from those changes.

Schedule 4 – Acceptable Use Policy

1. Acceptance of Acceptable Use Policy

- 1.1 By accessing any part of the Leadbay Website or using Leadbay systems and services, the Buyer shall be deemed to have accepted this Acceptable Use Policy. If the Buyer does not accept the terms of this Acceptable Use Policy, they must leave the Leadbay Website immediately and not use any Leadbay systems and services.
- 1.2 Where the Buyer enters into any additional contract with Leadbay for Leadbay goods and services via the Leadbay Website or otherwise, this Acceptable Use Policy will form a part of such contract that the Buyer has with Leadbay.
- 1.3 Leadbay advises that the Buyer reads this Acceptable Use Policy carefully since it sets out important information regarding the Buyer's rights and obligations including the consequences of breaching this Acceptable Use Policy.

2. Acceptable Use

2.1 Leadbay requires that, in using the Leadbay Website and Leadbay systems or services, the Buyer does 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 Buyer'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 Leadbay Website or Leadbay systems or services, Leadbay 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 Leadbay or another person;
- g) use the Leadbay Website, Leadbay 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 Buyer may access via the Leadbay Website, Leadbay systems and services;
- i) connect any insecure computer hardware or other machines to the Leadbay 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 Leadbay; or
- k) access or attempt to access the accounts of other users or to penetrate or attempt to penetrate the Leadbay Website or Leadbay's security measures.

2.2 Leadbay may take any or all of the following action at its discretion:

- a) remove any material that, in Leadbay's sole discretion may be inappropriate or that Leadbay may suspect to be illegal, may subject Leadbay to liability, damage Leadbay's reputation or which may violate this Acceptable Use Policy or where Leadbay is required to do so by law;
- b) issue the Buyer with verbal or written warnings and take such further action as Leadbay deems appropriate if such warnings are not heeded;
- c) suspend or terminate the Buyer's access to any or all of the Leadbay Website or Leadbay 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 Buyer or any other user in relation to any breach by the Buyer or such other user of this Acceptable Use Policy or any illegal or suspected illegal activity.

2.3 Leadbay will determine what action is appropriate to be taken against a user on a case by case basis.

2.4 The Buyer's breach of this Acceptable Use Policy constitutes an irremedial breach of the Agreement which entitles Leadbay to terminate immediately under Clause 14.4 e) of the Agreement and may also give rise to termination of or further action under any other contract that the Buyer may have with Leadbay that incorporates this Acceptable Use Policy.

2.5 In addition to the obligations set out in paragraph 2.1, the Buyer agrees that in using the Leadbay Website, Leadbay services and systems, the Buyer will at all times comply with all relevant laws and regulations.

3. Variation

3.1 Leadbay reserves the right to amend this policy at any time.

3.2 Any revisions to this policy will be published on the Leadbay Website and all changes will be notified through the Buyer Control Panel.

3.3 Continued use of the Leadbay Website after changes to this policy are posted on the Leadbay Website will constitute acceptance of any new or additional terms of the policy that result from those changes.