

## BUYER AGREEMENT

This agreement is entered into between Simply Online Media Limited, a company registered in England and Wales with company No. 07849157, whose registered office is 1C Riparian Way, The Crossing Business Park, Cross Hills, Keighley, West Yorkshire, BD20 7AA ("**Simply Online Media**") 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 Simply Online Media Website set out in Schedule 3 to this Agreement and contained in the Buyer Control Panel, as may be amended from time to time by Simply Online Media on notice to the Buyer;

"**Acceptance**" means notification on the Buyer Control Panel from Simply Online Media 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 1998, and the terms **Data Controller, Data Processor, Data Subject, Process** and **Personal Data** shall have the meanings given to them in section 1 of the DPA;

"**Applicable Law**" means the laws of England, Wales and the European Union and other laws or regulations, regulatory policies, guidelines or industry codes to the extent they apply to the activities contemplated by this Agreement (including without limitation, Data Protection Legislation, the FCA Rules, the DMP Protocol, DEMSA Code and the CMR Rules) in each case for the time being;

"**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 Simply Online Media registration process and any 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 Simply Online Media by the Buyer or representative of the Buyer in accordance with this Agreement and held by Simply Online Media 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 Simply Online Media to the Buyer on the Simply Online Media Website;

"**Buyer Data**" means the data inputted by the Buyer into the Simply Online Media Website from time to time or any other data supplied by the Buyer to Simply Online Media in the course of this Agreement;

"**CMR Rules**" means the rules and guidance issued by The Claims Management Regulator in relation

to claims management for the time being;

**“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 Simply Online Media, 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;

**"Data Protection Legislation"** means the DPA, the Data Protection Directive (95/46/EC), Interception Legislation, the Electronic Communications Data Protection Directive (2002/58/EC), the ePrivacy Regulations and all applicable laws and regulations relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner, and the equivalent of any of the foregoing in any relevant jurisdiction;

**"DEMSA Code"** means the code of conduct for the time being applicable to members of the Debt Managers Standards Association;

**"DMP Protocol"** means the Debt Management Plan Protocol for the time being issued by The Insolvency Service;

**“Express Consent”** means the process by which the Customer has either: completed an online enquiry form or seen the details of the Buyer’s firm who will respond to their enquiry and chosen to submit their details to the Buyer to be contacted.

**"FCA Rules"** means all applicable rules of the Financial Conduct Authority for the time being, including but not limited to the Consumer Credit sourcebook;

**“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;

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

**“Lead Category”** means the categorization of an FSP and Customer, defined by Simply Online Media in its absolute discretion, 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 Simply Online Media on notice to the Buyer;

**“Lead Class”** means a class of Lead Categories, 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 Simply Online Media on notice to the Buyer;

**“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 registers on the Simply Online Media Website and accepts the terms and conditions of this Agreement on the registration page of the Simply Online Media Website;

**“Simply Online Media Materials”** means any documentation, materials, software, equipment, data and all other materials owned by or licensed by Simply Online Media and used by Simply Online Media (excluding the Buyer Data) in providing the Simply Online Media 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 Simply Online Media Website to the Buyer;

**“Simply Online Media Website”** means the website at the URL “www.simplyonlineleads.com” (or such other URL as Simply Online Media may notify to the Buyer from time to time);

**“Test Lead”** means 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”** means 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.
- 1.6 References to a statute or statutory instrument or any of its provisions is a reference to that statute or statutory instrument or such provision as from time to time amended or re-enacted or superseded.

## **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 Simply Online Media Website which will allow the User to access the Simply Online Media Website. Simply Online Media 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 Simply Online Media 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 Simply Online Media immediately.

## **4. Lead Generation and Bid Process**

- 4.1 Simply Online Media shall make available the Lead Categories on the Simply Online Media 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 A Bid may specify that it is being placed in respect of the next available web-based Customer Lead or the next available hotkey transfer Customer Lead. If there is no such specification in the Bid, the Bid shall be deemed to be placed for the next available web-based transfer Customer Lead.
- 4.4 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 in the relevant Lead Category becomes available; and
- c) provided that such Bid does not exceed the current balance of the Buyer Account,

Simply Online Media shall Accept such Bid.

- 4.5 By sending the Acceptance Simply Online Media grants the Buyer a three (3) 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.
- 4.6 Once a Bid is placed on the Simply Online Media Website it may be amended or withdrawn by notification to Simply Online Media through the Buyer Control Panel at any time up to Acceptance. The Buyer acknowledges that in the event that Simply Online Media 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 Simply Online Media may deduct the amount of the Bid from the Buyer Account in accordance with Clause 10.

## 5. Leads

- 5.1 Leads are supplied on a no returns basis (Gross), leads can be submitted as 'invalid' for reporting, quality and management information purposes.

## 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. Simply Online Media 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 Automatic Payments and to complete any further documentation as requested by Simply Online Media to effect such transfer of monies;

*"Automatic Payment"* - Is a regular automatic payment that the Buyer can set up using their debit or credit card.

The authority is linked to the bank account or credit card account that the Buyer's card is linked to. This facility enables the system to automatically top up the Buyer Account from the Buyer's nominated credit or debit card, when the Buyer's funds in the Buyer Account are reduced below the nominated threshold. Payments made by Credit or debit card incur a charge per automatic payment of 2%, Payments made by Bank transfer do not incur a charge.

The Buyer has full management of this system and can maintain the following functions:

- Add and remove cards
- Set and change the bank or credit card account
- Set funds amount threshold (this is a minimum of £50)
- Opt in or opt out of receiving an SMS message when the threshold is reached.

An e-mail will be sent to the Buyer to confirm when an automatic payment has been processed. By providing Simply Online Media with the Buyer email address, the Buyer is agreeing to accept communication via e-mail and accept this level of security.

- b) to comply with the Simply Online Media Acceptable Use Policy as outlined in Schedule 3 of this Agreement;
- c) to use the Simply Online Media Website solely for its internal business purposes and not to use the Simply Online Media 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 Simply Online Media Website to any third party;
- d) not to allow any use of the Simply Online Media 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 none of the Buyer Data or any other information posted on the Simply Online Media 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 Simply Online Media Website;
- g) 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 Simply Online Media under or in connection with this Agreement; and
- h) that it shall not conduct any activity that shall have an adverse impact on the reputation of Simply Online Media or its customers, employees, agents or contractors.

7.2 The Buyer shall:

- a) notify Simply Online Media within thirty (30) days of Simply Online Media making available the Simply Online Media Website if the Simply Online Media Website is not provided in accordance with this Agreement, and the Buyer will be deemed to accept the Simply Online Media Website in the event that it has not provided any such notice to Simply Online Media;

and

- b) Save in respect of the rights to use the Simply Online Media Website granted by Simply Online Media under this Agreement, obtain all necessary consents, licences and permissions which are necessary in order for the Buyer to use the Simply Online Media Website.

7.3 The Buyer warrants and undertakes to Simply Online Media that:

- a) it has full capacity and authority to enter into this Agreement;
- b) it shall use its reasonable endeavours to complete the feedback forms contained on the Simply Online Media Website to allow Simply Online Media to assess and improve the performance of the Simply Online Media Website.
- c) it has all consents, licences and regulatory authority necessary or desirable for it 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 (including but not limited to authorisation by The Financial Conduct Authority);
- d) it has conducted and will continue to conduct its business in accordance with all Applicable Law;
- e) its processing or other use of the Customer Leads will be in full compliance with Data Protection Legislation and in particular with the Information Commissioner's guidance on direct marketing, which as at 15-Dec-14 is version 1.1 dated 23 October 2014.

7.4 The Buyer shall indemnify and keep indemnified Simply Online Media against all actions, proceedings, losses, claims, damages, liabilities, costs, charges and expenses which Simply Online Media or any member of the Group may suffer or incur in relation to:

- a) a breach by the Buyer of the warranties in Clause 7.3; and/or
- b) a breach of Applicable Law arising from the Buyer's use of a Customer Lead.

7.5 The Buyer acknowledges that any telephone call to Simply Online Media may be recorded for training purposes and for the purpose of recording the details of any transaction conducted or information supplied on such call and hereby gives consent to that recording.

## **8. Simply Online Media's Obligations**

8.1 The Simply Online Media Website is a mechanism to offer Customer Leads to various Buyers simultaneously. Simply Online Media is not acting as an auctioneer in selling the Customer Leads.

8.2 Simply Online Media shall make the Simply Online Media 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 Simply Online Media Website due to maintenance undertaken by Simply Online Media or its contractors ("**Maintenance Notice**"), save that such Maintenance Notice shall not be required when:

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- a) in Simply Online Media's absolute discretion, such maintenance work is essential for the availability of the Simply Online Media Website; or
- b) the unavailability of the Simply Online Media Website is by virtue of a Force Majeure.

8.3 Simply Online Media warrants to the Buyer that:

- a) it has full capacity and authority to enter into this Agreement;
- b) the Simply Online Media 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, Simply Online Media will not make such Customer Lead available to a third party for a period of three (3) months from the Acceptance, provided that Simply Online Media 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 Simply Online Media fails to comply with Clause 8.1, 8.2 or 8.3, then Simply Online Media will at its sole discretion, either:

- a) correct the Simply Online Media Website without any additional charge; or
- b) refund the charges in respect of the Simply Online Media 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 Simply Online Media Website or the services.

**9. Buyer Data and Customer Leads**

9.1 Simply Online Media and the Buyer are independent data controllers of the personal data in the Buyer Data, and shall process those personal data independently and not jointly or in common with the other, nor is one the other's Data Processor.

9.2 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.

9.3 To the extent that any of the Buyer Data contain personal data the Buyer warrants that it has obtained all required consents for the processing of the Buyer Data by Simply Online Media for the purposes of this Agreement and it will obtain consent for any other purpose notified by Simply Online Media to the Buyer.

9.4 Simply Online Media and the Buyer are independent data controllers of the personal data in the Customer Leads, and shall process those personal data independently and not jointly or in common with the other.



- 9.5 The Buyer warrants that it will not use any Customer Lead for any purpose which may be inconsistent with those identified to the Customer on or before the time of collection.
- 9.6 The Buyer shall indemnify Simply Online Media and keep Simply Online Media 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.
- 9.7 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 Simply Online Media.
- 10.2 In the event that the Buyer is found to be deliberately misusing the Simply Online Media Website, 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 Simply Online Media.

#### **11. Intellectual Property Rights**

- 11.1 All Intellectual Property Rights in the Simply Online Media Materials shall remain vested in Simply Online Media and/or its licensors.
- 11.2 The Buyer hereby grants Simply Online Media a perpetual, non-exclusive, transferable, royalty free licence to use the Buyer Data for Simply Online Media's business purposes (including marketing Customers with its own products and services) subject to Simply Online Media complying with its obligations under Data Protection Legislation 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 Simply Online Media's liability for death or personal injury resulting from that party's negligence. Nothing in this Agreement shall restrict or exclude Simply Online Media's liability for fraud or fraudulent misrepresentation.

13.2 Subject to Clauses 13.1 and 13.4, Simply Online Media 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 Simply Online Media 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 Simply Online Media from the Buyer in respect of successful Bids made by the Buyer.

13.4 The charges payable under this Agreement have been calculated on the basis that Simply Online Media will exclude or limit its liability as set out in this Agreement.

13.5 Simply Online Media 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 Simply Online Media 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 Simply Online Media 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.

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- 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 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 Simply Online Media shall be entitled to terminate this Agreement immediately in the event that:
- a) the Buyer is in breach of its undertakings and/or warranties in Clause 7; 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 Conduct Authority to conduct business in the financial services products forming the relevant Lead Class(es); or
  - e) the Buyer commits a breach of the Acceptable Use Policy; or
- 14.5 In the event that a Customer makes a complaint in respect of a Buyer, Simply Online Media shall be entitled to immediately suspend the Buyer Account and the Buyer’s use of the Simply Online Media Website. Simply Online Media shall investigate such complaint as soon as reasonably practicable. The Buyer shall provide all reasonable co-operation to Simply Online Media in respect of such investigation, including copies of relevant correspondence. If at the end of such investigation Simply Online Media determines that there are valid grounds for complaint, Simply Online Media 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, 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, Simply Online Media shall return to the Buyer any sums in the Buyer Account after payment of all outstanding amounts owing by the Buyer to Simply Online Media. The sums shall be

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returned to the originating funding source. Where the originating funding source is in question, Simply Online Media 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. Simply Online Media'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) Simply Online Media 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, Simply Online Media 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 Simply Online Media.
- 17.2 Simply Online Media 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 11 of Schedule 1, paragraph 8 of Schedule 2 and paragraph 3 of Schedule 3, this Agreement may be varied by Simply Online Media 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 Simply Online Media 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 Simply Online Media. 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 Simply Online Media, 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 Simply Online Media) 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 – Lead Categories**

**1. Mortgage Leads**

1.1 The following Customer Leads are classed as "Mortgage Leads":

- a) Remortgage, Adverse Remortgage, Self-Cert Remortgage, Remortgage plus Debt
  - (i) The Remortgage category comprises all types of remortgage Customers, except those clients Customers who have indicated they have adverse credit, or those who may need to self-certify their income.
  - (ii) If Remortgage Customers indicate they have adverse credit they become an Adverse Remortgage.
  - (iii) If remortgage Customers indicate they need to self-certify their income, they become a Self-Cert Remortgage.
  - (iv) If Remortgage Customers indicate they have more than £5,000 of additional 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 Customers 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 Customers who indicate that they are a first time buyer.
  - (iii) The Self-Cert Other category comprises all purchase Customers who indicate they need to self-certify their income.
  - (iv) The Buy To Let category comprises purchase Customers who indicate that they require any type of buy to let mortgage.
  - (v) The Adverse Other category comprises those purchase Customers who indicate they have adverse credit (and may include Customers who need to self-certify their income and buy-to-let Customers).
- c) Equity release
  - (i) The Equity Release category comprises all Customers who have indicated that they require advice through completion and submission of the Equity Release specific enquiry form.
- d) Professional Leads
  - (i) The Professional Leads Category comprises all Customers, 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) Homeowner, Adverse Homeowner
  - (i) The Homeowner category comprises all types of homeowner loan Customers, except those Customers who have indicated they have adverse credit.
  - (ii) If a homeowner loan Customer indicates they have adverse credit they become an adverse homeowner.
- b) Tenant, Adverse Tenant.
  - (i) The Tenant category comprises all types of unsecured loan Customers who do not have adverse credit and are not homeowners
  - (ii) If a Tenant Customer 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 Customers, except those Customers who have indicated they have adverse credit.
  - (ii) If a Car Finance loan Customer indicates they have adverse credit they become an Adverse Car Finance.
- d) Unemployed
  - (i) The Unemployed category comprises all types of loan Customers who have indicated that they are not employed, self-employed, a home-maker, a student, retired or other.

## **4. Life Insurance Leads**

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

- (i) The Term Assurance category comprises those Customers who have indicated that they require life cover for a fixed number of years
- (ii) The Term Assurance and Critical Illness category comprises those Customers who have indicated that they require life cover for a fixed number of years, plus Critical Illness cover.
- (iii) The Professional Leads category comprises all Customers, 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 Customers who have indicated that they require protection

for 2 years or less

- b) The Income Protection category comprises those Customers 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 Customers who have indicated that they require cover for personal reasons, including cover for dependents.
- b) The Business category comprises those Customers 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 Customer that has indicated that they require a Will through completion and submission of an appropriate enquiry form.

## **8. Variation**

8.1 Simply Online Media reserves the right to amend this policy at any time.

8.2 Any revisions to this policy will be published on the Simply Online Media Website and all changes will be notified through the Buyer Control Panel.

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

## **9. Lead Classes**

The corresponding Lead Classes for the Lead Categories above are:

1. Mortgage
2. Loan
3. Debt
4. Life
5. Protection
6. PMI
7. Wills



**Schedule 2 – Acceptable Use Policy**

**1. Acceptance of Acceptable Use Policy**

- 1.1 By accessing any part of the Simply Online Media Website or using Simply Online Media 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 Simply Online Media Website immediately and not use any Simply Online Media systems and services.
- 1.2 Where the Buyer enters into any additional contract with Simply Online Media for Simply Online Media goods and services via the Simply Online Media Website or otherwise, this Acceptable Use Policy will form a part of such contract that the Buyer has with Simply Online Media.
- 1.3 Simply Online Media 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 Simply Online Media requires that, in using the Simply Online Media Website and Simply Online Media systems or services, the Buyer does not:
  - a) say or do anything that would cause unjustified annoyance, unjustified 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 Simply Online Media Website or Simply Online Media systems or services, Simply Online Media 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 Simply Online Media or another person;
  - g) use the Simply Online Media Website, Simply Online Media 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 Simply Online Media Website, Simply Online Media systems and services;
  - i) connect any insecure computer hardware or other machines to the Simply Online Media systems which may be exploited by third parties to carry out activities that are in breach of this

## Private & Confidential

Acceptable Use Policy;

- j) monitor or make bids by means of any automated process, computer programs or software other than that provided by Simply Online Media; or
- k) access or attempt to access the accounts of other users or to penetrate or attempt to penetrate the Simply Online Media Website or Simply Online Media's security measures.

2.2 Simply Online Media may take any or all of the following action at its discretion:

- a) remove any material that, in Simply Online Media's sole discretion may be inappropriate or that Simply Online Media may suspect to be illegal, may subject Simply Online Media to liability, damage Simply Online Media's reputation or which may breach this Acceptable Use Policy or where Simply Online Media is permitted or required to do so by law;
- b) issue the Buyer with verbal or written warnings and take such further action as Simply Online Media deems appropriate if such warnings are not heeded;
- c) suspend or terminate the Buyer's access to any or all of the Simply Online Media Website or Simply Online Media 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 Simply Online Media 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 irremediable breach of the Agreement which entitles Simply Online Media 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 Simply Online Media 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 Simply Online Media Website, Simply Online Media services and systems, the Buyer will at all times comply with all relevant laws and regulations.

### **3. Variation**

3.1 Simply Online Media reserves the right to amend this policy at any time.

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

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